



BROKER CALL OFF LETTER OF APPOINTMENT

AON UK LIMITED
122 Leadenhall Street
London, EC3V 4AN

By email

13 April 2023

Dear [REDACTED],

1. This Call Off Contract is for the provision of insurance brokerage and associated support services by Aon UK Limited (00210725) as the "**Supplier**" to the Secretary of State, acting through Export Credits Guarantee Department, operating as UK Export Finance as Authority pursuant to Lot 1 of the Political and Credit Risk Insurance Framework Agreement which commenced on 16 January 2023 (the "**Framework Agreement**").

For the purposes of this Letter of Appointment:

- capitalised terms and expressions used in this Letter of Appointment shall have the same meanings given to them below or in or pursuant to Clause 1.1 (*Definitions*) of the Call Off Terms attached to this Letter of Appointment unless the context otherwise requires;
 - where capitalised terms and expressions used in this Letter of Appointment or the Call Off Terms are not defined below or in the Call Off Terms attached to this Letter of Appointment then they shall have the same meanings given to them in or pursuant to the Framework Agreement;
 - references to Appendix 1 are references to the appendices to this Letter of Appointment; and
 - Appendix 1 shall form part of this Letter of Appointment.
2. This Letter of Appointment constitutes an Order issued in accordance with the Call Off Procedure. The Supplier in their capacity as a broker agrees to supply the **Contract Services specified in Appendix 1** in accordance with the terms of this Letter of Appointment and the Call Off Terms for the Call Off Contract Period.
3. The Call Off Commencement Date shall be 16 March 2023.
4. The Call Off Expiry Date shall be the later of:

- (a) the last expiry date of any Contract of Insurance incepted pursuant to this Call Off Contract; and
 - (b) if no Contracts of Insurance have been incepted pursuant to this Call Off Contract, the date on which the Authority completes or terminates the Further Competition Procedure undertaken pursuant to this Call Off Contract without entering into a Contract of Insurance.
- 5. The Supplier's Representative with overall responsibility for the supply of the Contract Services and for the purposes of this Call Off Contract is [REDACTED]
- 6. The Authority's Representative for the purpose of this Call Off Contract is [REDACTED] and any Disputes shall be escalated in accordance with Clause 21 (*Disputes and Law*) of the Call Off Terms.
- 7. The Authority confirms that the applicable law for this Call Off Contract shall be the law of England and Wales.
- 8. The Supplier shall:
 - (a) supply the Contract Services to the Authority in accordance with the provisions of the Call Off Contract;
 - (b) comply with all reasonable and lawful instructions given to the Supplier and Supplier Personnel by the Authority in relation to the provision of the Contract Services;
 - (c) immediately report to the Authority's Representative any matters which involve or could potentially involve a conflict of interest;
 - (d) ensure that neither it, nor any of its Affiliates or Supplier Personnel, embarrasses the Authority, damage the reputation of the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract;
 - (e) where requested, advise the Authority in the performance of its duty to make a fair presentation of the risk, present to Insurers the relevant documents and information, including, where appropriate, presenting the documents and information which it holds in its own capacity which are required to be presented;
 - (f) procure for the benefit of the Authority properly documented Contract(s) of Insurance which meet(s) the Authority's needs as communicated to the Supplier from time to time, save where it has not been possible to do so in which case the Authority needs to have been informed of and accepted the limitations (the "Policy Document(s)");

- (g) subject to clause 12 (*Records, Audit Access and Reporting*) of the Framework Agreement and Clause 9 (*Consequences of Expiry and Termination*) of this Call Off Contract ensure that it retains, and will make available to the Authority on request at any time (including after termination of this Call Off Contract and/or of the Framework Agreement), the documents comprising the placing file (including, *inter alia*, all copies of written communications between the Supplier and Insurer and other records of communications between the Supplier and Insurer, whether such communications are written or oral, prior to and following inception) in respect of the policies incepted under this Call Off Contract (the "**Placing File(s)**");
 - (h) co-operate with the Authority and the Authority's other professional advisers in relation to the Contract Services as required by the Authority;
 - (i) if requested, comply with the Authority's internal policies in each case as notified to the Supplier in writing by the Authority and procedures and Government and FCA codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) and in each case notified to the Supplier in writing by the Authority. Notwithstanding the above, the Supplier shall comply with the relevant principles of any Authority policy requirements which are notified to the Supplier by the Authority (a) to the extent that these requirements are reasonable, proportionate and relevant to the performance of this Call Off Contract and (b) in accordance with and subject to the Supplier's duty to exercise reasonable skill and care in the performance of this Call Off Contract; and
 - (j) ensure that it has a valid Cyber Essentials Plus Certificate or equivalent acceptable to the Authority.
9. The Supplier shall not:
- (a) knowingly act at any time during the term of this Call Off Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Authority shall thereby exist in relation to the Contract Services; and
 - (b) engage in any conduct which in the reasonable opinion of the Authority is prejudicial to the Authority.
10. Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.
11. No variation of this Call Off Contract shall be effective unless it is agreed in accordance with Clause 2.1 (*Variation of Contract Services*) of the Call Off Terms.
12. The unique order reference number for this Call Off Contract is APM Tranche 7

13. For the purposes of Clause 20 (*Notices*) of the Call Off Terms, the address or email address of each Party shall be:

For the attention of: [REDACTED]

Tel: +44 (0) [REDACTED] | M. +44 (0) [REDACTED]

Email: apm@ukexportfinance.gov.uk

for the Supplier:

For the attention of: [REDACTED]

Tel: +44 (0) [REDACTED] | M +44 (0) [REDACTED]

Email: pri.team@aon.co.uk

14. The following special terms are incorporated into this Call Off Contract:

- (a) For the purposes of KPI1 of Table 1 of Schedule 2, the capacity targets are:

(i) [REDACTED]; [REDACTED]

(ii) [REDACTED]

BY SIGNING AND RETURNING THIS LETTER OF APPOINTMENT (which may be done by electronic means) the Supplier agrees to enter into a Call Off Contract with the Authority to provide the Contract Services.

The Parties hereby acknowledge and agree that they have read the Letter of Appointment, the Joint Schedules and the Call Off Terms and by signing below agree to be bound by this Call Off Contract.

Please sign and return the attached duplicate of this Letter of Appointment with the acknowledgement signed by an authorised representative of the Supplier.

Yours faithfully

[REDACTED]

For and on behalf of the Authority

as an authorised signatory of the Authority



For and on behalf of the Supplier:

Name and Title	<div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em;"></div>
Signature	<div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em;"></div>
Date	Apr 19, 2023

APPENDIX 1 CONTRACT SERVICES

The Supplier will assist the Authority in the placement of up to 7 policies of the following type:

- Non-Payment Insurance

[REDACTED]

[REDACTED]

[REDACTED]

1. The Contract Services shall incorporate the following:
 - (a) The services set out in paragraph 4 of Part B Specification of Requirements for Lot 1 in Framework Schedule 1 (*Services and Key Performance Indicators*) of the Framework Agreement;
 - (b) The services set out in paragraphs 5 and 6 of Part B Specification of Requirements for Lot 1 in Framework Schedule 1 (*Services and Key Performance Indicators*) of the Framework Agreement.
2. The Insurance Services Brokerage shall be a percentage, equal to the Brokerage Percentage, of the Premium due to the Insurer under a Contract of Insurance which shall be capped at an amount equal to the Broker Cap. The Broker Cap shall apply per Further Competition Procedure pursuant to this Call Off Contract and at the prevailing exchange rate (where currencies of Premium and Broker Cap differ) as at the date of inception of the Contract of Insurance.
3. The Authority reserves the right to require the Supplier to establish appropriate escrow arrangements regarding the collection and distribution of funds (including premiums, premium refunds and the proceeds of any claims).

PART B: TEMPLATE BROKER CALL OFF TERMS

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Call Off Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below. Where provisions in the Call Off Terms are not defined below then they shall have the same meanings given to them in or pursuant to the Framework Agreement:

"Affiliates" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time and **"Affiliate"** shall be interpreted accordingly;

"Approval" means the prior written consent of the Authority and **"Approve"** and **"Approved"** shall be construed accordingly;

"Auditor" means:

- (a) the Authority internal and external auditors;
- (b) the Authority statutory or regulatory auditors;
- (c) the Comptroller and Auditor General and their staff;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Authority to carry out audit or similar review functions; or
- (f) successors or assigns of any of the above;

"Authority" means the Secretary of State acting through the Export Credits Guarantee Department whose office is at 1 Horse Guards Road, London, SW1A 2HQ and which operates as UK Export Finance;

"Authority Confidential Information" means all Authority's Personal Data and any information (including the existence or content of any Contract of Insurance), however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers, customers and clients of the Authority, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential");

"Authority's Premises" means premises owned, controlled or occupied by the Authority which are made available for use by the Supplier for provision of the Contract Services (or any of them);

"Authority's Personal Data" means any Personal Data supplied by the Authority to the Supplier for the purposes of, or in connection with, this Call Off Contract;

"Authority's Representative" means the representative of the Authority appointed by the Authority from time to time in relation to this Call Off Contract and notified to the Supplier;

"Brokerage Cap" has the meaning given to it in Annex 1 of Framework Schedule 2 (*Framework Prices*);

"Brokerage Percentage" has the meaning given to it in Annex 1 of Framework Schedule 2 (*Framework Prices*);

"Call Off Commencement Date" means the date of commencement of this Call Off Contract set out in paragraph 3 of the Letter of Appointment;

"Call Off Contract" means the contract between the Authority and the Supplier (entered into pursuant to the provisions of the Framework Agreement) and consisting of the Letter of Appointment, these Call Off Terms (save to the extent varied by the Letter of Appointment), the Joint Schedules and any other documents referred to in either of them;

