

**Framework Schedule 6b Order Form Template**  
**Operating Lease Only**  
**(Leasing and/or Service Requirements under Lots 1 and 2)**

**Order Form**

CALL-OFF REFERENCE:	PROC-387-2022
THE BUYER:	Competition and Markets Authority
BUYER ADDRESS	The Cabot 25 Cabot Square London E14 4QZ
THE SUPPLIER:	Canon (UK) Limited
SUPPLIER ADDRESS:	4 Roundwood Avenue, Stockley Park, Uxbridge UB11 1AF
REGISTRATION NUMBER:	1264300
DUNS NUMBER:	217343912
SID4GOV ID:	N/A

**APPLICABLE FRAMEWORK CONTRACT**

This Order Form is for the provision of the Call-Off Deliverables and dated 31<sup>st</sup> March 2022. It's issued under the Framework Contract with the reference number RM6174 for the provision of Multifunctional Devices (MFDs), Print and Digital Workflow Software Services and Managed Print Service Provision.

CALL-OFF LOT(S):

<b><i>Lot Number</i></b>	<b><i>Lot Name</i></b>	<b><i>Relevant (Yes/No)</i></b>
<i>1</i>	<i>Multifunctional Print Devices (MFDs) and Basic Print Management Software</i>	<i>No</i>

2	<i>Multifunctional Print Devices (MFDs), Print Management and/or Digital Workflow Software and Associated Services</i>	Yes
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## **CALL-OFF INCORPORATED TERMS**

The following documents are incorporated into this Call-Off Contract.

Where numbers are missing, we are not using those schedules. If the documents conflict, the following order of precedence applies:

1. This Order Form including the Call-Off Special Terms and Call-Off Special Schedules.
2. Joint Schedule 1 (Definitions and Interpretation) **RM6174**
3. Framework Special Terms
4. The following Schedules in equal order of precedence:
5. CCS Core Terms (version 3.0.11)
6. Joint Schedule 5 (Corporate Social Responsibility)
7. Call-Off Schedule 4 (Call-Off Tender) - Not required, this is a Direct Award

No other Supplier terms are part of the Call-Off Contract. That includes any terms written on the back of, added to this Order Form, or presented at the time of delivery.

- Joint Schedules for **RM6174**

Joint Schedule 1	(Definitions)	<b>Buyer guidance:</b> This Schedule details all the defined terms stated within the Specification of Requirements for Lots 1, 2, 3 and 4. Shall be used if required. <a href="https://assets.crowncommercial.gov.uk/wp-content/uploads/Joint-Schedule-1-Definitions-v3.9-1.docx">https://assets.crowncommercial.gov.uk/wp-content/uploads/Joint-Schedule-1-Definitions-v3.9-1.docx</a>
Joint Schedule 2	(Variation Form)	<b>Buyer guidance:</b> This Schedule is to be used when either the Buyer and/or Supplier wants to change/update the deliverables of the original Call-Off Contract in accordance with Clause 24 (Changing the Contract) of the Core Terms <a href="https://assets.crowncommercial.gov.uk/wp-content/uploads/Joint-Schedule-2-Variation-Form-v.3.1-1.docx">https://assets.crowncommercial.gov.uk/wp-content/uploads/Joint-Schedule-2-Variation-Form-v.3.1-1.docx</a>
Joint Schedule	(Insurance Requirements)	<b>Buyer guidance:</b> This Schedule defines the standard insurance cover required by Suppliers at Framework level. If Buyers require Suppliers to obtain additional Insurance, this should be

3		<p>detailed in the 'Additional Insurance' section found further on in this form.</p> <p><a href="https://assets.crowncommercial.gov.uk/wp-content/uploads/Joint-Schedule-3-Insurance-Requirements-V3.1-1.docx">https://assets.crowncommercial.gov.uk/wp-content/uploads/Joint-Schedule-3-Insurance-Requirements-V3.1-1.docx</a></p>			
Joint Schedule 4	(Commercially Sensitive Information)	1.	From acceptance of Terms and Conditions	The commercial pricing response contained in Call Off Schedule 5 – Pricing Details -containing our charges, payment and invoicing details	Up to the Agreement expiry date
		2.	From acceptance of Terms and Conditions	Call Off Schedule 20 (Call-Off Specification)	Up to the Agreement expiry date
Joint Schedule 10	(Rectification Plan)	<p><b>Buyer guidance:</b> This schedule is used when a supplier breaches any of their obligations and sets out the steps to be taken by Suppliers to rectify the Defaults. <i>The definition of Default can be found in Joint Schedule 1 – Definitions</i></p> <p><a href="https://assets.crowncommercial.gov.uk/wp-content/uploads/Joint-Schedule-10-Rectification-Plan-v.3.0-1.docx">https://assets.crowncommercial.gov.uk/wp-content/uploads/Joint-Schedule-10-Rectification-Plan-v.3.0-1.docx</a></p>			
Joint Schedule 11	(Processing Data)	<p><b>Buyer guidance:</b> Annex 1 of Schedule 11 is to be completed by Buyer's when Personal Data is processed by Supplier's. Annex 2 of this Schedule should be considered when both parties agree to Joint Controller Status</p> <p><a href="https://assets.crowncommercial.gov.uk/wp-content/uploads/Joint-Schedule-11-Processing-Data-v4.3-1.docx">https://assets.crowncommercial.gov.uk/wp-content/uploads/Joint-Schedule-11-Processing-Data-v4.3-1.docx</a></p>			

- Call-Off Schedules for **RM6174**

Call-Off Schedule 1	(Transparency Reports)	<p><b>Buyer guidance:</b> This Schedule is to be populated by Buyer's and sets out the reporting requirements which the</p>
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		<p>Supplier will comply with throughout the duration of the Call-Off Contract</p> <p><a href="https://assets.crowncommercial.gov.uk/wp-content/uploads/Call-Off-Schedule-1-Transparency-Reports-v3.0-1.docx">https://assets.crowncommercial.gov.uk/wp-content/uploads/Call-Off-Schedule-1-Transparency-Reports-v3.0-1.docx</a></p>
Call-Off Schedule 2	(Staff Transfer)	<p><b>Buyer guidance:</b> This schedule sets out the provisions of Staff transfer. Buyers will need to seek their own legal advice prior to completing Call-Off Schedule 2.</p> <p><a href="https://assets.crowncommercial.gov.uk/wp-content/uploads/Call-Off-Schedule-2-Staff-Transfer-v3.3-1.docx">https://assets.crowncommercial.gov.uk/wp-content/uploads/Call-Off-Schedule-2-Staff-Transfer-v3.3-1.docx</a></p>
Call-Off Schedule 5	(Pricing Details)	<p><b>Buyer guidance:</b> This schedule is to be populated by Buyers with the applicable Call-Off Contract Charges.</p> <p>Please see Appendix 1 – Call Off Schedule 5 – Pricing Details</p>
Call-Off Schedule 6	(ICT Services) Section	<p><b>Buyer guidance:</b> This Schedule sets out the requirement to which the Supplier are to comply with the Buyer's <i>ICT Policy (ensure it is handed over to the Supplier before the Commencement Date)</i></p> <p><b>and / or</b></p> <p>The Buyer requires the supplier is to create and maintain a rolling schedule of planned maintenance to the ICT Environment.</p> <p><a href="https://assets.crowncommercial.gov.uk/wp-content/uploads/Call-Off-Schedule-6-ICT-Services-v3.4-1.docx">https://assets.crowncommercial.gov.uk/wp-content/uploads/Call-Off-Schedule-6-ICT-Services-v3.4-1.docx</a></p>

Call-Off Schedule 9	(Security)	<p><b>Buyer guidance:</b> Buyer's need to consider and select either the short form (Part A of Schedule 9 (Security)) or long form terms (Part B of Schedule 9).</p> <p>Buyers can also choose to insert their Security Management Plan into Annex 2 of Call-Off Schedule 9 or provide details of where the Security Management Plan can be found.</p> <p><a href="https://assets.crowncommercial.gov.uk/wp-content/uploads/Call-Off-Schedule-9-Security-v3.4-1.docx">https://assets.crowncommercial.gov.uk/wp-content/uploads/Call-Off-Schedule-9-Security-v3.4-1.docx</a></p>
Call-Off Schedule 10	(Exit Management)	<p><b>Buyers Guidance:</b> (Exit Management). Call Off Schedule 10 is likely to be relevant in the context of procuring Services or Goods and Services rather than Goods only. Supports Buyers and Suppliers in devising and agreeing an exit strategy and Contract end.</p> <p><a href="https://assets.crowncommercial.gov.uk/wp-content/uploads/Call-Off-Schedule-10-Exit-Management-v3.2-1.docx">https://assets.crowncommercial.gov.uk/wp-content/uploads/Call-Off-Schedule-10-Exit-Management-v3.2-1.docx</a></p>
Call-Off Schedule 11	(Installation Works)	<p><b>Buyer Guidance Note:</b> This schedule defines the Installation Works (for definition of Installation Works see Joint Schedule 1 – Definitions) needed by Buyer's during the Call-Off Contract term</p> <p><a href="https://assets.crowncommercial.gov.uk/wp-content/uploads/Call-Off-Schedule-11-Installation-Works-v3.0-1.docx">https://assets.crowncommercial.gov.uk/wp-content/uploads/Call-Off-Schedule-11-Installation-Works-v3.0-1.docx</a></p>
Call-Off Schedule 14	(Service Levels)	<p><b>Buyer Guidance Note:</b> This schedule is to be completed if specific Service Levels are required against the Call-Off deliverables. Populate Annex A within Call-Off Schedule 14</p> <p>Please see Appendix 2 – Call Off Schedule 14 – Service Levels</p>
Call-Off Schedule 20	(Call-Off Specification)	<p><b>Buyer Guidance Note:</b> This schedule is to be populated by Buyers with the Deliverables applicable to this Call-Off Contract Charges.</p> <p>Please see Appendix 3 – Call Off Schedule 20 – Call Off Specification</p>

Call-Off Schedule 24	(Operating Lease)	<b>Buyer Guidance Note:</b> This schedule should be incorporated when an Operating Lease is required.  Please see Appendix 4 – Call Off Schedule 24 – Operating Lease
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## **CALL-OFF SPECIAL TERMS**

The following Special Terms are incorporated into this Call-Off Contract:

- None

## **SECTION B**

### **1. Call-Off Contract Period / Value**

CALL-OFF CONTRACT VALUE	£269,111.00
CALL-OFF START DATE: (The initial contract period excluding extension options)	31 <sup>st</sup> March 2022, for an initial term of Three Years
CALL-OFF EXTENSION PERIOD OPTIONS: (State the options to extend)	N/A
CALL-OFF EXPIRY DATE:	30 <sup>th</sup> March 2025
MINIMUM WRITTEN NOTICE TO SUPPLIER IN RESPECT OF EXTENSION:	3 Months

### **2. Contract Performance**

<b>STANDARDS AND QUALITY</b>  Cyber Essentials Basic, ISO 27001, ISO 9001, BS 7858 (Code of Practice), ISO29412 (Statement of Applicability) and ISO15408  <b>AND</b>  <b>30</b> working days within which Quality Plans must be developed by the Supplier
<b>SERVICE CREDITS</b>  Not Applicable

### 3. Liability and Insurance

#### MAXIMUM LIABILITY

The limitation of liability for this Call-Off Contract is stated in Clause 11.2 of the Core Terms.

