the Supplier Software and/or the Supplier Background IPR (as the case may be); and

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

14.3.4 Those items licensed according to the terms of Clause 14.3.1 are listed in the Order Form or, where this is used, Call Off Schedule 3.

14.4 **Customer's right to sub-license**

14.4.1 The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 14.2.1.

14.4.2 The Customer may sub-license:

a) the rights granted under Clause 14.3.1 to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:

(i) the sub-licence is on terms no broader than those granted to the Customer; and

(ii) the sub-licence only authorises the third party to use the rights licensed in Clause 14.3.1 for purposes relating to the Goods or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and

b) the rights granted under Clause 14.3.1 to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Customer.

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

14.5.1 The Customer:

a) shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 14.2.1; and

b) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 14.3.1 to:

(i) a Central Government Body; or

(ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.

c) Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it

ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 14.2.1 and/or Clause 14.3.1. If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 14.2.1 and Clause 14.3.1.

d) If a licence granted in Clause 14.2.1 and/or Clause 14.3.1 is novated under Clause 14.5.1 or there is a change of the Customer's status pursuant to Clause c) (both such bodies being referred to as the **"Transferee"**), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

14.6 **Third Party IPR and Third Party Software**

14.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not commercial off-the-shelf software grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 14.3.1 and Clause 14.5.1b). If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in Clause 14.3.1 and Clause 14.5.1b) in respect of any such Third Party IPR and/or Third Party Software, the Supplier shall:

a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and

b) only use such Third Party IPR and/or Third Party Software if the Customer Approves the terms of the licence from the relevant third party.

14.6.2 The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable that such software is usually made available.

14.6.3 Those items licensed according to the terms of Clause 14.6.1 and those items licensed according to the terms of Clause 14.6.2 are listed in the Order Form or, where this is used, Call Off Schedule 3.

14.7 **Termination of licenses**

14.7.1 Subject to Clauses 14.3.2 and/or 14.3.3, all licences granted pursuant to this Clause 14 (other than those granted pursuant to Clause 14.6.2 and B6 where used) shall survive the Call Off Expiry Date.

14.7.2 The Supplier shall, if requested by the Customer, grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPR, Third Party IPR and/or Third Party Software on terms equivalent to those set out in Clause 14.3.1 subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

14.7.3 Any licences granted by the Customer to the Supplier in respect of the Customer Software, Customer Background IPR and the

Customer Data and any sub-licence granted by the Supplier pursuant to this Call Off Contract shall terminate automatically on the Call Off Expiry Date and the Supplier shall:

a) immediately cease all use of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be);

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

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

14.8 **IPR Indemnity**

14.8.1 The Supplier shall during and after the Call Off Contract Period, on written demand indemnify the Customer against all Losses incurred by, awarded against or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

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

a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or

b) replace or modify the relevant item with non-infringing substitutes provided that:

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

(ii) the replaced or modified item does not have an adverse effect on any other Goods;

(iii) there is no additional cost to the Customer; and

(iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Goods.

14.8.3 If the Supplier elects to procure a licence in accordance with Clause 14.8.2a) or to modify or replace an item pursuant to Clause 14.8.2b), but this has not avoided or resolved the IPR Claim, then:

a) the Customer may terminate this Call Off Contract by written notice with immediate effect; and

b) without prejudice to the indemnity set out in Clause 14.8.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

14.8.4 The provisions of Clauses 14.8.1 to 14.8.3 (inclusive) shall not apply to the extent that any IPR Claim is caused by any use by or on behalf of the Customer of the Software, or the use of the Customer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Call Off Contract or in a manner not reasonably to be inferred from the description of the Goods in this Call Off Contract.

14.8.5 The Customer agrees that:

a) it will notify the Supplier in writing of any IPR Claim;

b) it will allow the Supplier to conduct all negotiations and proceedings and will provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and

c) it will not, without first consulting with the Supplier, agree to make any payment or make an admission relating to the IPR Claim.

14.8.6 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute. The Supplier shall not settle or compromise any IPR Claim without the Customer's Approval (not to be unreasonably withheld or delayed).

15. SECURITY AND PROTECTION OF INFORMATION

15.1 Security Requirements

15.1.1 The Supplier shall comply with the Security Policy and where specified by the Customer, with the requirements of Call Off Schedule B12 (Security Management) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

15.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.

15.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Goods it may propose a Variation to the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call Off Contract Charges shall then be subject to the Variation Procedure.

15.1.4 Until and/or unless a change to the Call Off Contract Charges is agreed by the Customer pursuant to the Variation Procedure the

Supplier shall continue to provide the Goods in accordance with its existing obligations.

15.2 **Malicious Software**

15.2.1 The Supplier shall, as an enduring obligation throughout the Call Off Contract Period use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).

15.2.2 Notwithstanding Clause 15.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Goods to its desired operating efficiency.

15.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 15.2.2 shall be borne by the Parties as follows:

a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Customer has waived the obligation set out in Clause 15.2.1) or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and

b) by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in Clause 15.2.1) or the Customer Data (whilst the Customer Data was under the control of the Customer).

15.3 **Protection of Customer Data**

15.3.1 To the extent that the Customer Data is held and/or Processed by the Supplier:

a) the Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

b) the Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call Off Contract or as otherwise Approved by the Customer.

c) the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Call Off Contract and in any event as specified by the Customer from time to time in writing.

d) the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

e) the Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with any BCDR plan. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).

f) the Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).

g) if at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

h) if the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:

(i) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or

(ii) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so).