"Call Off Contract Period" means the period commencing on the Call Off Commencement Date and ending on the Call Off End Date;

"Call Off End Date" means the earlier of:

- (a) the Call Off Expiry Date; and
- (b) if the Call Off Contract is terminated before the Call Off Expiry Date, the date of termination of the Call Off Contract;

"Call Off Expiry Date" has the meaning given to it in paragraph 4 of the Letter of Appointment;

"Call Off Schedules" means the schedules to the Call Off Terms;

"Call Off Terms" means the Template Broker Call Off Terms (as varied by the Letter of Appointment);

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

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

"Change in Law" means any change in Law which impacts on the supply and performance of the Contract Services, which comes into force after the Call Off Commencement Date;

"Change of Control" means a change of control within the meaning of section 450 of the Corporation Tax Act 2010;

"Commercially Sensitive Information" means the information listed in Call Off Schedule 3 (*Commercially Sensitive Information*) which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;

"Confidential Information" means the Authority Confidential Information and/or the Supplier Confidential Information as the context requires;

"Contract of Insurance" means a legally binding contract of insurance or reinsurance issued to the Authority by the Insurer under the Framework placed by the Supplier pursuant to this Call Off Contract;

"Contract of Insurance Charges" means the following charges arising in respect of a Contracts of Insurance incepted under this Call Off Contract:

- (a) Premium; and
- (b) IPT (if applicable); and
- (c) VAT (if applicable);

"Contract Services" means the services to be supplied by the Supplier to the Authority as set out in Appendix 1 to the Letter of Appointment;

"Control" means control as defined in sections 1124 and 450 of the Corporation Tax Act 2010, and **"Controls"** or **"Controlled"** shall be interpreted accordingly;

"Crown" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

"Crown Body" means any department, office or executive agency of the Crown;

"Cyber Essentials Scheme" means the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials scheme can be found here: <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>;

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Call Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call Off Contract, including any Personal Data Breach;

"Data Protection Legislation" means:

- (a) the UK GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time; and
- (b) all applicable Law about the processing of personal data and privacy;

"Data Subject" has the meaning given in the Data Protection Legislation;

"Data Subject Access Request" means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

"Default" means any breach of the obligations of the Supplier (including but not limited to abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Authority;

"Dispute" means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Contract Services, or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

"Dispute Resolution Procedure" means the dispute resolution procedure set out in Call Off Schedule 1 (*Dispute Resolution Procedure*);

"EIR" means the Environmental Information Regulations 2004;

"Existing IPR" means any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of this Call Off Contract (whether prior to the Call Off Commencement Date or otherwise);

"FCA" means the Financial Conduct Authority, an independent body corporate with statutory powers derived from the Financial Services and Markets Act 2000, and its successors in title;

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

"Framework Agreement" means the Framework Agreement between the Authority and the Supplier referred to in the Letter of Appointment;

"Framework Prices" means the prices contained in Framework Schedule 2 (*Framework Prices*);

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence,

prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person carrying on the relevant regulated activities in the United Kingdom and in accordance with applicable Regulatory Requirements;

"Government" shall take the same meaning as the Crown;

"Government Data" means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority Confidential Information, and which:
 - (i) are supplied to the Supplier by or on behalf of the Authority; and/or
 - (ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or
- (b) any Personal Data for which the Authority is the Data Controller;

"Improvement Notice" means the notice served by the Authority pursuant to Clause 2.2 (*Remedies for KPI Target Failure*);

"Improvement Plan" means the plan developed and revised by the Supplier from time to time in accordance with Clause 2.2 (*Remedies for KPI Target Failure*);

"Information" has the meaning given under section 84 of Freedom of Information Act 2000;

"Insurance Services Brokerage" means the fee paid by the Authority to the Supplier for placing a Contract of Insurance under the Call Off Contract, and the provision of ongoing services in respect of such Contract of Insurance (where directed by the Authority), as calculated in accordance with paragraph 2 of Appendix 1 to the Letter of Appointment and payable in accordance with Clause 2.3 (*Payments and Invoicing*);

"Insurer" means an entity acting as insurer or reinsurer under a Contract of Insurance placed pursuant to the Framework from time to time including (as the context requires):

- (a) a Framework Lot 2 Supplier;
- (b) where relevant, the member(s) of the relevant Lloyd's Syndicate of which the Framework Lot 2 Supplier is the managing agent;
- (c) where relevant, the member(s) of the relevant Lloyd's Syndicate of which a Nominated Insurer is the managing agent; or
- (d) where relevant, a Nominated Insurer of a Framework Lot 2 Supplier,

and **"Insurers"** shall be interpreted accordingly;

"Intellectual Property Rights" or **"IPR"** means:

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

"**IPT**" means Insurance Premium Tax at the current rate payable in the event that export credit insurance ceases to be exempt;

"**Joint Schedule**" means each of the following:

- (a) Joint Schedule 1 (*Corporate Social Responsibility*); and
- (b) Joint Schedule 2 (*Data Processing*),

which are incorporated into this Call Off Contract and "**Joint Schedules**" will be interpreted accordingly;

"**Key Performance Indicators**" or "**KPIs**" means the performance measurements and targets set out in Call Off Schedule 2 (*Key Performance Indicators*) as varied from time to time in accordance with this Call Off Contract;

"**Key Sub-Contract**" means any contract or agreement (or proposed contract or agreement), other than this Call Off Contract or the Framework Agreement, pursuant to which a third party:

- (a) provides the Contract Services (or any part of them); and/or
- (b) is responsible for the management, direction or control of the provision of the Contract Services (or any part of them);

"**Key Sub-Contractor**" means a sub-contractor with a Key Sub-Contract;

"**Know How**" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Contract Services but excluding know-how already in the Supplier's or the Authority's possession before the Call Off Commencement Date;

"**KPI Targets**" means the key performance indicator targets set out in Table 1 of Call Off Schedule 2 (*Key Performance Indicators*);

"**Law**" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or

directives or requirements with which the relevant Party is bound to comply and "**Laws**" shall be interpreted accordingly;

"**Lloyd's Syndicate**" means a member or a group of members supporting a common underwriting venture. All syndicates are managed by a Lloyd's managing agent;

"**Letter of Appointment**" means the letter from the Authority to the Supplier which contains details of an Order (including without limitation the description of the Contract Services to be supplied) and is used to create a Call Off Contract;

"**Losses**" means losses, liabilities, damages, costs, fines and expenses (including legal fees on a solicitor/client basis), disbursements, costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and "**Loss**" shall be interpreted accordingly;

"**Month**" means a calendar month and "**Monthly**" shall be interpreted accordingly;

"**New IPR**" means:

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

but shall not include the Supplier's Existing IPR;

"**Nominated Insurer(s)**" means the insurance services suppliers who are an Affiliate of a Lot 2 Supplier and listed in Framework Schedule 10 (*List of Nominated Insurer(s)*);

"**Order**" means the order for the provision of the Contract Services placed by the Authority with the Supplier in accordance with the Framework Agreement and under the terms of the Call Off Contract;

"**Order Reference Number**" has the meaning given to it in paragraph 12 of the Letter of Appointment;

"**Party**" means the Supplier or the Authority and "**Parties**" shall mean both of them;

"**Personal Data**" has the meaning given to it in the UK GDPR;

"**Placing Files**" has the meaning given to it in paragraph 8(g) of the Letter of Appointment;

"**Premium**" means the cost of a Contract of Insurance to the Authority excluding Insurance Services Brokerage, VAT (if applicable) and IPT (if applicable);

"**Processor**" has the meaning given to it in the Data Protection Legislation;

"Policy Documents" has the meaning given to it in paragraph 8(f) of the Letter of Appointment;

"Prohibited Act" means any of the following:

- (a) directly or indirectly offering, promising or giving any person working for or engaged by the Authority, any other Contracting Body or any other public body a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Call Off Contract;
- (c) committing any offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) by defrauding, attempting to defraud or conspiring to defraud the Authority or other public body; and/or
- (d) any activity, practice or conduct which would constitute one of the offences listed under paragraph (c) above if such activity, practice or conduct had been carried out in the UK;

"PRA" means the Prudential Regulation Authority, part of the Bank of England, with statutory powers derived from the Financial Services and Markets Act 2000 and its successors in title;

"Regulations" means the Public Contracts Regulations 2015 as amended from time to time;

"Regulatory Bodies" means the FCA and their overseas equivalent and other government departments and Lloyd's, regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement and "Regulatory Body" shall be interpreted accordingly;

"Regulatory Requirements" means all rules and regulations (including all applicable and other financial services laws, statutes, statutory guidance rules and regulations and the FCA's handbook of rules and guidance as amended, Lloyd's guidance, bye-laws or codes of conduct, and any other rules which the FCA or Lloyd's is applying to the

relevant person), bye-law, order, decree, code of practice, circular, directive or other legislative measure, of or made by any relevant Regulatory Body;

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

"Request for Information" means a request for information relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIR;

"Security Management Plan" means evidence of the Supplier's Cyber Essentials Plus Certificate in accordance with Call Off Schedule 4 (*Security*);

"Security Policy" means the Cyber Essentials Scheme;

"Specific Change in Law" means a Change in Law that relates specifically to the business of the Authority and which would not affect a comparable supply of services to another customer of the Supplier that are the same or similar to the Contract Services;

"Storage Media" the part of any device that is capable of storing and retrieving data;

"Supplier" means the person, firm or company with whom the Authority enters into this Call Off Contract with as identified in the Letter of Appointment;

"Supplier Confidential Information" means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including all IPRs, together with information derived from the foregoing and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential");