The Estimated Year 1 Charges used to calculate liability in the first Contract Year is the total charges applicable as per each order placed under this call off agreement.

#### ADDITIONAL INSURANCES

Not applicable

### 4. Buyer Information

#### BUYER'S INVOICE ADDRESS

[REDACTED]

[REDACTED]

Competition & Markets Authority

The Cabot

25 Cabot Square

London

E14 4QZ

BUYER'S AUTHORISED REPRESENTATIVE

[REDACTED]

Competition & Markets Authority

The Cabot

25 Cabot Square

London

E14 4QZ

PAYMENT METHOD

Invoice

**5. Supplier Information**

SUPPLIER'S AUTHORISED REPRESENTATIVE

[REDACTED]

SUPPLIER'S CONTRACT MANAGER

[REDACTED]



#### SUPPLIER REQUIREMENTS

##### **Supplier's inspection of Sites, Customer Property and Customer Assets:**

Acceptance will be deemed to have been given on completion of delivery, installation and green button tests having been completed.

#### FAILURE OF SUPPLIER EQUIPMENT

**Not applied**

### **6. Other Call-Off Requirements**

#### TERMINATION WITHOUT CAUSE NOTICE PERIOD

as per Clause 10.2.2 of the Core Terms

#### UNDISPUTED SUMS LIMIT

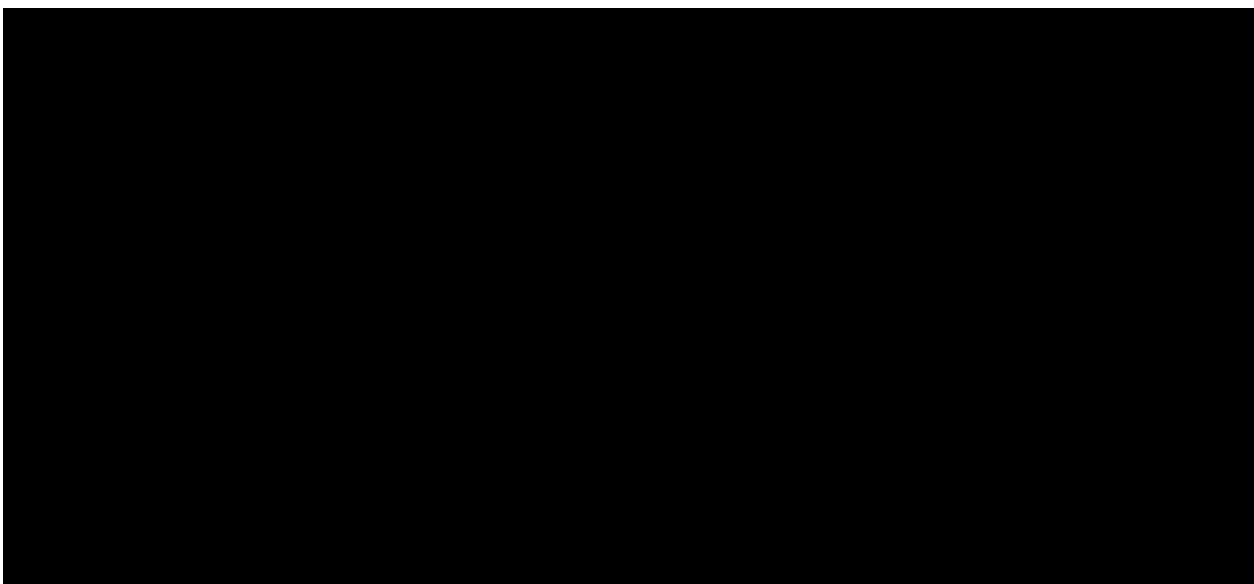
as per Clause 10.5 of the Core Terms

#### TRAINING

Not applicable

#### SOCIAL VALUE COMMITMENT

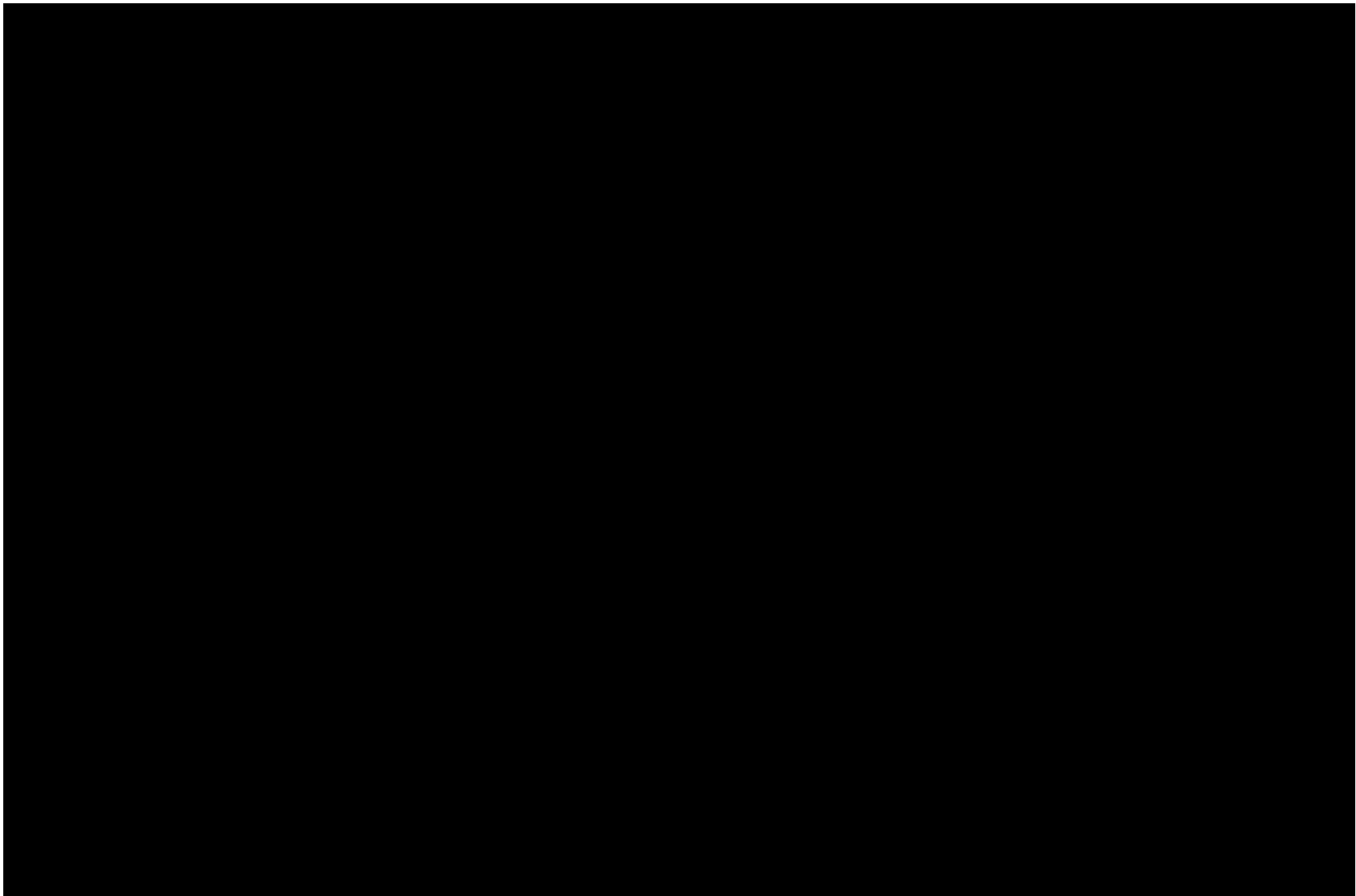
Not applicable



## **Appendix 1 – Call Off Schedule 5 – Pricing Details**

PLEASE RETAIN A COPY OF THIS SCHEDULE AS THIS FORMS PART OF  
YOUR CALL-OFF CONTRACT

# Call-Off Schedule 5 (Pricing Details)



**The Charges will not be impacted by any change to the Framework Prices. The Charges can only be changed by agreement in writing between the Buyer and the Supplier because of:**

- **Specific Change in Law**

## **Appendix 2 – Call Off Schedule 14 – Service Levels**

**PLEASE RETAIN A COPY OF THIS SCHEDULE AS THIS FORMS PART OF  
YOUR CALL-OFF CONTRACT**

# Call-Off Schedule 14 (Service Levels)

## 1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"Critical Service Level Failure"</b>	has the meaning given to it in the Order Form;
<b>"Service Credits"</b>	1 any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Credit Cap"</b>	2 has the meaning given to it in the Order Form; 3
<b>"Service Level Failure"</b>	4 means a failure to meet the Service Level Performance Measure in respect of a Service Level;
<b>"Service Level Performance Measure"</b>	5 shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule; and
<b>"Service Level Threshold"</b>	6 shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule.

## 2. What happens if you don't meet the Service Levels

- 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.
- 2.2 The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 2.4 A Service Credit shall be the Buyer's exclusive financial remedy for a Service Level Failure except where:



- 2.4.1 the Supplier has over the previous (twelve) 12 Month period exceeded the Service Credit Cap; and/or
- 2.4.2 the Service Level Failure:
  - (a) exceeds the relevant Service Level Threshold;
  - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier;
  - (c) results in the corruption or loss of any Government Data; and/or
  - (d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or
- 2.4.3 the Buyer is entitled to or does terminate this Contract pursuant to Clause 10.4 (CCS and Buyer Termination Rights).
- 2.5 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
  - 2.5.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;
  - 2.5.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and
  - 2.5.3 there is no change to the Service Credit Cap.

### 3. Critical Service Level Failure

On the occurrence of a Critical Service Level Failure:

- 3.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
- 3.2 the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"), provided that the operation of this paragraph 3 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.