15.4 **Confidentiality**

15.4.1 For the purposes of this Clause , the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.

15.4.2 Except to the extent set out in this Clause 15 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:

a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and

b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call Off Contract or without obtaining the owner's prior written consent;

c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and

d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

15.4.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 15.6.1 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;

b) the need for such disclosure arises out of or in connection with:

(i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;

(ii) the purpose of the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Goods provided under this Call Off Contract; or

(iii) the conduct of a Central Government Body review in respect of this Call Off Contract; or

c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

15.4.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

15.4.5 Subject to Clauses 15.4.2 and 15.4.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:

a) Supplier Personnel who are directly involved in the provision of the Goods and need to know the Confidential Information to enable performance of the Supplier's obligations under this Call Off Contract; and

b) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.

15.4.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 15.4.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.

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

a) on a confidential basis to any Central Government Body for any proper purpose of the Customer or of the relevant Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Bodies;

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

c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 15.4.7a) (including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;

e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or

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

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 15.

15.4.8 Nothing in this Clause 15 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

15.4.9 In the event that the Supplier fails to comply with Clauses 15.4.2 to 15.4.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

15.5 **Transparency**

15.5.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract is not Confidential Information. The Customer shall determine whether any of the content of this Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

15.5.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives his consent for the Customer to publish this Call Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Call Off Contract agreed from time to time.

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

15.6 **Freedom of Information**

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

a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;

b) transfer to the Customer all Requests for Information relating to this Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

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

15.7 **Protection of Personal Data**

15.7.1 Where any Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Call Off Contract, the Parties acknowledge that the Customer is the Data Controller and that the Supplier is the Data Processor.

15.7.2 The Supplier shall:

a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call Off Contract;

b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Clauses 15.1 (Security Requirements) and 15.3 (Protection of Customer Data);

c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call Off Contract);

d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:

   (i) are aware of and comply with the Supplier's duties under this Clause 15.7.2 and Clauses 15.1 (Security Requirements), 15.3 (Protection of Customer Data) and 15.4 (Confidentiality);

   (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and

   (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);

e) notify the Customer within five (5) Working Days if it receives:

   (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;

   (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or

   (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint, communication or request made (as referred to at Clause e)), including by promptly providing:

   (i) the Customer with full details and copies of the complaint, communication or request;

   (ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and

   (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and

g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance

with its obligations pursuant to this Clause 15.7.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

15.7.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "**Restricted Countries**"). If, after the Call Off Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any outside the European Economic Area, the following provisions shall apply:

a) the Supplier shall propose a Variation to the Customer which, if it is agreed by the Customer, shall be dealt with in accordance with the Variation Procedure and Clauses 15.7.3b) to d);

b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:

(i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;

(ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and

(iii) any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;

c) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;

d) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and

e) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:

(i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and

(ii) procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:

A. a direct data processing agreement with the Customer on such terms as may be required by the Customer; or

B. a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-contractor relating to the relevant Personal Data transfer, and

(iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

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

16. PUBLICITY AND BRANDING

16.1 The Supplier shall not make any press announcements or publicise this Call Off Contract in any way nor use the Customer's name or brand in any promotion or marketing or announcement of orders, without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed).

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

H. LIABILITY AND INSURANCE

17. LIABILITY

17.1 Neither Party excludes or limits it liability for:

17.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);

17.1.2 bribery or Fraud by it or its employees;

17.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

17.1.4 any liability to the extent it cannot be excluded or limited by Law.

17.2 Subject to Clause 17.1 the Supplier's total aggregate liability in respect of all:

17.2.1 Service Credits; and

17.2.2 Compensation for Critical Service Level Failure;

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

17.3 in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:

a) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year (for the avoidance of doubt including Call Off Contracts with a duration of less than one year), the higher of one hundred thousand pounds (£100,000) or a sum equal to one hundred and twenty-five per cent (125%) of the Estimated Year 1 Call Off Contract Charges;

b) in relation to any Defaults occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, the higher of one hundred thousand pounds (£100,000) in each such Call Off Contract Year or a sum equal to one hundred and twenty-five per cent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and

c) in relation to any Defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, the higher of one hundred thousand pounds (£100,000) in each such Call Off Contract Year or a sum equal to one hundred and twenty-five percent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period,

unless a different aggregate limit or percentage under this Clause 17.3 is stipulated by the Customer during a Further Competition Procedure and set out in the Order Form.

17.4 Subject to Clause 17.1 and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:

17.4.1 in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year (for the avoidance of doubt including Call Off Contracts with a duration of less than one year), a sum equal to the Estimated Year 1 Call Off Contract Charges;

17.4.2 in relation to any Customer Causes occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and

17.4.3 in relation to any Customer Causes occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

17.5 Subject to Clause 17.1 neither Party shall be liable to the other Party for any:

17.5.1 indirect, special or consequential Loss;

17.5.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

17.6 Subject to Clause 17.3, and notwithstanding Clause 17.4, the Supplier acknowledges that the Customer may, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of, and relate to a Default by the Supplier:

17.6.1 any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;

17.6.2 any wasted expenditure or charges;

17.6.3 the additional cost of procuring Replacement Goods for the remainder of the Call Off Contract Period and/or replacement Deliverables if any, which shall include any incremental costs associated with such Replacement Goods and/or replacement Deliverables above those which would have been payable under this Call Off Contract;

17.6.4 any compensation or interest paid to a third party by the Customer; and

17.6.5 any fine, penalty or costs incurred by the Customer pursuant to Law.

17.7 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call Off Contract.

17.8 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 17.3.

I. REMEDIES AND RELIEF

18. CUSTOMER REMEDIES FOR DEFAULT

18.1 **Remedies**

18.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising and subject to the exclusive financial remedy provisions in Clause **Error! Reference source not found.** (Delay Payments) where used, if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Goods have been Delivered) do any of the following:

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