"Supplier Personnel" means all directors, officers, employees, agents, consultants, contractors and sub-contractors (including, without prejudice to Clause 13.2, Key Sub-Contractors) of the Supplier engaged in the performance of the Supplier's obligations under this Call Off Contract;

"Supplier's Representative" means the representative of the Supplier appointed by the Supplier from time to time in relation to this Call Off Contract and notified to the Authority;

"Termination Notice" means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;

"Transparency Information" means the Transparency Reports and this Call Off Contract, including any changes to this Call Off Contract agreed from time to time, except for:

- (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority;

- (b) Authority Confidential Information;
- (c) Commercially Sensitive Information; and
- (d) any information which the Authority may withhold from disclosure pursuant to Regulation 108(3) of the Regulations;

"**Transparency Reports**" means the information relating to the performance of the Call Off Contract in Table 1 to Call Off Schedule 2 (*Key Performance Indicators*) which are identified as being reported publicly by Government;

"**UK GDPR**" means the UK Data Protection Act 2018 ("DPA 2018") and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 under the European Union (Withdrawal) Act 2018;

"**Valid Invoice**" means an invoice issued by the Supplier to the Authority in accordance with Clause 3.4 (*Invoicing Procedure*);

"**Variation**" has the meaning given to it in Clause 2.1 (*Variation of Contract Services*); and

"**Working Day**" means any day other than a Saturday, Sunday or public holiday in England and Wales and "**Working Days**" shall be interpreted accordingly.

1.2 Interpretation

1.2.1 The interpretation and construction of this Call Off Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "**include**", "**includes**" and "**including**" "**for example**" and "**in particular**" and words of similar effect are to be construed as if they were immediately followed by the words "**without limitation**" and shall not limit the general effect of the words which precede them;
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) the appendices form part of these Call Off Terms and shall have effect as if set out in full in the body of these Call Off Terms and any reference to these Call Off Terms includes the appendices;
- (f) references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced by any subsequent enactment,

modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of this Call Off Contract);

- (g) headings are included in this Call Off Contract for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract;
- (h) references to "**Clauses**" are, unless otherwise provided, references to the clauses of these Call Off Terms and references in any Call Off Schedule to "**Paragraphs**", parts, annexes and tables are, unless otherwise provided, references to Paragraphs, parts, annexes and tables of the Call Off Schedule in which the references are made;
- (i) terms or expressions contained in this Call Off Contract which are capitalised but which do not have an interpretation in Clause 1.1 (*Definitions*) shall be interpreted in accordance with the Framework Agreement;
- (j) a reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- (k) the Joint Schedules are incorporated into this Call Off Contract;
- (l) in the event of and only to the extent of any conflict between the Letter of Appointment, these Call Off Terms, the Joint Schedules, any other document referred to in the Call Off Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following descending order of precedence:
 - (i) Letter of Appointment;
 - (ii) The Clauses in the Call Off Terms;
 - (iii) Joint Schedule 2 (*Data Processing*);
 - (iv) Call Off Schedules;
 - (v) Framework Clauses including Clause 1 (*Definitions and Interpretation*);
 - (vi) Framework Schedules 1 to 12;
 - (vii) Joint Schedule 1 (*Corporate Social Responsibility*); and
 - (viii) Framework Schedule 13 (*Tender*).

1.2.2 In entering into this Call Off Contract, the Authority is acting as part of the Crown.

2. **SUPPLY OF CONTRACT SERVICES**

2.1 **Variation of Contract Services**

- 2.1.1 The Authority may request a variation to the Contract Services at any time provided that such variation does not amount to a material change to the Order. Such a change once implemented is hereinafter called a "**Variation**".
- 2.1.2 Any request by the Authority for a Variation to the Contract Services shall be by written notice:
 - (a) giving sufficient information for the Supplier to assess the extent of the Variation and any additional costs that may be incurred; and
 - (b) specifying the timeframe within which the Supplier must respond to the request, which shall be reasonable, and the Supplier shall respond to such request within such timeframe.
- 2.1.3 If the Authority and the Supplier agree to vary this Call Off Contract, 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.
- 2.1.4 In the event that the Supplier and the Authority are unable to agree to vary this Call Off Contract, the Authority may agree that the Supplier should continue to perform its obligations under this Call Off Contract without the Variation, or the Authority may terminate this Call Off Contract in accordance with Clause 8.5 (*Termination Without Cause*).

2.2 **Remedies for KPI Target Failure**

- 2.2.1 Without prejudice to any other rights or remedies arising under this Call Off Contract, including under Clause 8.2 (Termination on Material Default), if the Supplier fails to achieve a KPI Target, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:
 - (a) the Authority shall be entitled to require the Supplier, and the Supplier agrees to prepare and provide to the Authority, an Improvement Plan within ten (10) Working Days of a written request by the Authority for such Improvement Plan. Such Improvement Plan shall be subject to Approval and the Supplier will be required to implement any Approved Improvement Plan, as soon as reasonably practicable;
 - (b) the Authority shall be entitled to require the Supplier, and the Supplier agrees to attend, within a reasonable time one (1) or more meetings at the request of the Authority in order to resolve the issues raised by the Authority in its notice to the Supplier requesting such meetings; and
 - (c) the Authority shall be entitled to serve an Improvement Notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the Improvement Notice.

2.2.2 In the event that the Authority has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier either:

(a) fails to implement such requirements for improvement as set out in the Improvement Notice; and/or

(b) fails to implement an Improvement Plan Approved by the Authority,

then (without prejudice to any other rights and remedies of termination provided for in the Call Off Contract), the Authority shall be entitled to terminate the Call Off Contract for material Default.

2.3 Conflicts of Interest

2.3.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Authority under the provisions of this Call Off Contract.

2.3.2 The Supplier shall promptly notify, and provide full particulars to the Authority, if such conflict referred to in Clause 2.3.1 arises or may reasonably be foreseen as arising.

2.3.3 The Authority reserves the right to terminate this Call Off Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is an actual conflict between the pecuniary interests of the Supplier and the duties owed to the Authority under the provisions of this Call Off Contract. The action of the Authority pursuant to this Clause 2.3 (*Conflicts of Interest*) shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

3. PAYMENT AND INVOICING

3.1 Insurance Services Brokerage

3.1.1 In consideration of the Supplier's performance of its obligations under this Call Off Contract, the Authority shall pay to the Supplier the Insurance Services Brokerage in accordance with Clause 3.4 (*Invoicing Procedure*) and subject to Clause 3.1.3.

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

(a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel,

network or data interchange costs or other telecommunications charges;
or

- (b) any amount for any services provided or costs incurred by the Supplier prior to the Call Off Commencement Date.

3.1.3 The Supplier acknowledges and agrees that:

- (a) the Insurance Services Brokerage is only payable in respect of Contracts of Insurance that have been entered into pursuant to this Call Off Contract; and
- (b) no amounts shall be payable by the Authority to the Supplier in respect of a Further Competition Procedure that does not result in a Contract of Insurance.

3.1.4 The Brokerage Cap and/or Brokerage Percentage shall only be varied:

- (a) due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Brokerage Cap and/or Brokerage Percentage; and/or
- (b) where all or part of the Brokerage Cap and/or Brokerage Percentage are reviewed and reduced in accordance with Clause 2.1 (*Variation of Contract Services*).

3.2 Payment of Contract of Insurance Charges to the Insurers

3.2.1 The Supplier shall pay the Contract of Insurance Charges to the relevant Insurer(s) on behalf of the Authority:

- (a) within sixty (60) calendar days of inception of the Contract of Insurance; and
- (b) in accordance with any other provisions of the Contract of Insurance,

provided that the Authority pays the Contract of Insurance Charges to the Supplier within thirty (30) calendar days of inception of the Contract of Insurance.

3.2.2 The Supplier shall pay the Contract of Insurance Charges to the Insurer on behalf of the Authority without set off or deduction.

3.2.3 The Authority reserves the right to require the Supplier to establish appropriate escrow arrangements regarding the collection and distribution of funds (including Premiums, Premium refunds and the proceeds of any claims).

3.3 VAT

The Supplier shall indemnify the Authority on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Authority at any

time in respect of the Supplier's failure to account for or to pay any VAT, relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 3.3 (VAT) shall be paid by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

3.4 Invoicing Procedure

3.4.1 The Authority shall pay all sums properly due and payable to the Supplier in respect of the Insurance Services Brokerage in cleared funds by no later than thirty (30) calendar days after receipt of a Valid Invoice. Such payment period shall in no event exceed thirty (30) days from the inception of a Contract of Insurance.

3.4.2 The Supplier shall ensure that each invoice for the Insurance Services Brokerage (whether submitted electronically or in a paper form, as the Authority may specify):

- (a) contains:
 - (i) all appropriate references, including the Order Reference Number; and
 - (ii) a detailed breakdown of the Contracts of Insurance to which the invoice refers;
- (b) shows separately:
 - (i) Premium(s);
 - (ii) any credits due to the Authority if applicable;
 - (iii) the VAT and/or IPT added to the due and payable Premium if applicable; and
 - (iv) Insurance Services Brokerage;
- (c) it is supported by any other documentation reasonably required by the Authority to substantiate that the invoice has been submitted in accordance with this Clause 3.4 (*Invoicing Procedure*); and
- (d) is submitted within ten (10) days from the inception of a Contract of Insurance.