# Part A: Service Levels and Service Credits

## 1. Service Levels

If the level of performance of the Supplier:

- 1.1 is likely to or fails to meet any Service Level Performance Measure; or
- 1.2 is likely to cause or causes a Critical Service Failure to occur,

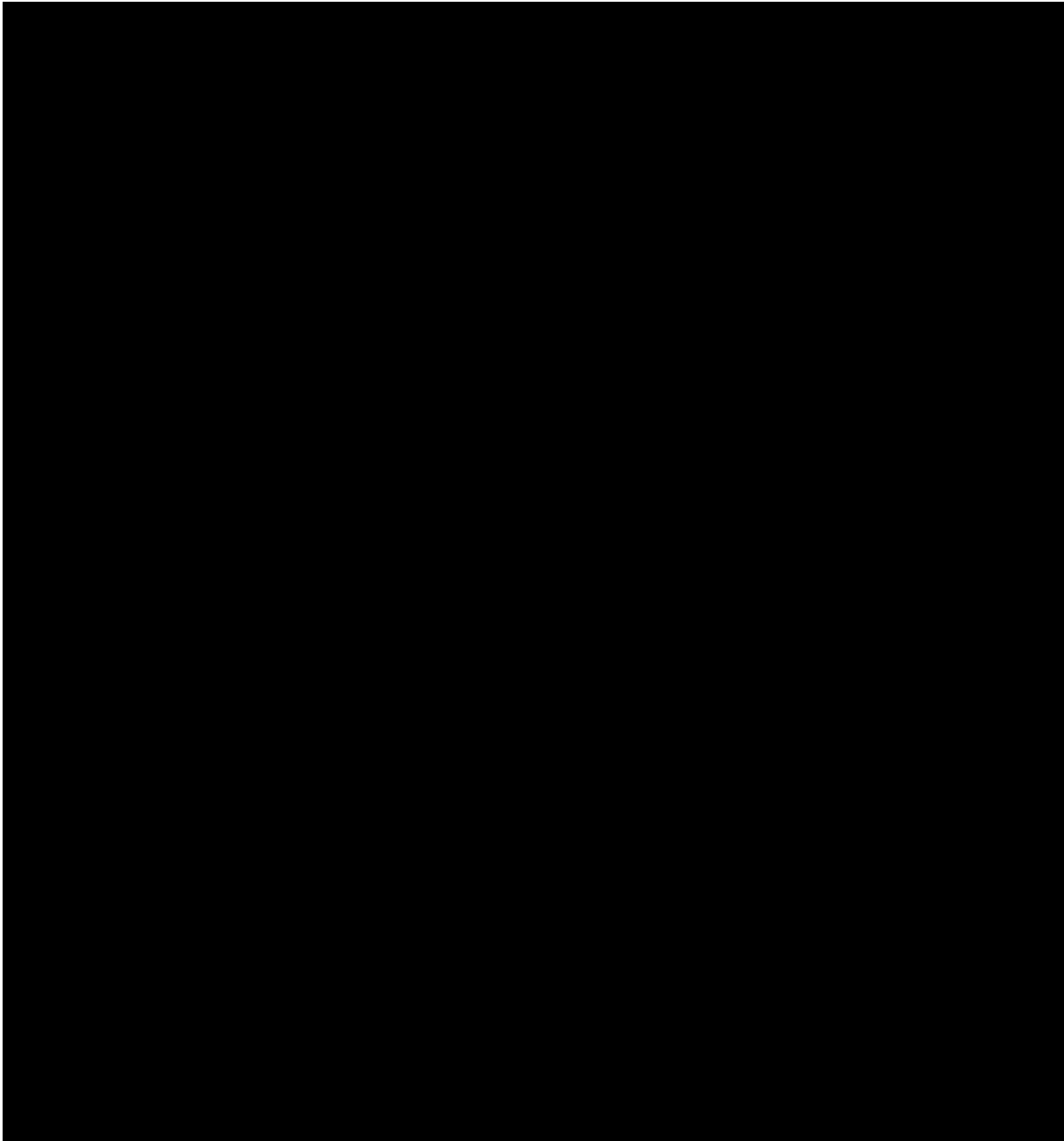
the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

- 1.2.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;
- 1.2.2 instruct the Supplier to comply with the Rectification Plan Process;
- 1.2.3 if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Supplier to the Buyer; and/or
- 1.2.4 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

## 2. Service Credits

- 2.1 The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.
- 2.2 Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

**Annex A to Part A: Services Levels and Service Credits Table**



The Service Credits shall be calculated on the basis of the following formula:

## Example

Formula:  $x\%$  (Service Level Performance Measure) -  $x\%$  (actual Service Level performance) =  $x\%$  of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer

Worked example: 98% (e.g. Service Level Performance Measure requirement for accurate and timely billing Service Level) - 75% (e.g. actual performance achieved against this Service Level in a Service Period) = 23% of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer]

## Part B: Performance Monitoring

### 3. Performance Monitoring and Performance Review

- 3.1 Within twenty (20) Working Days of the Start Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 3.2 The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
  - 3.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
  - 3.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
  - 3.2.3 details of any Critical Service Level Failures;

- 3.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 3.2.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
  - 3.2.6 such other details as the Buyer may reasonably require from time to time.
- 3.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
  - 3.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;
  - 3.3.2 be attended by the Supplier's Representative and the Buyer's Representative; and
  - 3.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.
- 3.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 3.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

#### 4. **Satisfaction Surveys**

- 4.1 The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

## Appendix 3 – Call Off Schedule 20

**PLEASE RETAIN A COPY OF THIS SCHEDULE AS THIS FORMS PART OF YOUR CALL-OFF CONTRACT**

### Call-Off Schedule 20 (Call-Off Specification)

This Schedule sets out the characteristics of the Deliverables that the Supplier will be required to make to the Buyers under this Call-Off Contract.

The Deliverable will be made in accordance with the Buyers Invitation to Quote (ITQ), dated 4<sup>th</sup> March 2022, and the Suppliers proposal and cost submission dated 24<sup>th</sup> March 2022,

Where the Buyer has identified to the Supplier that the disposal of old printers is required, this will be undertaken free of charge (FOC).

The Supplier will re-use Card readers from existing printers identified by the Buyer for disposal. Should these Card readers not function when installed on the replacement printers, the Supplier will at their own cost, rectify the issue or provide a replacement Card reader.

The below specification is a broad overview and is not exhaustive. Products and/or services may be ordered under the provisions of this Call Off at any stage of the agreement term.

Products and/or Services may be ordered on a separate agreement in line with the terms of this framework, as and when required, with no minimum order value.

The customer is under no obligation to order any product or service and no orders will be processed unless approved by the customer.

Approval will be deemed granted on the provision of an acceptable Purchase Order, by the customer, referencing this Call Off reference number.

#### **Lot 2: Multifunctional Print Devices (MFDs) Print Management and / or digital Workflow**

An extensive catalogue of MFDs ranging from entry level, standalone to fully networked, including:

- hardware print devices (including remanufactured)
- consumables
- print room equipment
- software options
- maintenance and support services
- cloud hosting and digital workflow solutions

You can buy all the above services either as a combined service or independently.

Our suppliers can also provide you with interim technical resources such as:

- project managers
- service need analyst or fleet
- security, service or technical architects to help with the development and / or implementing your service design needs

Some of the ways you can use lot 2 includes:

- accessing hardware (devices), software, consumables, service and maintenance
- having the option to outright buy and / or lease
- designing and implementing digital workflow and / or cloud based hosting solutions specific to your organisations needs
- managing your existing fleet, supported by service maintenance and potentially software upgrades if needed

# Appendix 4 – Call Off Schedule 24 – Operating Lease

## Call-Off Schedule 24 (RM6174 Operating Lease Terms)

### 1. Introduction

- 1.1 The Buyer has decided to lease Deliverables under the Framework Contract using Framework Schedule 7 (Call-Off Award Procedure) and has stated its requirement using Framework Schedule 6 (Order Form Template and Call-Off Schedules) including specified Joint Schedules and Call-Off Schedules, this Call-Off Schedule 24 (Multifunctional Devices, Managed Print and Content Services Operating Lease Terms) and the Core Terms.

### 2. Definitions

- 2.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>“Additional Clauses”</b>	means the additional Paragraphs in Annex 1 of these MFD Operating Lease Terms and any other additional Clauses set out in Framework Schedule 6 (Order Form Template and Call-Off Schedules) or elsewhere in this Call-Off Contract;
<b>“Alternative Clauses”</b>	means the additional Paragraphs in Annex 1 of these MFD Operating Lease Terms and any other additional Clauses set out in Framework Schedule 6 (Order Form Template and Call-Off Schedules) or elsewhere in this Call-Off Contract;
<b>“Approved Sub-Licensee”</b>	means any of the following: <ul style="list-style-type: none"><li>a) a Central Government Body;</li><li>b) any third party providing goods and/or services to a Central Government Body; and/or</li></ul>



c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer;

<b>“BCDR Plan”</b>	has the meaning given to it in Paragraph 2.2 of Call-Off Schedule 8 (Business Continuity and Disaster Recovery);
<b>“Buyer Property”</b>	has the meaning given to it in Call-Off Schedule 6 (ICT Services);
<b>“Buyer System”</b>	has the meaning given to it in Call-Off Schedule 6 (ICT Services);
<b>“Commercial off the shelf Software” or “COTS Software”</b>	has the meaning given to it in Call-Off Schedule 6 (ICT Services);
<b>“ICT Environment”</b>	has the meaning given to it in Call-Off Schedule 6 (ICT Services);
<b>“Maintenance Services”</b>	means the maintenance services set out in Schedule 1 of the Framework Agreement and more particularly described at Paragraph 7.16;
<b>“Malicious Software”</b>	has the meaning given to it in Call-Off Schedule 6 (ICT Services);
<b>“MFD Operating Lease Terms”</b>	means the terms set out in this Call-Off Schedule 24 (Multifunctional Devices, Managed Print and Content Services Operating Lease Terms);
<b>“Non-Print Room Equipment”</b>	means all of the Deliverables, specified in Framework Schedule 6 (Order Form Template and Call-Off Schedules) other than Print Room Equipment;

<b>"Open Source Software"</b>	has the meaning given to it in Call-Off Schedule 6 (ICT Services);
<b>"Operating Lease Agreement Commencement Date"</b>	means the date of commencement of a Call-Off Contract, which incorporates these MFD Operating Lease Terms, set out in Framework Schedule 6 (Order Form Template and Call-Off Schedules);
<b>"Operating Lease Agreement Period"</b>	the term of a Call-Off Contract, which incorporates these MFD Operating Lease Terms, from the Operating Lease Agreement Commencement Date until the Operating Lease Expiry Date;
<b>"Operating Lease Expiry Date"</b>	means: (a) the end date of the Operating Lease Agreement Period or any Operating Lease Extension Period; or (b) if this Call-Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call-Off Contract;
<b>"Operating Lease Extension Period"</b>	means such period or periods up to a maximum of the number of years in total as may be specified by the Buyer pursuant to Paragraph 4.2 and in Framework Schedule 6 (Order Form Template and Call-Off Schedules);
<b>"Operating Lease Initial Period"</b>	means the initial term of the Call-Off Contract from the Operating Lease Agreement Commencement Date to the end date of the initial term stated in Framework Schedule 6 (Order Form Template and Call-Off Schedules);
<b>"Other Supplier"</b>	means any supplier to the Buyer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;

<b>“Over-Delivered Goods”</b>	has the meaning given to it in Paragraph 7.5;
<b>“Print Room Equipment”</b>	means the Deliverables, specified in Framework Schedule 6 (Order Form Template and Call-Off Schedules), designed to be carry out a specific function within a print room environment;
<b>“Rental”</b>	means the periodic charges payable for the lease of the Goods;
<b>“Service Level Performance Measures”</b>	has the meaning provided in Call-Off Schedule 14;
<b>“Sites”</b>	<p>for the purposes of these MFD Operating Lease Terms, the definition of “Sites” in Joint Schedule 1 (Definitions) shall be supplemented by adding “or” to the end of paragraph (b), and adding the following to the list as paragraphs (c) and (d):</p> <p>“(c) where any part of the Supplier System is situated; or</p> <p>(d) any physical interface with the Buyer System takes place”</p>
<b>“Software”</b>	has the meaning given to it in Call-Off Schedule 6 (ICT Services);
<b>“Source Code”</b>	has the meaning given to it in Call-Off Schedule 6 (ICT Services);
<b>“Specially Written Software”</b>	has the meaning given to it in Call-Off Schedule 6 (ICT Services);
<b>“Supplier System”</b>	has the meaning given to it in Call-Off Schedule 6 (ICT Services);
<b>“Termination Assistance”</b>	is as defined in Call-Off Schedule 10 (Exit Management);

<b>“Termination Assistance Period”</b>	is as defined Call-Off Schedule 10 (Exit Management);
<b>“Third Party Software”</b>	means any software identified as such in the Call Off Order Form together with all other software which is not listed in the Call Off Order Form which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Goods and/or Services); and
<b>“Undelivered Goods”</b>	has the meaning given to it in Paragraph 7.4.