3.4.3 The Supplier shall ensure that each invoice submitted to it from an Insurer for any Contract of Insurance Charges (whether submitted electronically or in a paper form, as the Authority may specify):

- (a) contains:
 - (i) all appropriate references; and

- (ii) Premium payable; and
 - (b) shows separately:
 - (i) any credits due to the Authority if applicable; and
 - (ii) it is supported by any other documentation reasonably required by the Authority.
- 3.4.4 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- 3.4.5 The Supplier shall not suspend the supply of the Contract Services unless the Supplier is entitled to terminate this Call Off Contract under Clause 8.9 (*Supplier's Termination Rights*) on the grounds of the Authority's failure to pay undisputed sums of money. Interest shall be payable by the Authority in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any undisputed sums of money properly invoiced by the Supplier in respect of the Contract Services.
- 3.4.6 All payments due shall be made in cleared funds to such bank or building society account as the recipient Party may from time to time direct in writing.

3.5 Recovery of Sums Due

- 3.5.1 Wherever under this Call Off Contract any sum of money excluding Contract of Insurance Charges is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of this Call Off Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under any Call Off Contract.
- 3.5.2 Any overpayment by either Party, whether of the Insurance Services Brokerage or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

4. LIABILITY AND INSURANCE

4.1 Liability

- 4.1.1 Neither Party excludes or limits its liability for:
- (a) for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors; or
 - (b) fraud or fraudulent misrepresentation by it or its employees.
- 4.1.2 No individual of the Supplier shall have any personal liability to the Authority for the Contract Services supplied by that individual on behalf of the Supplier and the Authority shall not bring any claim under this Call Off Contract against

that individual in respect of the Contract Services save in the case of fraud or any liability for death or personal injury.

- 4.1.3 Subject to the limits stated in Clause 4.1.8, subject to Clause 4.1.4 and without prejudice to the provisions of 4.1.5 the Supplier shall fully indemnify and keep indemnified the Authority on demand in full from and against all claims, proceedings, actions, damages, reasonable costs and expenses and any other liabilities whatsoever arising any breach by the Supplier of its obligations under this Call Off Contract.
- 4.1.4 Subject to Clauses 4.1.1 and 4.1.5, in no event shall either Party be liable to the other for any:
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect, special or consequential loss or damage.
- 4.1.5 Notwithstanding Clause 4.1.4, but subject to the limits stated in Clause 4.1.8, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
- (a) the additional operational and/or administrative costs and expenses arising from any material Default;
 - (b) the cost of procuring, implementing and operating any alternative or replacement services to the Contract Services;
 - (c) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; and
 - (d) amounts paid by the Authority to third parties (including lenders) under an Authority guarantee agreement and which it is not able to recover under a Contract of Insurance incepted pursuant to this Call Off Contract as a result of a Default by the Supplier.
- 4.1.6 No enquiry, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Authority to any document or information provided by the Supplier in its provision of the Contract Services, and no failure of the Authority to discern any defect in or omission from any such document or information, shall operate to exclude or limit the obligation of the Supplier to exercise all the obligations of a professional Supplier employed in a Authority/Supplier relationship.

- 4.1.7 Save as otherwise expressly provided, the obligations of the Authority under this Call Off Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Call Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority, in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Call Off Contract (howsoever arising) on the part of the Authority to the Supplier.
- 4.1.8 Subject always to Clause 4.1.1, Clause 4.1.4 and Clause 4.1.10, the Supplier's liability to the Authority for each year of this Call Off Contract:
- (a) in respect of loss of or damage to the Authority's Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Government Data or any other data) that is caused by Defaults of the Supplier shall in no event exceed £1 million (one million pounds) for each individual claim;
 - (b) in respect of:
 - (i) loss or damage to Government Data; or
 - (ii) breach of the Data Protection Legislation,that is caused by Default of the Supplier shall in no event exceed £5 million (five million pounds) for each individual claim; and
 - (c) in respect of all other Losses incurred by the Authority under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed £5 million (five million pounds) for each individual claim.
- 4.1.9 Subject to Clause 4.1.1, and without prejudice to Clause 4.1.4, the Authority's total aggregate liability to the Supplier under this Call Off Contract is no more than £100,000 (one hundred thousand pounds).
- 4.1.10 Notwithstanding Clause 4.1.8, the Supplier does not exclude or limit its liability for any indemnity given under Clause 2.3, Clause 5.4, Clause 6.2.9 and Paragraph 2.3 of Part B of Call Off Schedule 5 (*Staff Transfer*).

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:
- 5.1.1 receive and use the Contract Services; and
 - 5.1.2 make use of the deliverables provided by a Replacement Supplier (as defined in Call Off Schedule 5 (*Staff Transfer*)).

- 5.2 Any New IPR created under this Call Off Contract is owned by the Authority. The Authority gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Call Off Contract Period.
- 5.3 Where a Party acquires ownership of IPRs incorrectly under this Call Off Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 5.4 The Supplier shall, on demand, fully indemnify and keep fully indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of any claim that the performance by the Supplier of the Contract Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being an "**IPR Claim**").
- 5.5 If an IPR Claim arises, the Authority shall notify the Supplier in writing of the IPR Claim and the Authority shall not make any admissions which may be prejudicial to the defence or settlement of the IPR Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the IPR Claim provided always that the Supplier:
- 5.5.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 5.5.2 shall take due and proper account of the interests of the Authority;
 - 5.5.3 shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute; and
 - 5.5.4 shall not settle or compromise the IPR Claim without Approval (not to be unreasonably withheld or delayed).
- 5.6 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in this Clause 5 (*Intellectual Property Rights*) or otherwise agreed in writing.

6. PROTECTION OF DATA

6.1 Protection of Data

- 6.1.1 The Supplier must process Personal Data, and ensure that Supplier Personnel process Personal Data, only in accordance with Joint Schedule 2 (*Processing Data*).
- 6.1.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 6.1.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Authority copies every six (6) Months.

- 6.1.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.
- 6.1.5 If at any time the Supplier suspects or has reason to believe that the Government Data provided under this Call Off Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Authority and immediately suggest remedial action.
- 6.1.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Authority may either or both:
- (a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Authority receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
 - (b) restore the Government Data itself or using a third party.
- 6.1.7 The Supplier must pay each Party's reasonable costs of complying with Clause 6.1.6 unless the Authority is at fault.
- 6.1.8 The Supplier must:
- (a) provide the Authority with all Government Data in an agreed open format within ten (10) Working Days of a written request;
 - (b) have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
 - (c) securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
 - (d) subject to clause 12 (*Records, Audit Access and Reporting*) of the Framework Agreement and Clause 9 (*Consequences of Expiry and Termination*) of this Call Off Contract, securely erase all Government Data and any copies it holds when asked to do so by the Authority unless required by Law to retain it; and
 - (e) indemnify the Authority against any and all Losses incurred if the Supplier breaches this Clause 6.1 (*Protection of Data*) and any Data Protection Legislation.

6.2 Confidentiality

- 6.2.1 Except to the extent set out in this Clause 6.2 (*Confidentiality*) or where disclosure is expressly permitted elsewhere in the Call Off Contract, each Party shall:
- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly;

- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent, excluding the need for the Supplier to comply with the duty of fair presentation or to obtain an insurance quote from any Insurer;
- (c) not use or exploit the other Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and
- (d) immediately notify the other Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the other Party's Confidential Information.

6.2.2 Clause 6.2.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIRs;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call Off Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

6.2.3 The Supplier may only disclose the Authority Confidential Information to those members of the Supplier Personnel who are directly involved in the provision of the Contract Services and who need to know the information, and shall ensure that such individuals are aware of and shall comply with these obligations as to confidentiality.

6.2.4 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of the Authority Confidential Information received otherwise than for the purposes of this Call Off Contract.

6.2.5 Nothing in this Call Off Contract shall prevent the Authority from disclosing the Supplier Confidential Information:

- (a) to any Crown Body or any other Contracting Authority to the Framework Agreement on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any other Contracting Authority save as required by Law;
- (b) to any consultant, contractor or other person engaged by the Authority for any purpose relating to or connected with this Call Off Contract or

the Framework Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an Office of Government Commerce gateway review or any additional assurance programme;

- (c) for the purpose of the examination and certification of the Authority's accounts;
- (d) for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- (e) to the Authority's employees, agents, consultants, advisers and contractors.

6.2.6 The Authority shall use all reasonable endeavours to ensure that any government department, Authority, employee or third party to whom the Supplier Confidential Information is disclosed pursuant to Clause 6.2 (*Confidentiality*) is made aware of the Authority's obligations of confidentiality.

6.2.7 Nothing in this Clause 6.2 (*Confidentiality*) shall prevent either Party 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 other Party's Confidential Information or an infringement of IPR.

6.2.8 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Call Off Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

6.2.9 The Supplier shall, at all times during and after the performance of this Call Off Contract, indemnify the Authority and keep the Authority fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Authority arising from any breach of the Supplier's obligations under this Clause 6.2 (*Confidentiality*) except and to the extent that such liabilities have resulted directly from the Authority's instructions.

6.2.10 In the event that the Supplier fails to comply with its obligations in this Clause 6.2 (*Confidentiality*), the Authority reserves the right to terminate this Call Off Contract for material Default.

6.3 Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989

6.3.1 The Supplier shall comply with, and shall ensure that Supplier Personnel comply with, the provisions of:

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

6.4 Freedom of Information

- 6.4.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 6.4.2 The Supplier shall and shall procure that its Supplier Personnel shall:
- (a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Authority with a copy of all Information relating to a Request for Information in its possession, or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 6.4.3 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority 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) for the purpose of this Call Off Contract, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 6.4.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 6.4.5 The Supplier acknowledges that the Authority may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the EIRs to disclose information concerning the Supplier or the Contract Services:
- (a) in certain circumstances without consulting the Supplier; or
 - (b) following consultation with the Supplier and having taken the Supplier's views into account,

provided always that where paragraph (a) of this Clause 6.4.5 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 6.4.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of the Call Off Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Authority on reasonable notice to inspect such records as requested from time to time.
- 6.4.7 The Supplier acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Authority may be obliged to disclose it in accordance with Clause 6.4.5.

6.5 Transparency

- 6.5.1 The Parties acknowledge that Transparency Information is not Confidential Information.
- 6.5.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives its consent for the Authority to publish this Call Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or the Regulations redacted). The Authority 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.
- 6.5.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including, where relevant, the preparation of the Transparency Reports.

7. REPRESENTATIONS AND WARRANTIES

7.1 Each Party warrants that:

- 7.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;
- 7.1.2 this Call Off Contract is executed by its duly authorised representative;
- 7.1.3 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
- 7.1.4 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).

7.2 The Supplier represents and warrants that:

- 7.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 7.2.2 it has all necessary consents (including, where its procedures so require, the consent of its parent company) licences authorisations permissions (statutory, regulatory, contractual or otherwise) to enter into this Call Off Contract;
- 7.2.3 in entering the Call Off Contract, it has not committed any fraud;
- 7.2.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 7.2.5 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 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 and it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 7.2.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Call Off Contract;
- 7.2.7 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Call Off Contract;
- 7.2.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Call Off Contract;
- 7.2.9 no proceedings or other steps have been taken and not discharged or dismissed (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;
- 7.2.10 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority;
- 7.2.11 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under

the Call Off Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Contract Services;

7.2.12 it has read and fully understood the Letter of Appointment and these Call Off Terms and is capable of performing the Contract Services in all respects in accordance with the Call Off Contract;

7.2.13 the Supplier has all staff, equipment and experience necessary for the proper performance of the Contract Services; and

7.2.14 it will at all times:

- (a) perform its obligations under the Call Off Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
- (b) comply with all the KPIs;
- (c) carry out the Contract Services within the timeframe agreed with the Authority; and
- (d) ensure to the satisfaction of the Authority that the Contract Services are provided and carried out by such appropriately qualified, skilled and experienced Supplier Personnel as shall be necessary for the proper performance of the Contract Services.

7.3 The Supplier shall immediately notify the Authority in writing:

7.3.1 of any material detrimental change in the financial standing and/or credit rating of the Supplier;

7.3.2 if the Supplier undergoes a Change of Control; or

7.3.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.

7.4 For the avoidance of doubt, the fact that any provision within the Call Off Contract is expressed as a warranty shall not preclude any right of termination the Authority would have in respect of breach of that provision by the Supplier if that provision had not been so expressed.

8. TERMINATION RIGHTS

8.1 Termination on Insolvency

8.1.1 The Authority may terminate this Call Off Contract with immediate effect by issuing a Termination Notice to the Supplier if:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors;

- (b) a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Supplier be wound up or a resolution for the winding-up of the Supplier is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for the winding-up of the Supplier (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened in respect of the Supplier pursuant to section 98 of the Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Supplier's business or assets;
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within ten (10) Working Days;
- (f) an application is made in respect of the Supplier either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given;
- (g) if the Supplier is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (h) the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business;
- (i) in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
 - (i) adversely impacts on the Supplier's ability to supply the Contract Services in accordance with the Call Off Contract; or
 - (ii) could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Contract Services in accordance with this Call Off Contract;
- (j) the Supplier demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier;
- (k) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Supplier comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

- (l) any event analogous with those listed in paragraphs (a) to (k) of Clause 8.1.1 occurs under the law of any other jurisdiction.

8.2 Termination on Material Default

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

- (a) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Authority, capable of remedy;
- (b) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within ten (10) Working Days or such other longer period as may be specified by the Authority after issue of a written notice to the Supplier specifying the material Default and requesting it to be remedied;
- (c) the Authority expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: Clause 2.2 (*Remedies for KPI Target Failure*), Clause 2.3 (*Conflicts of Interest*), Clause 6.2.10 (*Confidentiality*), and Clause 11.6 (*Prevention of Fraud and Bribery*);
- (d) there is a Default of any of the following Clauses:
 - (i) Clause 5 (*Intellectual Property Rights*);
 - (ii) Clause 6.1 (*Protection of Data*);
 - (iii) Clause 6.4 (*Freedom of Information*);
 - (iv) Clause 7 (*Representations and Warranties*); and/or
- (e) the occurrence of an event which renders the performance of all or a material part of the Supplier's obligations under this Call Off Contract unlawful under applicable Law.

8.3 Termination on Change of Control

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

- (a) being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

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

but shall not be permitted to terminate where the Authority's written consent to the continuation of this Call Off Contract was granted prior to the Change of Control.

8.4 Termination in Relation to Financial Standing

The Authority may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority 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 Contract Services under this Call Off Contract; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Contract Services under this Call Off Contract.

8.5 Termination Without Cause

The Authority shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving written notice of at least three (3) Months.

8.6 Partial Termination

Where the Authority is entitled to terminate this Call Off Contract pursuant to this Clause 8 (*Termination Rights*), the Authority shall be entitled to terminate all or part of this Call Off Contract provided always that the parts of this Call Off Contract not terminated can operate effectively to deliver the intended purpose of this Call Off Contract or a part thereof. The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 2.1 (*Variation of Contract Services*).

8.7 Termination for loss of Insurance Licence

The Authority may terminate this Call Off Contract with immediate effect by issuing a Termination Notice to the Supplier where the Supplier ceases to be authorised by the FCA to carry on regulated activities in the UK including, if the Supplier is regulated by Lloyd's, if the Supplier ceases to be authorised to carry on business at Lloyd's, which form part of the Supplier's obligations under this Call Off Contract.

8.8 Termination for breach of Regulations

The Authority may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where Regulation 73(1) of the Regulations applies.

8.9 **Supplier's Termination Rights**

In the event that the Authority fails to pay an undisputed Valid Invoice in accordance with the terms of this Call Off Contract, the Supplier shall notify the Authority in writing of such failure. Where the relevant undisputed Valid Invoice remains unpaid for 30 days following the Authority's receipt of such notice from the Supplier, the Supplier may terminate this Call Off Contract on no less than three (3) Months' written notice to the Authority.

9. **CONSEQUENCES OF EXPIRY OR TERMINATION**

9.1 Where the Authority terminates this Call Off Contract pursuant to Clause 8 (*Termination Rights*) and then makes other arrangements for the supply of the Contract Services:

9.1.1 the Authority may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Authority in securing the Contract Services in accordance with the requirements of this Call Off Contract; and

9.1.2 the Authority shall take all reasonable steps to mitigate such additional expenditure.

9.2 Clause 9.1 shall not apply where the Authority terminates this Call Off Contract solely pursuant to Clause 8.5 (*Termination Without Cause*).

9.3 On the termination of this Call Off Contract for any reason, the Supplier shall, at the request of the Authority and at the Supplier's cost:

9.3.1 immediately return to the Authority all Confidential Information and the Authority's Personal Data in its possession, or in the possession or under the control of the Supplier Personnel, which was obtained or produced in the course of providing the Contract Services, except where the retention of Authority's Personal Data is required by Law and or the FCA;

9.3.2 promptly destroy all copies of the Government Data and provide written confirmation to the Authority that the data has been destroyed, except where the retention of Authority's Personal Data is required by Law and or the FCA;

9.3.3 immediately deliver to the Authority in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) issued or made available to the Supplier by the Authority in connection with this Call Off Contract provided to the Supplier;

9.3.4 vacate, and procure that the Supplier Personnel vacate, any premises of the Authority occupied for the purposes of providing the Contract Services;

9.3.5 promptly provide the Placing Files and Policy Documents; and

9.3.6 promptly provide all other information and documentation concerning the provision of the Contract Services which may reasonably be requested by the

Authority for the purposes of adequately understanding the manner in which the Contract Services have been provided or for the purpose of allowing the Authority to conduct due diligence.

9.4 Without prejudice to any other right or remedy which the Authority may have, if any Contract Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of this Call Off Contract then the Authority may (whether or not any part of the Contract Services has been delivered) do any one or more of the following:

9.4.1 at the Authority's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the performance of the Contract Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Authority's instructions;

9.4.2 without terminating this Call Off Contract, itself supply or procure the supply of all or part of the Contract Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will once more be able to supply all or such part of the Contract Services in accordance with this Call Off Contract;

9.4.3 without terminating the whole of this Call Off Contract, terminate this Call Off Contract in respect of part of the Contract Services only and thereafter itself supply or procure a third party to supply such part of the Contract Services; and/or

9.4.4 charge the Supplier for, whereupon the Supplier shall on demand pay, any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Contract Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Contract Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Contract Services.

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

9.5.1 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

9.5.2 termination or expiry of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under:

(a) paragraph (b) of Appendix 1 (*Contract Services*) to the Letter of Appointment;

- (b) Clause 2.3 (*Payment and Invoicing*); Clause 4 (*Liability and Insurance*); Clause 5 (*Intellectual Property Rights*); Clause 6 (*Protection of Data*); Clause 6.2 (*Confidentiality*); Clause 6.3 (*Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989*); Clause 6.4 (*Freedom of Information*); Clauses 9.3, 9.5 and 9.6 (*Consequences of Expiry or Termination*); Clause 10 (*Publicity, Media and Official Enquiries*); Clause 11 (*Prevention of Fraud and Bribery*); Clause 14 (*Waiver and Cumulative Remedies*); Clause 18 (*Entire Agreement*); Clause 19 (*Third Party Rights*); Clause 20 (*Notices*); and Clause 21 (*Dispute and Law*);
- (c) Call Off Schedule 5 (*Staff Transfer*);
- (d) Joint Schedule 2 (*Data Processing*); and
- (e) 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 termination or expiry of this Call Off Contract.