### **3. Exclusion of certain Core Terms and Call-Off Schedule Terms**

- 3.1 When the Parties have entered into a Call-Off Contract which incorporates the MFD Operating Lease Terms, the following Core Terms are modified in respect of the Call-Off Contract (but are not modified in respect of the Framework Contract):
  - 3.1.1 Clause 3.1.2 does not apply to the Call-Off Contract;
  - 3.1.2 Clause 3.2.3 does not apply to the Call-Off Contract;
  - 3.1.3 In Clause 3.2.5, the words “transfer of ownership” are deleted and the words “for the duration of the Operating Lease Agreement Period” are inserted;
  - 3.1.4 The words “for the duration of the Operating Lease Agreement Period” are added to the end of Clause 8.7;
  - 3.1.5 Clauses 9.1– 9.6 inclusive do not apply to the Call-Off Contract;
  - 3.1.6 Clause 10.1.2 does not apply to the Buyer extending the Operating Lease Agreement Period of any Deliverables;
  - 3.1.7 “90” is deleted from Clause 10.2.2 and is substituted with “30”;
  - 3.1.8 In Clause 10.2.2, the words “unless stated differently in Framework Schedule 6 (Order Form Template and Call-Off Schedules)” are added after the word “notice”; and
  - 3.1.9 Clause 11.3 does not apply where the Buyer must pay any amount under Paragraph 14 of these MFD Operating Lease Terms.

- 3.2 When the Parties have incorporated Call-Off Schedule 6 (ICT Services) into a Call-Off Contract, Paragraph 9 of that Schedule does not apply to the Call-Off Contract and these MFD Operating Lease Terms. This is with the exception of Paragraph 9.7 of Call-Off Schedule 6 (ICT Services), which will continue to apply.

#### **4. Duration of MFD Operating Lease Terms**

- 4.1 A Call-Off Contract incorporating these MFD Operating Lease Terms shall take effect on the Operating Lease Agreement Commencement Date and the term of this Call-Off Contract shall be the Operating Lease Agreement Period.
- 4.2 The Supplier shall be aware that the maximum Operating Lease Agreement Period shall not exceed five (5) years for Non-Print Room Equipment or seven (7) years for Print Room Equipment.
- 4.3 The Supplier shall ensure that any Operating Lease Extension Period will not extend a Contracting Authority's total Call-Off Contract Period beyond five (5) years for Non-Print Room Equipment and seven (7) years for Print Room Equipment from the Operating Lease Commencement Date to the expiry of the Operating Lease Extension Period.
- 4.4 Where the Buyer has included the option for an Operating Lease Extension Period in Framework Schedule 6 (Order Form Template and Call-Off Schedules), the Buyer may extend this Call-Off Contract for the Operating Lease Extension Period by providing written notice to the Supplier before the end of the Operating Lease Initial Period. The minimum period for the written notice shall be as specified in Framework Schedule 6 (Order Form Template and Call-Off Schedules).

#### **5. Deliverables**

- 5.1 The Supplier acknowledges and agrees that the Buyer relies on the skill and judgment of the Supplier in the provision of the Deliverables and the performance of its obligations under this Call-Off Contract and these MFD Operating Lease Terms.
- 5.2 The Supplier shall ensure that the Deliverables comply in all respects with the description of the Deliverables in Framework Schedule 6 (Order Form Template and Call-Off Schedules).
- 5.3 The Supplier shall:
- 5.3.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Goods and/or Services in accordance with the Call-Off Contract and these MFD Operating Lease Terms;

- 5.3.2 ensure that any Documentation and training provided by the Supplier to the Buyer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.3.3 co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Deliverables to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Deliverables and, on the Operating Lease Expiry Date for any reason, to enable the timely transition of the supply of the Deliverables (or any of them) to the Buyer and/or to any Replacement Supplier;
- 5.3.4 if unable to assign to the Buyer third party warranties and indemnities pursuant to Clause 8.7 of the Core Terms and to the extent it is legally able to do so, hold on trust for the sole benefit of the Buyer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Buyer may notify from time to time to the Supplier;
- 5.3.5 provide the Buyer with such assistance as the Buyer may reasonably require during the Operating Lease Agreement Period in respect of the supply of the Deliverables;
- 5.3.6 ensure that neither it, nor any of its Affiliates, embarrasses the Buyer or otherwise brings the Buyer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Buyer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call-Off Contract;
- 5.3.7 gather, collate and provide such information and co-operation as the Buyer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call-Off Contract;
- 5.3.8 provide training to the Buyer's personnel in accordance with requirements set out in Framework Schedule 6 (Order Form Template and Call-Off Schedules) in respect of the use and maintenance of the Deliverables and, unless otherwise indicated in Framework Schedule 6 (Order Form Template and Call-Off Schedules), the Charges shall include all costs of training including the cost of instruction of the Buyer's personnel in the use and maintenance of the Goods, such instruction to be in accordance with the specification for training set out in Framework Schedule 1 (Specification) or as otherwise set out in Framework Schedule 6 (Order Form Template and Call-Off Schedules); and

- 5.3.9 provide ongoing support and guidance to the Buyer to assist in determining the most effective and efficient way of using the Deliverables to meet the Buyer's requirements.

## **6. Services**

### **6.1 General Application**

- 6.1.1 This Paragraph 6 shall apply if any Services, including Maintenance Services, have been included in Framework Schedule 6 (Order Form Template and Call-Off Schedules).

### **6.2 Time of Delivery of the Services**

- 6.2.1 The Supplier shall provide the Services on the date(s) specified in Framework Schedule 6 (Order Form Template and Call-Off Schedules) and the Milestone Dates (if any) in accordance with the Buyer's requirements in consideration for the payment of the Charges.
- 6.2.2 If the Buyer informs the Supplier in writing that the Buyer reasonably believes that any part of the Services does not meet the requirements of the Call-Off Contract or differs in any way from those requirements, and this is other than as a result of an Authority Cause, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Call-Off Contract within such reasonable time as may be specified by the Buyer.
- 6.2.3 Subject to the Buyer providing Approval in accordance with Paragraph 7.15 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Call-Off Contract, including in relation to commencing the supply of the Services within the time agreed or on a date specified in Framework Schedule 6 (Order Form Template and Call-Off Schedules) and performing any Milestones by the relevant Milestones Date.

### **6.3 Location and Manner of Delivery of the Services**

- 6.3.1 Except where otherwise provided in this Call-Off Contract, the Supplier shall provide the Services to the Buyer through the Supplier Staff at the Sites.
- 6.3.2 The Buyer may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Buyer Premises, the Buyer may carry out such inspection and examination during normal business hours and on reasonable notice.

### **6.4 Obligation to Remedy of Default in the Supply of the Services**

6.4.1 Subject to Paragraph 13.26 (IPR Indemnity) and without prejudice to any other rights and remedies of the Buyer howsoever arising (including under Clause 3.3.7 of the Core Terms), the Supplier shall, where practicable:

- (a) remedy any breach of its obligations in Clause 3 of the Core Terms and Paragraph 5 and 6 of these MFD Operating Lease Terms within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Buyer or within such other time period as may be agreed with the Buyer (taking into account the nature of the breach that has occurred); and
- (b) meet all the costs of, and incidental to, the performance of such remedial work.

## **6.5 Continuing Obligation to Provide the Services**

6.5.1 The Supplier shall continue to perform all of its obligations under this Call-Off Contract and shall not suspend the provision of the Services, notwithstanding:

- (a) any withholding or deduction by the Buyer of any sum due to the Supplier pursuant to the exercise of a right of the Buyer to such withholding or deduction under this Call-Off Contract;
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Buyer to pay any Charges,

unless the Supplier is entitled to terminate this Call-Off Contract under Clause 10.5 of the Core Terms for failure by the Buyer to pay undisputed Charges.

## **7. Goods**

### **7.1 General application**

7.1.1 This Paragraph 7 shall apply if any Goods have been included in Framework Schedule 6 (Order Form Template and Call-Off Schedules).

### **7.2 Time of Delivery of the Goods**

7.2.1 The Supplier shall provide the Goods on the date(s) specified in Framework Schedule 6 (Order Form Template and Call-Off Schedules) and the Milestone Dates (if any). In the event of any delay in the delivery, the Supplier shall immediately notify the Buyer, specifying reasons for the delay and the revised delivery date.

7.2.2 Subject to the rest of this Paragraph 7.2 (Time of Delivery of the Goods), where the Goods are delivered by the Supplier, the point of delivery shall be to the



point of use. Where the Goods are collected by the Buyer, the point of delivery shall be when the Goods are loaded on the Buyer's vehicle.

- 7.2.3 Where the Buyer has specified any Installation Works in Framework Schedule 6 (Order Form Template and Call-Off Schedules), Delivery shall include installation of the Goods by the Supplier Staff at the Sites (or at such place as the Buyer may reasonably direct) in accordance with Call-Off Schedule 11 (Installation Works) and Framework Schedule 6 (Order Form Template and Call-Off Schedules).

### **7.3 Location and Manner of Delivery of the Goods**

- 7.3.1 Except where otherwise provided in this Call-Off Contract, the Supplier shall deliver the Goods to the Buyer through the Supplier Staff at the Sites.
- 7.3.2 If requested by the Buyer prior to Delivery, the Supplier shall provide the Buyer with a sample or samples of Goods for evaluation and Approval, at the Supplier's cost and expense.
- 7.3.3 The Goods shall be marked, stored, handled and delivered in a proper manner and in accordance the Buyer's instructions as set out in Framework Schedule 6 (Order Form Template and Call-Off Schedules) (or elsewhere in this Call-Off Contract), Good Industry Practice, any applicable Standards and any Law. In particular, the Goods shall be marked with the Order number and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- 7.3.4 On dispatch of any consignment of the Goods the Supplier shall send the Buyer an advice note specifying the means of transport, the place and date of dispatch, the number of packages, their weight and volume together with all other relevant documentation and information required to be provided under any Laws.
- 7.3.5 The Buyer may inspect and examine the manner in which the Supplier supplies the Goods at the Sites and, if the Sites are not the Buyer Premises, the Buyer may carry out such inspection and examination during normal business hours and on reasonable notice.
- 7.3.6 The Supplier shall not charge for delivery of the Goods to the Sites or for packing used by the Supplier, other than expressly provided for in Framework Schedule 6 (Order Form Template and Call-Off Schedules).

## **7.4 Undelivered Goods**

- 7.4.1 In the event that not all of the Goods are Delivered in accordance with Clause 3 of the Core Terms, Paragraph 5, Paragraph 7.2 (Time of Delivery of the Goods) and Paragraph 7.3 (Location and Manner of Delivery of the Goods) ("**Undelivered Goods**"), the Buyer, without prejudice to any other rights and remedies of the Buyer howsoever arising, shall be entitled to withhold payment of the applicable Charges for the Goods that were not so Delivered until such time as the Undelivered Goods are Delivered.
- 7.4.2 The Buyer, at its discretion and without prejudice to any other rights and remedies of the Buyer howsoever arising, may deem the failure to comply with Clause 3 of the Core Terms, Paragraph 5, Paragraph 7.2 (Time of Delivery of the Goods) and Paragraph 7.3 (Location and Manner of Delivery of the Goods) and to meet the relevant Milestone Date (if any) to be a material Default (including for the purpose of Clause 10.4 of the Core Terms).