9.6 The Supplier shall fully indemnify the Authority against any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.

10. **PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

10.1 The Supplier shall not make any press announcements or publicise this Call Off Contract in any way without Approval and shall ensure that the Supplier Personnel and professional advisors comply with this Clause 10 (*Publicity, Media and Official Enquiries*). Any such press announcements or publicity proposed under this Clause 10 (*Publicity, Media and Official Enquiries*) shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.

10.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Authority shall be entitled to publicise this Call Off Contract in accordance with any legal obligation upon the Authority including any examination of this Call Off Contract by the Auditors.

10.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

11. **PREVENTION OF FRAUD AND BRIBERY**

11.1 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:

- 11.1.1 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
- 11.1.2 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.

- 11.2 The Supplier must not during the Call Off Contract Period:
- 11.2.1 commit a Prohibited Act; and/or
 - 11.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority'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.
- 11.3 The Supplier must during the Call Off Contract Period:
- 11.3.1 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;
 - 11.3.2 keep appropriate records of its compliance with its obligations under Clause 11.3.1 and make such records available to the Authority on request;
 - 11.3.3 if so required by the Authority, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Authority in writing that the Supplier and all Supplier Personnel are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
 - 11.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 11.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 11.1 or 11.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 11.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 11.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 11.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Contract has committed or attempted to commit a Prohibited Act.
- 11.5 If the Supplier makes a notification to the Authority pursuant to Clause 11.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any

investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.

11.6 If the Supplier breaches Clause 11.3, the Authority may by written notice:

11.6.1 require the Supplier to remove from performance of this Call Off Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach;
or

11.6.2 immediately terminate this Call Off Contract for material Default.

11.7 Any notice served by the Authority under Clause 11.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

12. **EQUALITY AND DIVERSITY**

12.1 The Supplier shall:

12.1.1 perform its obligations under this Call Off Contract (including those in relation to provision of the Contract Services) in accordance with:

- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
- (b) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

12.1.2 take all necessary steps, and inform the Authority 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).

13. **TRANSFER, ASSIGNMENT AND NOVATION**

The Supplier

13.1 The Supplier shall not assign, novate, or in any other way dispose of this Call Off Contract or any part of it without the Authority's prior written consent.

13.2 The Supplier is not permitted to enter into Key Sub-Contracts without the Authority's prior written consent. Upon receipt of the Authority's prior written consent, the Supplier shall comply with the requirements of Procurement Policy Note 01/18 Supply Chain Visibility
(<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachm>

ent_data/file/698482/PPN_0118_Contract_Condition_for_Subcontracting__Supply_chain_spend_on_CF_final_.docx.pdf) as updated from time to time.

- 13.3 Without prejudice to Clause 13.2, the Supplier acknowledges and agrees that it remains responsible for all acts and omissions of the Supplier Personnel.
- 13.4 Without prejudice to Clause 13.2, the Supplier acknowledges and agrees that it must ensure that all sub-contracts (which in this Clause 13.4 includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Call Off Contract) contain provisions:
- 13.4.1 requiring the Supplier or other party to pay any undisputed sums which are due from it to the sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed invoice;
 - 13.4.2 giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
 - 13.4.3 requiring the sub-contractor to include a clause to the same effect as this Clause 13.4 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Call Off Contract.

The Authority

- 13.5 The Authority may assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof to:
- 13.5.1 any Central Government Body; or
 - 13.5.2 a body other than a Central Government Body which performs any of the functions that previously had been performed by the Authority,
- and the Supplier must, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 13.5 (*Transfer, Assignment and Novation*).
- 13.6 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 13.7, affect the validity of this Call Off Contract. In such circumstances, this Call Off Contract shall bind and inure to the benefit of any successor body to the Authority.
- 13.7 If the rights and obligations under this Call Off Contract are assigned, novated or otherwise disposed of pursuant to Clause 13.5 to a body which is not a Contracting Authority or there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority any such body being referred to as a "**Transferee**"):
- 13.7.1 the rights of termination of the Authority in Clause 8 (*Termination Rights*) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

- 13.7.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof with the previous consent in writing of the Supplier.
- 13.8 The Authority may following consultation with the Supplier disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Call Off Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under this Call Off Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking to the Supplier in relation to such Confidential Information.
- 13.9 For the purposes of Clause 13.7 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Call Off Contract.
- 14. WAIVER AND CUMULATIVE REMEDIES**
- 14.1 The failure of either Party to insist upon strict performance of any provision of this Call Off Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Call Off Contract.
- 14.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 20 (*Notices*).
- 14.3 A waiver by either Party of any right or remedy arising from a breach of this Call Off Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Call Off Contract.
- 14.4 Except as otherwise expressly provided by this Call Off Contract, all remedies available to either Party for breach of this Call Off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 15. FURTHER ASSURANCES**
- Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Call Off Contract.
- 16. SEVERABILITY**
- 16.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Call Off Contract are not void or unenforceable be deemed to be deleted and the validity

and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected.

16.2 In the event that any deemed deletion under Clause 16.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

16.3 If the Parties are unable to resolve the good faith negotiations referred to in Clause 16.2 within twenty (20) Working Days of the date of the notice given pursuant to Clause 16.2 and to the satisfaction of both Parties, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to this Clause 16.3.

17. **RELATIONSHIP OF PARTIES**

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.

18. **ENTIRE AGREEMENT**

18.1 This Call Off Contract, together with a completed, signed and dated Framework Agreement and the other documents referred to in them, constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.

18.2 Each of the Parties acknowledges and agrees that in entering into this Call Off Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Call Off Contract.

18.3 The Supplier acknowledges that it has:

18.3.1 entered into this Call Off Contract in reliance on its own due diligence alone; and

18.3.2 received sufficient information required by it in order to determine whether it is able to provide the Contract Services in accordance with the terms of this Call Off Contract.

18.4 Nothing in Clauses 18.1 and 18.2 shall operate:

18.4.1 to exclude fraud or fraudulent misrepresentation; or

18.4.2 to limit the rights of the Authority pursuant to the Third Party Rights clause set out in the Framework Agreement.

19. THIRD PARTY RIGHTS

- 19.1 A person who is not a party to this Call Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, provided that this Clause 19.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 19.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Call Off Contract or any one or more Clauses of it.

20. NOTICES

- 20.1 Any notices given under or in relation to this Contract shall be in writing by letter, (signed by or on behalf of the Party giving it) sent by hand, post, registered post or by the recorded delivery service or by electronic mail to the address or email address and for the attention of the relevant Party set out in Clause 20.4 or to such other address or email address as that Party may have stipulated in accordance with Clause 20.5.
- 20.2 A notice shall be deemed to have been received:
- 20.2.1 if delivered personally, at the time of delivery;
 - 20.2.2 in the case of pre-paid first class post, special or other recorded delivery two (2) Working Days from the date of posting; or
 - 20.2.3 in the case of electronic communication, 9:00 am on the first Working Day after sending.
- 20.3 In proving service, it shall be sufficient to prove that personal delivery was made, or (including for the purposes of electronic mail, the confirmation letter) that the envelope containing the notice was addressed to the relevant Party set out in Clause 20.2 (or as

otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, special or other recorded delivery.

- 20.4 For the purposes of Clause 20.2, the address or email address of each Party shall be the address or email address specified in paragraph 14 of the Letter of Appointment.
- 20.5 Either Party may change its address or email address for service by serving written notice in accordance with this Clause 20 (*Notices*).
- 20.6 For the avoidance of doubt, any notice given under this Call Off Contract shall not be validly served if sent by electronic mail (email) where the confirmation letter is not sent within 24 hours of the electronic mail (email) being sent.

21. **DISPUTES AND LAW**

- 21.1 The Parties shall follow the dispute resolution procedure as set out in Call Off Schedule 1 (*Dispute Resolution Procedure*).
- 21.2 This Call Off Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with the Laws of the country stipulated in the Letter of Appointment (England & Wales).
- 21.3 Subject to Clause 21.1 and Call Off Schedule 1 (*Dispute Resolution Procedure*), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

22. **SUPPLIER COUNTERPARTS**

The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

CALL OFF SCHEDULE 1 DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

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

"**CEDR**" the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 100 St. Paul's Churchyard, London, EC4M 8BU;

"**Counter Notice**" has the meaning given to it in Paragraph 5.2 of this Call Off Schedule;

"**Mediation Notice**" has the meaning given to it in Paragraph 3.2 of this Call Off Schedule; and

"**Mediator**" the independent third party appointed in accordance with Paragraph 4 of this Call Off Schedule.

2. INTRODUCTION

2.1 If a Dispute arises then:

- (a) the representative of the Authority and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

- (a) the material particulars of the Dispute;
- (b) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- (c) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in Paragraph 2.6 of this Call Off Schedule, the reason why.

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call Off Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

2.4 Subject to Paragraph 2.6 of this Call Off Schedule, the Parties shall seek to resolve Disputes:

- (a) first by commercial negotiation (as prescribed in Paragraph 3 of this Call Off Schedule); then by mediation (as prescribed in Paragraph 4 of this Call Off Schedule); and

- (b) lastly by recourse to arbitration (as prescribed in Paragraph 5 of this Call Off Schedule) or litigation in accordance with Clause 21 (*Disputes and Law*).
- 2.5 In exceptional circumstances where the use of the times in this Call Off Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 2.6 If the use of the Expedited Dispute Timetable is determined in accordance with Paragraph 2.2(c) or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
 - (a) in Paragraph 3.2, ten (10) Working Days;
 - (b) in Paragraph 4.2, ten (10) Working Days;
 - (c) in Paragraph 5.2, ten (10) Working Days.
- 2.7 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.
- 3. **COMMERCIAL NEGOTIATIONS**
- 3.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authority's Commercial Manager and the Supplier's Head of Crisis Management.
- 3.2 If:
 - (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
 - (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this Paragraph 3 of this Call Off Schedule; or
 - (c) the Parties have not settled the Dispute in accordance with Paragraph 3.1 of this Call Off Schedule within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with Paragraph 4 of this Call Off Schedule.

4. **MEDIATION**

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

5. **ARBITRATION**

- 5.1 The Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 5.4 of this Call Off Schedule.
- 5.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "Counter Notice") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 5.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 21.3 (*Disputes and Law*). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 5.3 If:
 - (a) the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 5.4 of this Call Off Schedule shall apply;
 - (b) the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 21.3 (*Disputes and Law*). The Supplier shall not commence any court proceedings or arbitration until the expiry), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
 - (c) the Authority does not serve a Counter Notice within the fifteen (15) Working Days period referred to in Paragraph 5.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with Paragraph 5.4 of this Call Off Schedule or commence court proceedings in the courts in

accordance with Clause 21.3 (*Disputes and Law*) which shall (in those circumstances) have exclusive jurisdiction.

5.4 In the event that any arbitration proceedings are commenced pursuant to Paragraphs 5 to 5.3 of this Call Off Schedule, the Parties hereby confirm that:

- (a) all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to paragraphs (b) to (g) of this Paragraph 5.4 of this Call Off Schedule);
- (b) the arbitration shall be administered by the LCIA;
- (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the chair of the arbitral tribunal shall be British and Article 6 of the LCIA Rules shall not apply to disqualify the chair on the basis of nationality;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

6. **URGENT RELIEF**

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

- (a) for interim or interlocutory remedies in relation to this Call Off Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- (b) where compliance with Paragraph 2.1 of this Call Off Schedule and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

CALL OFF SCHEDULE 2
KEY PERFORMANCE INDICATORS

1. The purpose of this Call Off Schedule 2 (*Key Performance Indicators*) is to set out the KPIs by which the Supplier's overall performance under this Call Off Contract shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Call Off Contract Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause 2.1 (*Variation of Contract Services*).
2. The Supplier shall comply with all its obligations related to KPIs set out in this Call Off Contract and shall meet the KPI Targets identified in the table below.
3. The KPIs from which performance of this Call Off Contract by the Supplier will be reported against are set out in Table 1 of this Call Off Schedule 2 (*Key Performance Indicators*).

Table 1

Key Performance Indicator	Description	KPI Measure / Target	Frequency	Transparency Reports (information to be reported publicly by Government)
Further Competition Procedures				
1. <u>Additional</u> Capacity Secured	<p>Shortfall/ Surplus of capacity targets set by the Authority at the beginning of a Further Competition Procedure</p> <p>Within each Quarter:</p> <p>The net total secured after deducting the Authority's reasonable target</p>	<p>Target met = green</p> <p>Target not met (but reasonable justification provided by supplier) = green</p> <p>Target not met = red</p>	Quarterly (before 1 December, 1 March, 1 June, 1 September)	Not applicable
Management of Contracts of Insurance				
2. <u>Response</u> to issues arising after the binding of the Contract of Insurance	Time taken to respond to issues related to the delivery of the management of contracts of insurance, the KPI will report the number of instances where the Broker fails to address / communicate to the Authority an issue arising on any Contract of Insurance within two (2) Working Days.	Target is Zero that exceed two (2) Working Days	Quarterly (before 1 December, 1 March, 1 June, 1 September)	Not applicable
Framework Contract Compliance				

Key Performance Indicator	Description	KPI Measure / Target	Frequency	Transparency Reports (information to be reported publicly by Government)
3. Framework Contract Compliance	The Supplier shall at all times comply fully with this Framework Agreement.	Zero breaches	Quarterly (before 1 December, 1 March, 1 June, 1 September)	Not applicable
Social Values				
4. Timely and Complete: Social Value Review (Equal Opportunity)	<p>The report shall include</p> <p>(i) the number and details of new initiatives launched for disadvantaged or minority groups (e.g., opportunities offered under the contract for initiatives such as work experience placements, internships, graduate schemes, engagement, recruitment and staff development); and</p> <p>(ii) the number and details of existing initiatives for disadvantaged and minority groups. There are opportunities to tackle training, employment, skills and pay inequality in the contract workforce, or to support in-work progression to help people in the contract workforce to move into higher paid work by developing new skills relevant to the contract.</p>	<ul style="list-style-type: none"> Target: Meets / exceeds the Authority requirements, including Tender commitments N/A (November, February, May) 	Annually (no later than 31 August)	Not applicable
Fighting climate change	Annual reporting on the Carbon Reduction Plan	Reporting Carbon Reduction Plan improvements	Annually	N/A

**CALL OFF SCHEDULE 3
COMMERCIALLY SENSITIVE INFORMATION**

1. INTRODUCTION

- 1.1 In this Call Off Schedule 3 (*Commercially Sensitive Information*) the Parties have sought to identify the Supplier Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Call Off Schedule 3 (*Commercially Sensitive Information*) applies.
- 1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 6.4 (*Freedom of Information*), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
1			

CALL OFF SCHEDULE 4 SECURITY

1. DEFINITIONS

1.1 In this Call Off Schedule 4 (*Security*), the following definitions shall apply:

"Breach of Security" means the occurrence of:

- (a) any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("**ICT**"), information or data (including the Confidential Information and the Government Data) used by the Authority and/or the Supplier in connection with this Call Off Contract; and/or
- (b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Call Off Contract,

in either case as more particularly set out in the Security Policy where the Authority has required compliance therewith in accordance with Paragraph 2.1 of this Call Off Schedule 4;

"Sites" any premises (including the Authority Premises, the Supplier's premises or third party premises) from, to or at which:

- (a) the Contract Services are (or are to be) provided; or
- (b) the Supplier manages, organises or otherwise directs the provision or the use of the Contract Services; and

"Variation Procedure" the procedure set out in Clause 2.1 (*Variation of Contract Services*).

2. COMPLYING WITH SECURITY REQUIREMENTS AND UPDATES TO THEM

2.1 The Supplier shall comply with the requirements in this Call Off Schedule 4 in respect of the Security Management Plan. Where specified by the Authority that has undertaken a Further Competition it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

2.2 Where the Security Policy applies the Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.

2.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Contract Services it may propose a Variation to the Authority. 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 Brokerage Cap and/or Brokerage Percentage shall be subject to the Variation Procedure.

- 2.4 Until and/or unless a change to the Brokerage Cap and/or Brokerage Percentage is agreed by the Authority pursuant to the Variation Procedure the Supplier shall continue to provide the Contract Services in accordance with its existing obligations.

3. SECURITY STANDARDS

- 3.1 The Supplier acknowledges that the Authority places great emphasis on the reliability of the performance of the Contract Services, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
- 3.2.1 is in accordance with the Law and this Call Off Contract;
 - 3.2.2 as a minimum demonstrates Good Industry Practice;
 - 3.2.3 meets any specific security threats of immediate relevance to the Contract Services and/or the Government Data; and
 - 3.2.4 where specified by the Authority in accordance with Paragraph 2.1 of this Call Off Schedule 4 complies with the Security Policy.
- 3.3 The references to standards, guidance and policies contained or set out in Paragraph 3.2 of this Call Off Schedule 4 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

4. SECURITY MANAGEMENT PLAN

4.1 Introduction

The Supplier shall develop and maintain a Security Management Plan in accordance with this Call Off Schedule 4. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

5. SECURITY BREACH

- 5.1 Either Party shall notify the other upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Upon becoming aware of any of the circumstances referred to in Paragraph 5.1 of this Call Off Schedule 4, the Supplier shall immediately take all reasonable steps (which

may include any action or changes reasonably requested by the Authority) necessary to:

- 5.2.1 minimise the extent of actual or potential harm caused by any Breach of Security;
 - 5.2.2 remedy such Breach of Security to the extent possible and protect the integrity of the Authority and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - 5.2.3 prevent an equivalent breach in the future exploiting the same cause failure; and
 - 5.2.4 as soon as reasonably practicable provide to the Authority, where the Authority so requests, full details of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Authority. Any disclosures by the Supplier shall be subject to the requirements of confidentiality and provided to the extent that it relates to the Authority and affects the delivery of the Services.
- 5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Policy (where relevant in accordance with Paragraph 2.1 of this Call Off Schedule 4 (*Security*)) or the requirements of this Call Off Schedule 4 (*Security*), then any required change shall be at no cost to the Authority.