## **7.5 Over-Delivered Goods**

- 7.5.1 The Buyer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity specified in Framework Schedule 6 (Order Form Template and Call-Off Schedules), or elsewhere in the Call-Off Contract ("**Over-Delivered Goods**").
- 7.5.2 If the Buyer elects not to accept such Over-Delivered Goods it may, without prejudice to any other rights and remedies of the Buyer howsoever arising, give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Buyer any expenses incurred by the Buyer as a result of such Over-Delivered Goods (including but not limited to the costs of moving and storing the Over-Delivered Goods).
- 7.5.3 If the Supplier fails to comply with the Buyer's notice under Paragraph 7.5.2, the Buyer may dispose of such Over-Delivered Goods and charge the Supplier for the costs of such disposal. The risk in any Over-Delivered Goods shall remain with the Supplier.

## **7.6 Delivery of the Goods by Instalments**

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

## **7.7 Risk and Ownership in Relation to the Goods**

- 7.7.1 Risk in the Goods shall without prejudice to any other rights or remedies of the Buyer pass to the Buyer at the time of acceptance of delivery.
- 7.7.2 Possession and control of the Goods shall, without prejudice to any other rights or remedies of the Parties, remain with the Buyer throughout the term of the Call-Off Contract.
- 7.7.3 Title to the Goods shall, without prejudice to any other rights or remedies of the Parties, remain with the Supplier throughout the term of the Call-Off Contract.

## **7.8 Responsibility for Damage to or Loss of the Goods**

- 7.8.1 Without prejudice to the Supplier's other obligations to provide the Goods in accordance with this Call-Off Contract, the Supplier accepts responsibility for all damage to or loss of the Goods if the:
  - (a) same is notified in writing to the Supplier within three (3) Working Days of receipt and inspection of the Goods by the Buyer; and
  - (b) Goods have been handled by the Buyer in accordance with the Supplier's instructions.
- 7.8.2 Where the Supplier accepts responsibility under Paragraph 7.8.1, it shall, at its sole option, replace or repair the Goods (or part thereof) within such time as is reasonable having regard to the circumstances and as agreed with the Buyer.
- 7.8.3 The Supplier shall permit the Buyer and/or its authorised representatives to make any inspections or tests on the Goods, which may reasonably be required and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's premises. No failure to make complaint at the time of such inspection or tests and no Approval given during or after such tests of the Goods or inspections shall constitute a waiver by the Buyer of any rights or remedies in respect of the Goods and, in particular, the Buyer retains the right to reject the Goods.
- 7.8.4 The Buyer may by written notice to the Supplier reject any of the Goods, which fail to conform to the approved sample or fail to meet the specification stated in Framework Schedule 6 (Order Form Template and Call-Off Schedules). Such notice shall be given within a reasonable time after delivery to the Buyer of the Goods concerned. If the Buyer rejects any of the Goods pursuant to this Paragraph the Buyer shall be entitled (without prejudice to other rights and remedies) either:

- (a) to have the Goods concerned as quickly as possible and in any event within 5 Working Days either repaired by the Supplier or (as the Buyer shall elect) replaced by the Supplier with Goods that conform in all respects with the approved sample or with the specification set out in Framework Schedule 6 (Order Form Template and Call-Off Schedules) and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
- (b) to treat the Call-Off Contract as discharged by the Supplier's breach and require a refund from the Supplier in respect of any Rental or other Charges paid by the Buyer in respect of the Goods concerned together with payment of any additional expenditure over and above the price incurred by the Buyer in obtaining replacement goods in replacement provided that the Buyer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

7.8.5 The issue by the Buyer of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods.

7.8.6 Any Goods rejected or returned by the Buyer as described in Paragraph 7.8.4 shall be returned to the Supplier at the Supplier's risk and expense.

## **7.9 Defects in the Goods**

7.9.1 On notice in writing by the Buyer to the Supplier, the Supplier shall make good at its own expense any defect which develops or any loss or damage sustained to the Goods (howsoever caused, except by negligence of the Buyer) from the date of delivery and throughout the Operating Lease Agreement Period.

7.9.2 Without prejudice to any other remedies the Buyer may make good such defects or damage and deduct the cost of so doing from any monies due or which may become due to the Supplier under the Order or any other agreement with the Buyer or recover the same from the Supplier as a debt.

## **7.10 Obligation to Remedy Default in the Supply of the Goods**

7.10.1 Subject to Paragraph 13.26 (IPR Indemnity) and without prejudice to any other rights and remedies of the Buyer howsoever arising (including under Paragraph 7.4 (Undelivered Goods) and 14.1 (Consequences of Expiry or Termination)), the Supplier shall, where practicable:

- (a) remedy any breach of its obligations in this Paragraph 7 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Buyer or within such other time period as

may be agreed with the Buyer (taking into account the nature of the breach that has occurred); and

- (b) meet all the costs of, and incidental to, the performance of such remedial work.

## **7.11 Continuing Obligation to Provide the Goods**

7.11.1 The Supplier shall continue to perform all of its obligations under this Call-Off Contract and shall not suspend the provision of the Goods, notwithstanding:

- (a) any withholding or deduction by the Buyer of any sum due to the Supplier pursuant to the exercise of a right of the Buyer to such withholding or deduction under this Call-Off Contract;
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Buyer to pay any Charges,

unless the Supplier is entitled to terminate this Call-Off Contract under Clause 10.5 of the Core Terms for failure to pay undisputed Charges.

## **7.12 No Obligation to pay for Rentals**

7.12.1 Without prejudice to the Buyer's other remedies, the Buyer shall not be obliged to pay any Rental for Goods in respect of any period prior to the Goods being delivered to the Buyer Premises in accordance with Framework Schedule 6 (Order Form Template and Call-Off Schedules).

## **7.13 Possession and Location**

7.13.1 The Buyer shall have the right to quiet possession of the Goods throughout the Operating Lease Agreement Period and in accordance with the terms of the Call-Off Contract.

7.13.2 The Buyer shall not, without the written consent of the Supplier (such consent not to be unreasonably withheld or delayed):

- (a) modify or replace the Goods except in accordance with Paragraph 7.17 (Upgrades and Improvements)
- (b) use the Goods as security for a loan or other obligation;
- (c) sell, or attempt to sell, part with possession of, or encumber the Goods;
- (d) allow anyone to obtain a lien over, or right to retain, the Goods; or
- (e) move the Goods from the location in which they were installed except where it is necessary to do so for the purposes of maintaining and repairing the Goods.

## **7.14 Insurance for Buyers**

7.14.1 The Supplier shall provide insurance against loss, damage, theft and destruction of Goods only where requested by the Buyer during the Call-Off Procedure.

7.14.2 The Supplier shall clearly define costs for insurance within Framework Schedule 3 (Framework Prices) however, for the avoidance of doubt the Buyer will decide at the time of placing an Order whether they want to include Supplier insurance within the Order.

## **7.15 Provision and Removal of Supplier Equipment**

7.15.1 Unless otherwise stated in Framework Schedule 6 (Order Form Template and Call-Off Schedules), the Supplier shall provide all the Supplier Equipment necessary for the supply of the Deliverables.

7.15.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Buyer Premises without obtaining Approval.

7.15.3 All Supplier Equipment brought onto the Buyer Premises shall be at the Supplier's own risk and the Buyer shall have no liability for any loss of or damage to any Supplier Equipment unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by or contributed to by an Authority Cause. The Supplier shall be wholly responsible for the haulage or carriage of the Supplier Equipment to the Buyer Premises and the removal thereof when it is no longer required by the Buyer and in each case at the Supplier's sole cost. Unless otherwise stated in this Call-Off Contract, Supplier Equipment brought onto the Buyer Premises will remain the property of the Supplier.

7.15.4 The Supplier shall maintain all items of Supplier Equipment within the Buyer Premises in a safe, serviceable and clean condition.

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

(a) remove from the Buyer Premises any Supplier Equipment which in the reasonable opinion of the Buyer is either hazardous, noxious or not in accordance with the Call-Off Contract; and

(b) replace such item with a suitable substitute item of Supplier Equipment.

7.15.6 Upon termination or expiry of the Call-Off Contract, the Supplier shall remove the Supplier Equipment together with (for the avoidance of any doubt) the

Goods and any other materials used by the Supplier to supply the Goods and Services and shall leave the Buyer Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Buyer Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or Supplier's Staff.

## **7.16 Provision of Maintenance Services**

- 7.16.1 This Paragraph 7.16 shall apply to the provision of the Maintenance Services.
- 7.16.2 The Supplier shall supply the Maintenance Services during the Operating Lease Agreement Period in accordance with the specification for maintenance services set out in Framework Schedule 6 (Order Form Template and Call-Off Schedules).
- 7.16.3 The Maintenance Services shall include the provision of spares, replacement parts, consumables, toner and staples and the Supplier shall not be entitled to make any additional charge for the supply of such items, except where expressly set out in Framework Schedule 6 (Order Form Template and Call-Off Schedules).
- 7.16.4 If any of the Goods breaks down and the Supplier is not able to repair the Goods in accordance with the specification and timescales set out in Framework Schedule 6 (Order Form Template and Call-Off Schedules), the Supplier shall, at its own cost, without delay, replace any Goods that are not operational with goods of the same type and upon the same terms as the original Goods.
- 7.16.5 All replacement parts fitted to the Goods and all substitutions for the Goods shall remain the property of the Supplier.
- 7.16.6 Paragraph 7.16.5 shall not apply to upgrades or improvements to the Goods made in accordance with Paragraph 7.17.
- 7.16.7 The Supplier shall be entitled to inspect the Goods at any time having given reasonable notice to the Buyer.

## **7.17 Upgrades and Improvements**

- 7.17.1 At any time the Buyer may upgrade or improve the Goods by replacing component parts (but not the Goods in their entirety) with new or used parts or by installing new software with the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 7.17.2 If the Buyer upgrades or improves the Goods by replacing component parts of the Goods with new or used component parts or by installing software, such

upgrades or improvements shall belong to the Buyer and the Buyer shall have the option to remove any such replacement parts, or uninstall any software that it has installed, before the Supplier collects the Goods on expiry or earlier termination of the Call-Off Contract provided that the removal of such replacement parts shall not damage the Goods and the Buyer shall:

- (a) reinstate the original component parts or re-install the original software;  
or
- (b) substitute component parts or install software (where possible from the same manufacturer) reasonably similar to the removed component parts or software (which will become the property of the Supplier); or
- (c) offer for acceptance by the Supplier in substitution for the removed parts or uninstalled software (such acceptance not to be unreasonably withheld or delayed) any component parts or software used in upgrading or improving the Goods (which, if accepted, will become the property of the Supplier).

## **7.18 Return of the Goods**

7.18.1 The Supplier shall give the Buyer 6 months' notice in writing of the Operating Lease Expiry Date.

7.18.2 As soon as practicable upon (and in any event within 10 days of) the Operating Lease Expiry Date, the Supplier shall, at its own cost, collect the Goods from the Buyer Premises.

7.18.3 Notwithstanding the Supplier's responsibility to collect the Goods upon the Operating Lease Expiry Date, the Buyer shall at its own expense ensure the safe and proper storage of the Goods until the Goods are collected by the Supplier.

7.18.4 The Buyer will cease to be liable for any Charges in respect of the Goods and Services after the Operating Lease Expiry Date.

7.18.5 On or before the Operating Lease Expiry Date, the Buyer shall:

- (a) cease using the Goods;
- (b) at its own cost, ensure that the Goods are in the same complete working order and condition as when installed unless:
  - (i) any damage, defects or deterioration in condition are reasonably attributable to fair wear and tear; or



- (ii) the aggregate cost of repairing any and all damage or defects is equal to or less than £250; and
- (c) make the Goods available for collection whenever the Supplier reasonably requires.

7.18.6 Promptly following collection of the Goods and in any event before the Goods are used again, sold on, re-let out on hire or otherwise disposed of in any way (or possession of the Goods is given to any third party) the Supplier will ensure that all data (including any Government Data) as stored on the Goods is removed in such a way that it cannot be retrieved. The Supplier will promptly certify that this has been done and, if required by the Buyer, provide evidence of the same.

## **8. Installation Works**

8.1 In addition to the matters set out in Call-Off Schedule 11 (Installation Works) or elsewhere in the Call-Off Contract:

- 8.1.1 Access to the Buyer's Premises shall not be exclusive to the Supplier but shall be limited to such Supplier Staff and Supplier's Sub-contractors as are necessary to enable the performance of the Call-Off Contract concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Buyer may reasonably require.
- 8.1.2 Where any access to the Buyer's Premises is necessary in connection with delivery or installation, the Supplier and the Supplier's Staff and Sub-contractors shall at all times comply with the reasonable requirements of the Buyer's security procedures as notified to the Supplier from time to time.
- 8.1.3 Throughout the Operating Lease Agreement Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Supplier Staff to carry out the Installation Works.
- 8.1.4 The Buyer shall have the right at any time during the progress of the Call-Off Contract to require the Supplier to remove from the Buyer's Premises any materials which in the opinion of the Buyer are either hazardous, noxious or not in accordance with the Call-Off Contract.
- 8.1.5 The Supplier shall ensure that the Goods are safe and without risk to health when installed and properly used.

## **9. Disruption**

- 9.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call-Off Contract it does not disrupt the operations of the Buyer, its employees or any other contractor employed by the Buyer.
- 9.2 The Supplier shall immediately inform the Buyer of any actual or potential industrial action, whether such action be by the Supplier Staff or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call-Off Contract.
- 9.3 In the event of industrial action by the Supplier Staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Deliverables in accordance with its obligations under this Call-Off Contract.
- 9.4 If the Supplier's proposals referred to in Paragraph 9.3 are considered insufficient or unacceptable by the Buyer acting reasonably then the Buyer may terminate this Call-Off Contract for material Default.
- 9.5 If the Supplier is temporarily unable to fulfil the requirements of this Call-Off Contract owing to disruption of normal business solely due to an Authority Cause, then subject to Clause 5 of the Core Terms, an appropriate allowance by way of an extension of time will be Approved by the Buyer. In addition, the Buyer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **10. Continuous Improvement**

- 10.1 In addition to the matters set out in call-off schedule 3 (Continuous Improvement) or elsewhere in the Call-Off Contract, the Supplier shall identify and report to the Buyer once every twelve (12) months:
  - 10.1.1 the emergence of new and evolving relevant technologies which could improve the ICT Environment, Sites and/or the provision of the Deliverables, and those technological advances potentially available to the Supplier and the Buyer which the Parties may wish to adopt;
  - 10.1.2 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support goods and/or services in relation to the Goods and/or Services;
  - 10.1.3 changes in business processes and ways of working that would enable the Deliverables to be provided at lower costs and/or at greater benefits to the Buyer; and/or

10.1.4 changes to the ICT Environment, Sites, business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Deliverables.

## **11. Variation Procedure**

- 11.1 Any request from either Party for a Variation to the Call-Off Contract is subject to the provisions of this Paragraph 11, Framework Schedule 3 (Framework Prices), Clause 24 of the Core Terms and Joint Schedule 2 (Variation Form).
- 11.2 Where the Supplier must provide an Impact Assessment pursuant to Clause 24.2 of the Core Terms, the Impact Assessment shall be completed in good faith and shall include:
  - 11.2.1 details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under this Call-Off Contract;
  - 11.2.2 details of the cost of implementing the proposed Variation;
  - 11.2.3 details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
  - 11.2.4 a timetable for the implementation, together with any proposals for the testing of the Variation; and
  - 11.2.5 such other information as the Buyer may reasonably request in (or in response to) the Variation request.
- 11.3 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.
- 11.4 Subject to Paragraph 11.3, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Buyer having regard to the nature of the Deliverables and the proposed Variation.

## **12. Property Matters**

### **Buyer Premises**

- 12.1 Licence to occupy Buyer Premises
  - 12.1.1 Any Buyer Premises made available to the Supplier shall be on a non-exclusive licence basis free of charge and shall be used by the Supplier solely

for the purpose of performing its obligations under this Call-Off Contract. The Supplier shall have the use of such Buyer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call-Off Contract and in accordance with Call-Off Schedule 10 (Exit Management).

- 12.1.2 The Supplier shall limit access to the Buyer Premises to such Supplier Staff as is necessary to enable it to perform its obligations under the Call-Off Contract and the Supplier shall co-operate (and ensure that the Supplier Staff co-operate) with such other persons working concurrently on such Buyer Premises as the Buyer may reasonably request.
- 12.1.3 Save in relation to such actions identified by the Supplier in accordance with Paragraph 3 of Call-Off Schedule 6 (ICT Services) and set out in Framework Schedule 6 (Order Form Template and Call-Off Schedules), should the Supplier require modifications to the Buyer Premises, such modifications shall be subject to Approval and shall be carried out by the Buyer at the Supplier's expense. The Buyer shall undertake any modification work which it approves pursuant to this Paragraph 12.1.3 without undue delay. Ownership of such modifications shall rest with the Buyer.
- 12.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Buyer Premises and conduct of personnel at the Buyer Premises as determined by the Buyer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 12.1.5 The Parties agree that there is no intention on the part of the Buyer to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Call-Off Contract, the Buyer retains the right at any time to use any Buyer Premises in any manner it sees fit.

### **Security of Buyer Premises**

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

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

#### **Buyer Property**

- 12.4 Where the Buyer issues Buyer Property free of charge to the Supplier such Buyer Property shall be and remain the property of the Buyer and the Supplier irrevocably licences the Buyer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Buyer Property.
- 12.5 The Supplier shall not in any circumstances have a lien or any other interest on the Buyer Property and at all times the Supplier shall possess the Buyer Property as fiduciary agent and bailee of the Buyer.
- 12.6 The Supplier shall take all reasonable steps to ensure that the title of the Buyer to the Buyer Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Buyer's request, store the Buyer Property separately and securely and ensure that it is clearly identifiable as belonging to the Buyer.
- 12.7 The Buyer Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Buyer otherwise within five (5) Working Days of receipt.
- 12.8 The Supplier shall maintain the Buyer Property in good order and condition (excluding fair wear and tear) and shall use the Buyer Property solely in connection with this Call-Off Contract and for no other purpose without Approval.
- 12.9 The Supplier shall ensure the security of all the Buyer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Deliverables, in accordance with the Buyer's Security Policy and the Buyer's reasonable security requirements from time to time.
- 12.10 The Supplier shall be liable for all loss of, or damage to the Buyer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by an Authority Cause. The Supplier shall inform the Buyer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Buyer Property.

#### **Supplier Equipment**

- 12.11 Unless otherwise stated in Framework Schedule 6 (Order Form Template and Call-Off Schedules), or elsewhere in this Call-Off Contract, the Supplier shall provide all the Supplier Equipment necessary for the provision of the Deliverables.

- 12.12 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Buyer Premises without obtaining Approval.
- 12.13 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Buyer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Operating Lease Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Buyer Premises, including the cost of packing, carriage and making good the Sites and/or the Buyer Premises following removal.
- 12.14 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Buyer shall be liable for loss of or damage to any of the Supplier's property located on Buyer Premises which is due to the negligent act or omission of the Buyer.
- 12.15 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Deliverables in accordance with this Call-Off Contract, including the Service Level Performance Measures.
- 12.16 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Buyer Premises in a safe, serviceable and clean condition.
- 12.17 The Supplier shall, at the Buyer's written request, at its own expense and as soon as reasonably practicable:
- 12.17.1 remove from the Buyer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Buyer is either hazardous, noxious or not in accordance with this Call-Off Contract; and
  - 12.17.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.
- 12.18 For the purposes of this Paragraph 12.18, 'X' shall be the number of Service Failures, and 'Y' shall be the period in months, as respectively specified for 'X' and 'Y' in Framework Schedule 6 (Order Form Template and Call-Off Schedules). If this Paragraph 12.18 has been specified to apply in Framework Schedule 6 (Order Form Template and Call-Off Schedules), and there are no values specified for 'X' and/or 'Y', in default, 'X' shall be two (2) and 'Y' shall be twelve (12). Where a failure of Supplier Equipment or any component part of Supplier Equipment causes X or more Service Failures in any Y Month period, the Supplier shall notify the Buyer in writing and shall, at the Buyer's request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier

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

## **13. Intellectual Property and Information**

### **IPR Definitions**

- 13.1 For the purposes of this paragraph 13 of this Call-Off Schedule 24 only, the following definitions in Joint Schedule 1 (Definitions) shall be supplemented as follows:
- 13.1.1 at the end of the definition of “Existing IPR” the words “but, in the case of the Supplier, excluding IPR owned by the Supplier subsisting in the Supplier Software” are deemed to be added;
  - 13.1.2 at the end of the definition of “New IPR” the words “or Specially Written Software” are deemed to be added; and
  - 13.1.3 at the end of the definition of “Third Party IPR” the words “but excluding any IPR in the Third Party Software” are deemed to be added.

### **Allocation of title to IPR**

- 13.2 Save as expressly granted elsewhere under this Call-Off Contract:
- 13.2.1 the Buyer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
    - (a) the Supplier’s Existing IPR;
    - (b) the Third Party IPR excluding any IPR owned by the Third Party subsisting in any Third Party Software; and
    - (c) the New IPR.
  - 13.2.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Buyer or its licensors, including the:
    - (a) Buyer’s Existing IPR; and
    - (b) Government Data.
- 13.3 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in paragraph 13.2, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

### **Licence granted by the Supplier: New IPR**

- 13.4 The Supplier hereby grants to the Buyer, or shall procure the direct grant to the Buyer of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use the New IPR including but not limited to the right to copy, adapt, publish and distribute such New IPR.

### **Licence granted by the Supplier: Supplier's Existing IPR**

- 13.5 The Supplier hereby grants to the Buyer a perpetual, royalty-free and non-exclusive licence to use the Supplier's Existing IPR for any purpose relating to the Deliverables (or substantially equivalent goods and/or services) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function.

### **Termination of Licences granted by the Supplier**

- 13.6 At any time during the Operating Lease Agreement Period or following the Operating Lease Expiry Date, the Supplier may terminate a licence granted in respect of the New IPR under paragraph 13.4 or the Supplier's Existing IPR under paragraph 13.5 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is an Authority Cause which constitutes a material breach of the terms of paragraph 13.4 or 13.5 (as the context requires) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.
- 13.7 In the event a licence of the New IPR or the Supplier's Existing IPR is terminated pursuant to paragraph 13.6, the Buyer shall:
- 13.7.1 immediately cease all use of the New IPR or the Supplier's Existing IPR (as the context requires);
  - 13.7.2 at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the New IPR or the Supplier's Existing IPR (as the context requires), provided that if the Supplier has not made an election within six (6) Months of the termination of the licence, the Buyer may destroy the documents and other tangible materials that contain any of the New IPR or the Supplier's Existing IPR (as the context requires); and
  - 13.7.3 ensure, so far as reasonably practicable, that any New IPRs or the Supplier's Existing IPR (as the context requires) that is held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Buyer) from any computer, word processor,



voicemail system or any other device containing such New IPR or the Supplier's Existing IPR.