CALL OFF SCHEDULE 5 STAFF TRANSFER

1. DEFINITIONS

1.1 In this Call Off Schedule 5 (*Staff Transfer*), the following definitions shall apply:

"Broadly Comparable" means

- (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and
- (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,

and **"Broad Comparability"** shall be construed accordingly;

"Employee Liability" means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Authority or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions; and/or
- (f) claims whether in tort, contract or statute or otherwise,

any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"Employment Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;

"Equality and Human Rights Commission" means the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;

"Fair Deal Employee" means those;

- (a) Transferring Authority Employees;
- (b) Transferring Former Supplier Employees;
- (c) employees who are not Transferring Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier, and whose employment is not terminated in accordance with the provisions of Paragraph 1.2.4 of Part A; and/or
- (d) where the Former Supplier becomes the Supplier those employees,

who at the Call Off Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Authority;

"Fair Deal Schemes" means the relevant Statutory Scheme or a Broadly Comparable pension scheme;

"Former Supplier" means a supplier supplying the Contract Services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Contract Services (or any part of the Contract Services);

"National Insurance Contributions" means contributions required by the National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

"New Fair Deal" means the revised Fair Deal position set out in the HM Treasury guidance: *"Fair Deal for Staff Pensions: Staff Transfer from Central Government"* issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date; and
- (b) any similar pension protection as notified to the Supplier by the Authority;

"Partial Termination" means the partial termination of the Call Off Contract to the extent that it relates to the provision of any part of the Contract Services as further provided for in Clause 8.6 (*Partial Termination*);

"Relevant Transfer" means a transfer of employment to which the Employment Regulations applies;

"Relevant Transfer Date" means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, where appropriate;

"Replacement Contract Services" means any services which are substantially similar to any of the Contract Services and which the Authority receives in substitution for any of the Contract Services following the Call Off End Date, whether those services are provided by the Authority internally and/or by any third party;

"Replacement Supplier" means any third party provider of Replacement Contract Services appointed by or at the direction of the Authority from time to time or where the Authority is providing Replacement Contract Services for its own account, shall also include the Authority;

"Service Transfer" means any transfer of the Contract Services (or any part of the Contract Services), for whatever reason, from the Supplier to a Replacement Supplier;

"Service Transfer Date" means the date of a Service Transfer;

"Staffing Information" means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymized format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Statutory Schemes" means the Principal Civil Service Pension Scheme, the Local Government Pension Scheme and the National Health Service Pension Scheme for England and Wales;

"Supplier's Final Supplier Personnel List" a list provided by the Supplier of all Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date;

"Supplier's Provisional Supplier Personnel List" means a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Contract Services or any relevant part of the Contract Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

"Transferring Authority Employees" means those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date;

"Transferring Former Supplier Employees" means in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date; and

"Transferring Supplier Employees" means those employees of the Supplier to whom the Employment Regulations will apply to the Service Transfer Date.

2. **INTERPRETATION**

Where a provision in this Call Off Schedule 5 (*Staff Transfer*) imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, or Replacement Supplier, as the case may be and the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

PART A
NO STAFF TRANSFER ON THE CALL OFF COMMENCEMENT DATE

1. What happens if there is a staff transfer

1.1 The Authority and the Supplier agree that the commencement of the provision of the Contract Services or of any part of the Contract Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.

1.2 Subject to Paragraphs 1.3, 1.4 and 1.5 of this Call Off Schedule 5 (*Staff Transfer*), if any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier pursuant to the Employment Regulations then:

1.2.1 the Supplier will, within five (5) Working Days of becoming aware of that fact, notify the Authority in writing;

1.2.2 the Authority may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within ten (10) Working Days of receipt of notice from the Supplier;

1.2.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment; and

1.2.4 if after the period referred to in Paragraph 1.2.2 of this Call Off Schedule 5 (*Staff Transfer*) no such offer has been made, or such offer has been made but not accepted, the Supplier may within five (5) Working Days give notice to terminate the employment of such person,

and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4 of this Call Off Schedule 5 (*Staff Transfer*):

(a) the Authority will indemnify the Supplier against all Employee Liabilities arising out of the termination of the employment of any of the Authority's employees referred to in Paragraph 1.2 of this Call Off Schedule 5 (*Staff Transfer*); and

(b) the Authority will procure that the Former Supplier indemnifies the Supplier against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2.

1.3 The indemnities in Paragraph 1.2 of this Call Off Schedule 5 (*Staff Transfer*) shall not apply to any claim:

1.3.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier; or

- 1.3.2 any claim that the termination of employment was unfair because the Supplier neglected to follow a fair dismissal procedure.
- 1.4 The indemnities in Paragraph 1.2 of this Call Off Schedule 5 (*Staff Transfer*) shall not apply to any termination of employment occurring later than three (3) Months from the Call Off Commencement Date.
- 1.5 If the Supplier does not comply with Paragraph 1.2 of this Call Off Schedule 5 (*Staff Transfer*), all Employee Liabilities in relation to such employees shall remain with the Supplier and the Supplier shall indemnify the Authority and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier.

2. **LIMITS ON THE FORMER SUPPLIER'S OBLIGATIONS**

Where in this Part A the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavors to procure that the Former Supplier does or does not act accordingly.

PART B
STAFF TRANSFER ON EXIT

1. OBLIGATIONS BEFORE A STAFF TRANSFER

1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:

- 1.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the Call Off Contract;
- 1.1.3 the date which is 12 Months before the Call Off Expiry Date; and
- 1.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 of this Call Off Schedule 5 (*Staff Transfer*) for the purpose of informing any prospective Replacement Supplier.

1.4 The Supplier warrants, for the benefit of the Authority, and any Replacement Supplier, that all information provided pursuant to Paragraphs 1.1 and 1.2 of this Call Off Schedule 5 (*Staff Transfer*) shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraphs 1.1, 1.1.1 and 1.1.2 of this Call Off Schedule 5 (*Staff Transfer*), the Supplier agrees that it shall not assign any person to the provision of the Contract Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall, unless otherwise instructed by the Authority (acting reasonably):

- 1.5.1 not replace or re-deploy any Supplier Personnel listed on the Supplier's Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces not make, promise, propose, permit or implement any material changes to the terms and

conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);

- 1.5.2 not increase the proportion of working time spent on the Contract Services (or the relevant part of the Contract Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.3 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.4 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Contract Services (or the relevant part of the Contract Services);
- 1.5.5 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;
- 1.5.6 not dissuade or discourage any employees engaged in the provision of the Contract Services from transferring their employment to the Authority and/or the Replacement Supplier;
- 1.5.7 give the Authority and/or the Replacement Supplier reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Authority, Replacement Supplier in respect of persons expected to be Transferring Supplier Employees;
- 1.5.8 co-operate with the Authority and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Contract Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.9 promptly notify the Authority or, at the direction of the Authority, any Replacement Supplier of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;
- 1.5.10 not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, or suppliers whose employment or engagement is transferred to the Authority and/or the Replacement Supplier (unless otherwise instructed by the Authority (acting reasonably));
- 1.5.11 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
- 1.5.12 fully fund any Broadly Comparable pension schemes set up by the Supplier;

- 1.5.13 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier in the provision of the Contract Services on the expiry or termination of this Call Off Contract (including without limitation identification of the Fair Deal Employees); and
 - 1.5.14 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier in the provision of the Contract Services on the expiry or termination of this Call Off Contract.
- 1.6 On or around each anniversary of the Call Off Commencement Date and up to four times during the last 12 Months of the Call Off Contract Period, the Authority may make written requests to the Supplier for information relating to the manner in which the Contract Services are organised. Within twenty (20) Working Days of receipt of a written request the Supplier shall provide such information as the Authority may reasonably require which shall include:
- 1.6.1 the numbers of employees engaged in providing the Contract Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Contract Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes; and
 - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Authority, and any Replacement Supplier to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide to the Authority or, at the direction of the Authority, to any Replacement Supplier (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
- 1.7.1 the most recent Month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; and

1.7.6 bank/building society account details for payroll purposes.

2. STAFF TRANSFER AT CALL OFF CONTRACT EXPIRY

- 2.1 A change in the identity of the supplier of the Contract Services (or part of the Contract Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disappplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes.
- 2.3 Subject to Paragraph 2.4 of this Call Off Schedule 5 (*Staff Transfer*), the Supplier shall indemnify the Authority and/or the Replacement Supplier against any Employee Liabilities arising from or as a result of any act or omission of the Supplier in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
- 2.4 The indemnity in Paragraph 2.3 of this Call Off Schedule 5 (*Staff Transfer*) shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier whether occurring or having its origin before, on or after the Service Transfer Date.
- 2.5 Subject to Paragraphs 2.6 and 2.7 of this Call Off Schedule 5 (*Staff Transfer*), if any employee of the Supplier who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier pursuant to the Employment Regulations then.
- 2.5.1 the Replacement Supplier will, within five (5) Working Days of becoming aware of that fact, notify the Authority and the Supplier in writing;
- 2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within ten (10) Working Days of receipt of notice from the Replacement Supplier;
- 2.5.3 if such offer of employment is accepted, the Replacement Supplier shall immediately release the person from its employment; and
- 2.5.4 if after the period referred to in Paragraph 2.5.2 of this Call Off Schedule 5 (*Staff Transfer*) no such offer has been made, or such offer has been made but not

accepted, the Replacement Supplier may within five (5) Working Days give notice to terminate the employment of such person,

and subject to the Replacement Supplier's compliance with Paragraphs 2.5.1 to 2.5.4 of this Call Off Schedule 5 (*Staff Transfer*) the Supplier will indemnify the Replacement Supplier against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5 of this Call Off Schedule 5.

- 2.6 The indemnity in Paragraph 2.5 of this Call Off Schedule 5 (*Staff Transfer*) shall not apply to:
- (a) any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier; or
 - (b) any claim that the termination of employment was unfair because the Replacement Supplier neglected to follow a fair dismissal procedure.
- 2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than three (3) Months from the Service Transfer Date.
- 2.8 If at any point the Replacement Supplier accepts the employment of any such person as is described in Paragraph 2.5 of this Call Off Schedule 5 (*Staff Transfer*), such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.
- 2.9 The Supplier shall promptly provide the Authority and any Replacement Supplier, in writing such information as is necessary to enable the Authority, the Replacement Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier, shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.10 Subject to Paragraph 2.9 of this Call Off Schedule 5 (*Staff Transfer*), the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.
- 2.11 The indemnity in Paragraph 2.10 of this Call Off Schedule 5 (*Staff Transfer*) shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier to comply with its obligations under the Employment Regulations, or to

the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 of this Call Off Schedule 5 (*Staff Transfer*)).