### **Buyer's right to sub-licence**

- 13.8 The Buyer shall be freely entitled to sub-licence the rights granted to it pursuant to paragraph 13.4 (Licence granted by the Supplier: New IPR).
- 13.9 The Buyer may sub-licence:
- 13.9.1 the rights granted under paragraph 13.5 (Licence granted by the Supplier: Supplier's Existing IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
- (a) the sub-licence is on terms no broader than those granted to the Buyer; and
  - (b) the sub-licence only authorises the third party to use the rights licensed in paragraph 13.5. (Licence granted by the Supplier: Supplier's Existing IPR) for purposes relating to the Deliverables (or substantially equivalent goods and/or services) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function; and
- 13.9.2 the rights granted under paragraph 13.5 (Licence granted by the Supplier: Supplier's Existing IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the New IPR provided that the sub-licence is on terms no broader than those granted to the Buyer.

### **Buyer's right to assign/novate licences**

- 13.10 The Buyer shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to paragraph 13.4 (Licence granted by the Supplier: New IPR).
- 13.11 The Buyer may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to paragraph 13.5 (Licence granted by the Supplier: Supplier's Existing IPR) to:
- 13.11.1 a Central Government Body; or
  - 13.11.2 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 Buyer.

- 13.12 Where the Buyer is a Central Government Body, any change in the legal status of the Buyer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in paragraph 13.4 (Licence granted by the Supplier: New IPR) and/or paragraph 13.5 (Licences granted by the Supplier: Supplier's Existing IPR). If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in paragraph 13.4 (Licence granted by the Supplier: New IPR) and paragraph 13.5 (Licence granted by the Supplier: Supplier's Existing IPR).
- 13.13 If a licence granted in paragraph 13.4 (Licence granted by the Supplier: New IPR) and/or paragraph 13.5 (Licence granted by the Supplier: Supplier's Existing IPR) is novated under Paragraph 13.10 and/or 13.11 or there is a change of the Buyer's status pursuant to paragraph 13.12 (both such bodies being referred to as the "**Transferee**"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Buyer.

### **Third Party IPR**

- 13.14 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Buyer on terms at least equivalent to those set out in paragraph 13.5 (Licence granted by the Supplier: Supplier's Existing IPR) and paragraph 13.11 (Buyer's right to assign/novate licences). If the Supplier cannot obtain for the Buyer a licence materially in accordance with the licence terms set out in paragraph 13.5 (Licences granted by the Supplier: Supplier's Existing IPR) and paragraph 13.11 (Buyer's right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:
- 13.14.1 notify the Buyer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
  - 13.14.2 only use such Third Party IPR if the Buyer Approves the terms of the licence from the relevant third party.

### **Software Licence**

- 13.15 The Supplier hereby grants to the Buyer, for the duration of the Operating Lease Agreement, a fully paid up, royalty free, licence to use, copy, and sub-licence any Software installed in the Goods or required by the Buyer in order to make full use of the Goods.

- 13.16 To the extent that any Software referred to in paragraph 13.15 is Third Party Software, the Supplier shall be responsible for obtaining, for the benefit of the Buyer, licences from such third parties to allow the Buyer to make full use of the Goods.

## **Intellectual Property Rights in Software**

### **13.17 Assignments granted by the Supplier: Specially Written Software**

- 13.17.1 If the Buyer opts to make a single payment of the Charges for the Specially Written Software, paragraph 13.17.2 applies.
- 13.17.2 The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:
- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
  - (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**"),
- and the Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software are properly transferred to the Buyer.

### **13.18 Licence of Specially Written Software**

- 13.18.1 If the Buyer opts to make payment for Charges for the Specially Written Software throughout the Operating Lease Agreement Period, the Supplier grants to the Buyer a perpetual, royalty-free, non-exclusive licence to use the Specially Written Software together with and including:
- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
  - (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").
- 13.18.2 On expiry of the Operating Lease Agreement Period, the Supplier shall make an assignment of the title to and all rights and interest in the Specially Written Software, as per paragraph 13.17.2 of this Call-Off Schedule 24.

### **13.19 Specially Written Software: General**

#### **13.19.1 The Supplier shall:**

- (a) inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;
- (b) deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and
- (c) without prejudice to paragraph 13.19.1(b), provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.

#### **13.19.2 Unless the Buyer otherwise agrees in advance in writing (and subject to paragraph 13.19.4) all Specially Written Software shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:**

- (a) suitable for publication by the Buyer as Open Source; and
  - (b) based on Open Standards (where applicable),
- and the Buyer may, at its sole discretion, publish the same as Open Source.

#### **13.19.3 The Supplier hereby warrants that the Specially Written Software:**

- (a) are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure

that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software or the Buyer System;

- (b) have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;
- (c) do not contain any material which would bring the Buyer into disrepute;
- (d) can be published as Open Source without breaching the rights of any third party;
- (e) will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the date notified by the Buyer to the Supplier; and
- (f) do not contain any Malicious Software.

13.19.4 Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:

- (a) as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
- (b) include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and the Buyer's ability to publish such other items or Deliverables as Open Source.

13.19.5 The Buyer shall not publish any Specially Written Software as Open Source until the rights in such Specially Written Software have been assigned to the Buyer in accordance with either paragraph 13.17.2 or 13.18.2.

## **13.20 Licences for non-COTS IPR from the Supplier and third parties to the Buyer**

13.20.1 Unless the Buyer gives its Approval the Supplier must not use any:

of its own Existing IPR that is not COTS Software; or

- (a)

(b) Third Party Software that is not COTS Software.

- 13.20.2 Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Operating Lease Agreement Period and after expiry of the Operating Lease Agreement Period to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.
- 13.20.3 Where the Buyer Approves the use of Third Party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph 13.20.2. If the Supplier cannot obtain such a licence for the Buyer it shall:
- (a) notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and
  - (b) only use such third party IPR as referred to at paragraph 13.20.3(a) if the Buyer Approves the terms of the licence from the relevant third party.
- 13.20.4 Where the Supplier is unable to provide a license to the Supplier's Existing IPR in accordance with Paragraph 13.20.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.
- 13.20.5 The Supplier may terminate a licence granted under paragraph 13.20.1 by giving at least thirty (30) days' notice in writing if there is an Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

### **13.21 Licenses for COTS Software by the Supplier and third parties to the Buyer**

- 13.21.1 The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms

no less favourable than those standard commercial terms on which such software is usually made commercially available.

- 13.21.2 Where the Supplier owns the COTS Software it shall make available the COTS software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
- 13.21.3 Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 13.21 the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
- 13.21.4 The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:
  - (a) will no longer be maintained or supported by the developer; or
  - (b) will no longer be made commercially available.

#### **Licence granted by the Buyer**

- 13.22 The Buyer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Operating Lease Agreement Period to use the Buyer's Existing IPR and the Specially Written Software assigned to the Buyer under Paragraph 13.17.2 or 13.18.2 solely to the extent necessary for providing the Deliverables in accordance with this Call-Off Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
  - 13.22.1 any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15 (What you must keep confidential) of the Core Terms; and
  - 13.22.2 the Supplier shall not without Approval use the Buyer's Existing IPR for any other purpose or for the benefit of any person other than the Buyer.

## **Termination of licenses**

- 13.23 Subject to Paragraph 13.5 (Licence granted by the Supplier: Supplier's Existing IPR), all licences granted pursuant to this Paragraph 13 (Intellectual Property Rights) shall expire on the Operating Lease Expiry Date.
- 13.24 The Supplier shall, if requested by the Buyer in accordance with Call-Off Schedule 10 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier's Existing IPR and/or Third Party IPR on terms equivalent to those set out in paragraph 13.5 (Licence granted by the Supplier: Supplier's Existing IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 13.25 The licence granted pursuant to paragraph 13.22 (Licence granted by the Buyer) and any sub-licence granted by the Supplier in accordance with paragraph 13.22 (Licence granted by the Buyer) shall terminate automatically on the Operating Lease Expiry Date and the Supplier shall:
- 13.25.1 immediately cease all use of the Buyer's Existing IPR;
  - 13.25.2 at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer's Existing IPR, provided that if the Buyer 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 Buyer's Existing IPR; and
  - 13.25.3 ensure, so far as reasonably practicable, that any of the Buyer's Existing IPR that is 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 of the Buyer's Existing IPR and/or Buyer Data.

## **IPR Indemnity**

- 13.26 The Supplier indemnifies the Buyer against all Losses incurred by, awarded against, or agreed to be paid by the Buyer (including professional fees and fines) arising from an IPR Claim.
- 13.27 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 the Buyer's sole option, either:
- 13.27.1 procure for the Buyer the right to continue using the relevant item which is subject to the IPR Claim; or



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

- (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
- (b) the replaced or modified item does not have an adverse effect on any other Deliverables;
- (c) there is no additional cost to the Buyer; and
- (d) the terms and conditions of this Call-Off Contract shall apply to the replaced or modified Deliverables.

13.28 If the Supplier elects to procure a licence in accordance with Paragraph 13.27 or to modify or replace an item pursuant to Paragraph 13.27, but this has not avoided or resolved the IPR Claim, then:

13.28.1 the Buyer may terminate this Call-Off Contract by written notice with immediate effect and this shall be deemed to be an event to which Clause 10.4.1 of the Core Terms applies and Clauses 10.6.1 and 10.6.2 of the Core Terms shall apply as if the Call-Off Contract had been terminated under Clause 10.4.1; and

13.28.2 without prejudice to the indemnity set out in Paragraph 13.26, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute goods and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

13.29 In spite of Clauses 11.1 and 11.2 of the Core Terms, the Supplier does not limit or exclude its liability for the indemnity given under Paragraph 13.26.

#### **14. Consequences of Expiry or termination**

14.1 Consequences of termination under Clauses 10.4.1 and 10.4.3 of the Core Terms, and Paragraph 2.2 of Call-Off Schedule 16 (Benchmarking):

14.1.1 Where the Buyer terminates (in whole or in part) this Call-Off Contract under any of the Clauses or Paragraphs referenced in the opening words of Paragraph 14.1 above:

- (a) in respect of the Goods that are no longer required by the Buyer, the Buyer shall pay to the Supplier upon termination all arrears of Rentals and shall return the Goods to the Supplier in accordance with Paragraph 7.18 above; and

- (b) if the Buyer then makes other arrangements for the supply of the Deliverables, the Buyer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Buyer throughout the remainder of the Operating Lease Agreement Period provided that Buyer shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Buyer to the Supplier until the Buyer has established the final cost of making those other arrangements.

#### 14.2 Consequences of termination under Clause 10.2.2 of the Core Terms:

14.2.1 Where the Buyer terminates (in whole or in part) this Call-Off Contract under Clause 10.2.2 of the Core Terms (or the Supplier terminates this Call-Off Contract under Clause 10.5 of the Core Terms) the Buyer shall:

- (a) in respect of the Goods that are no longer required by the Buyer (in the case of termination by the Buyer under Clause 10.2.2 of the Core Terms) and in respect of all of the Goods (if the Supplier terminates this Call-Off Contract under Clause 10.5 of the Core Terms), the Buyer shall pay to the Supplier upon termination:

- (i) all arrears of Rentals; and
  - (ii) the sum of all the Rentals that would (but for the termination) have been due during the remainder of the Operating Lease Agreement Period each discounted at a rate of at least 10% in respect of the period between the date of actual payment and the date when the Rentals would have become due,

and shall return the relevant Goods to the Supplier in accordance with clause 7.18 above; and

- (b) in respect of the Services that are no longer required by the Buyer, indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call-Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Buyer may require, reasonably and actually incurred by the Supplier.

14.2.2 The Buyer shall not be liable under Paragraphs 14.2.1 or 14.2.2 to pay any sum which:

- (a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Supplier under this Call-Off Contract (or recovered (or which should reasonably be recovered by) the Supplier through the resale or re-leasing of the Goods returned), exceeds the total sum that would have been payable to the Supplier if this Call-Off Contract had not been terminated.

14.3 Without prejudice to Paragraph 14.2 above (and the Buyer's rights under Clause 10.2.2 of the Core Terms) the Supplier shall in particular be expected to provide flexibility in the management of the Deliverables and facilitate early termination by the Buyer (without any additional fee or charge being made), where the Goods are redundant due to re-organisation, merger or closure and all reasonable efforts have been made to re-site the Goods within the Buyer's organisation.

14.4 If there is any conflict in terms between this Paragraph 14 and Clause 10 of the Core Terms, this Paragraph 14 shall prevail.

## **15. Exit Management**

15.1 In addition to the matters set out in Call-Off Schedule 10 (Exit Management):

15.1.1 The Supplier may charge the Buyer for its reasonable additional costs to the extent the Buyer requests more than four (4) updates in any six (6) month period pursuant to Paragraph 3 of Call-Off Schedule 10 (Exit Information).

15.1.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (as defined in Call-Off Schedule 10 (Exit Management) (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance and its compliance with the other provisions of Call-Off Schedule 10 (Exit Management))), the Supplier shall:

- (a) cease to use the Government Data;
- (b) provide the Buyer and/or the Replacement Supplier with a complete and uncorrupted version of the Government Data in electronic form (or such other format as reasonably required by the Buyer);

- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Government Data and promptly certify to the Buyer that it has completed such deletion;
- (d) return to the Buyer such of the following as is in the Supplier's possession or control:
  - (i) all copies of the Buyer Software and any other software licensed by the Buyer to the Supplier under these MFD Operating Lease Terms;
  - (ii) all materials created by the Supplier under this Call-Off Contract in which the IPRs are owned by the Buyer;
  - (iii) any parts of the ICT Environment and any other equipment which belongs to the Buyer;
  - (iv) any items that have been on-charged to the Buyer, such as consumables; and
  - (v) all Buyer Property issued to the Supplier under Paragraphs 12.4 - 12.10 of these MFD Operating Lease Terms. Such Buyer Property shall be handed back to the Buyer in good working order (allowance shall be made only for reasonable wear and tear);
  - (vi) any sums prepaid by the Buyer in respect of Goods and/or Services not Delivered by the Operating Lease Expiry Date.

15.1.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance and its compliance with the other provisions of this Lease Agreement Schedule 9), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Deliverables or termination services or for statutory compliance purposes.

## Annex 1: Alternative AND/OR Additional Clauses

### **1. Introduction**

- 1.1 This Annex 1 specifies the range of Alternative Clauses and Additional Clauses that may be requested in Framework Schedule 6 (Order Form Template and Call-Off Schedules) and, if requested in the same, shall apply to this Call-Off Contract.

### **2. Clauses Selected**

The Buyer may, in Framework Schedule 6 (Order Form Template and Call-Off Schedules), request the following Additional Clauses on Security Measures (see paragraph 4.1 of this Annex 1);

### **3. Implementation**

- 3.1 The appropriate changes have been made in this Call-Off Contract to implement the Alternative and/or Additional Clauses specified in paragraph 2 of this Annex 1 and shall be deemed to be incorporated into this Lease Agreement.

### **4. ADDITIONAL CLAUSES: GENERAL**

#### **4.1 Security Measures**

- 4.1.1 The following definitions are added to paragraph 2 of these MFD Operating Lease Terms:

"Document" includes specifications, plans, drawings, photographs and books;

- (a) "Secret Matter" means any matter connected with or arising out of the performance of this Call-Off Contract which has been, or may hereafter be, by a notice in writing given by the Buyer to the Supplier be designated 'top secret', 'secret', or 'confidential';
- (b) "Servant" where the Supplier is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.

- 4.2 The following new Clause 16 shall apply:

## 16. Security Measures

- 16.1. The Supplier shall not, either before or after the completion or termination of this Call-Off Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a secret matter being:
  - 16.1.1. without the prior consent in writing of the Buyer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;
  - 16.1.2. disclosed to or acquired by a person as respects whom the Buyer has given to the Supplier a notice in writing which has not been cancelled stating that the Buyer requires that secret matters shall not be disclosed to that person;
  - 16.1.3. without the prior consent in writing of the Buyer, disclosed to or acquired by any person who is not a servant of the Supplier; or
  - 16.1.4. disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Lease Agreement that such person shall have the information.
- 16.2. Without prejudice to the provisions of Clause 16.1, the Supplier shall, both before and after the completion or termination of the Operating Lease Agreement Period, take all reasonable steps to ensure:
  - 16.2.1. no such person as is mentioned in Clauses 16.1, 16.1.1 or 16.1.2 hereof shall have access to any item or Document under the control of the Supplier containing information about a secret matter except with the prior consent in writing of the Buyer;
  - 16.2.2. that no visitor to any premises in which there is any item to be supplied under this Call-Off Contract or where Goods and/or Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter unless the visitor is authorised in writing by the Buyer so to do;
  - 16.2.3. that no photograph of any item to be supplied under this Call-Off Contract or any portions of the Goods and/or Services shall be taken except insofar as may be necessary for the proper performance of this Call-Off Contract or with the prior consent in writing of the Buyer, and that no such photograph shall, without such consent, be published or otherwise circulated;
  - 16.2.4. that all information about any secret matter and every Document, model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary

for the proper performance of this Call-Off Contract or with the prior consent in writing of the Buyer, no copies of or extracts from any such Document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such Document, model or item shall be placed thereon; and

- 16.2.5. that if the Buyer gives notice in writing to the Supplier at any time requiring the delivery to the Buyer of any such Document, model or item as is mentioned in Clause 16.2.3, that Document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Buyer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 16.3. The decision of the Buyer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of Clause 16 shall be final and conclusive.
- 16.4. If and when directed by the Buyer, the Supplier shall furnish full particulars of all people who are at any time concerned with any Secret Matter.
- 16.5. If and when directed by the Buyer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Call-Off Contract.
- 16.6. If, at any time either before or after the expiry or termination of this Call-Off Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning Call-Off Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Buyer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.
- 16.7. The Supplier shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any Secret Matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by

Clauses 16.1 and 16.2 and shall, if directed by the Buyer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any Secret Matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of Clause 16 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.

- 16.8. The Supplier shall, if directed by the Buyer, include in the Sub-Contract provisions in such terms as the Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by paragraph 16, but with such variations (if any) as the Buyer may consider necessary. Further the Supplier shall:
  - 16.8.1. give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under Clause 16 into operation in such cases and to such extent as the Buyer may direct;
  - 16.8.2. if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of paragraph 16, notify such breach forthwith to the Buyer; and
  - 16.8.3. if and when so required by the Buyer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to paragraph 16.11.
- 16.9. The Supplier shall give the Buyer such information and particulars as the Buyer may from time to time require for the purposes of satisfying the Buyer that the obligations imposed by or under the foregoing provisions of paragraph 16 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Buyer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Call-Off Contract or in which there is or will be any item to be supplied under this Call-Off Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Call-Off Contract and



that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

16.10. Nothing in paragraph 16 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

16.11. If the Buyer shall consider that any of the following events has occurred:

16.11.1. that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of paragraph 16; or

16.11.2. that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Buyer, or with any department or person acting on behalf of the Crown; or

16.11.3. that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in 16.11.2, information about a Secret Matter has been or is likely to be acquired by a person who, in the opinion of the Buyer, ought not to have such information;

and shall also decide that the interests of the State require the termination of this Call-Off Contract, the Buyer may by notice in writing terminate this Call-Off Contract forthwith.

16.12. A decision of the Buyer to terminate this Call-Off Contract in accordance with the provisions of paragraph 16.11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Buyer's decision is based.

16.13. Supplier's notice

16.13.1. The Supplier may within five (5) Working Days of the termination of this Call-Off Contract in accordance with the provisions of paragraph 16.11, give the Buyer notice in writing requesting the Buyer to state whether the event upon which the Buyer's decision to terminate was based is an event mentioned in paragraphs 16.11, 16.11.1 or 16.11.2 and to give particulars of that event; and

16.13.2. the Buyer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Supplier containing such a statement and particulars as are required by the request.

16.14. Matters pursuant to termination

- 16.14.1. The termination of this Call-Off Contract pursuant to paragraph 16.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;
- 16.14.2. The Supplier shall be entitled to be paid for any work or thing done under this Call-Off Contract and accepted but not paid for by the Buyer at the date of such termination either at the price which would have been payable under this Call-Off Contract if this Call-Off Contract had not been terminated, or at a reasonable price;
- 16.14.3. The Buyer may take over any work or thing done or made under this Call-Off Contract (whether completed or not) and not accepted at the date of such termination which the Buyer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of paragraph 16 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Buyer, deliver any work or thing taken over under this paragraph, and take all such other steps as may be reasonably necessary to enable the Buyer to have the full benefit of any work or thing taken over under this paragraph; and
- 16.14.4. Save as aforesaid, the Supplier shall not be entitled to any payment from the Buyer after the termination of this Call-Off Contract
- 16.15. If, after notice of termination of this Call-Off Contract pursuant to the provisions of 16.11:
- 16.15.1. the Buyer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in paragraph 16.13.1; or
- 16.15.2. the Buyer shall state in the statement and particulars detailed in paragraph 16.13.2. that the event upon which the Buyer's decision to terminate this Call-Off Contract was based is an event mentioned in paragraph 16.11.3,
- the respective rights and obligations of the Supplier and the Buyer shall be terminated in accordance with the following provisions:
- 16.15.3. the Buyer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and

components and articles in course of manufacture in the possession of the Supplier upon the termination of this Call-Off Contract under the provisions of paragraph 16.11 and properly provided by or supplied to the Supplier for the performance of this Call-Off Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Buyer, elect to retain;

- 16.15.4. the Supplier shall prepare and deliver to the Buyer within an agreed period or in default of agreement within such period as the Buyer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Buyer and shall deliver such materials and items in accordance with the directions of the Buyer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;
- 16.15.5. the Buyer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Call-Off Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call-Off Contract;
- 16.15.6. if hardship to the Supplier should arise from the operation of paragraph 16.15 it shall be open to the Supplier to refer the circumstances to the Buyer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Buyer on any matter arising out of this paragraph 16.15 shall be final and conclusive; and
- 16.15.7. subject to the operation of paragraphs 16.15.3, 16.15.4, 16.15.5 and 16.15.6 termination of this Call-Off Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.