



Department for
Business, Energy
& Industrial Strategy

Call Off Terms and Conditions

Climate Finance Accelerator Delivery Partner

Version Control

Version	Date	Reviewer	Summary of Change
1.0	11.09.2018	REDACTED	Inserted review clause into paragraph 10 of Schedule 3 for assessing Total Delivery Cost at the end of the Inception Phase.
1.1	18.10.18	REDACTED	Inserted new Sexual Exploitation - Abuse and Harassment clause.
1.2	19 July 2019	REDACTED	Corrected typo's and referencing errors throughout.
1.3	8 Aug 2019	REDACTED	Corrected more typo's and referencing errors throughout.
1.3 ALT	8 Aug 2019	REDACTED	Re-structing of negotiated terms
1.4	03 Oct 2019	REDACTED	Minor spelling errors etc corrected
1.4.1	03 Oct 2019	REDACTED	More minor spelling errors etc corrected and order or precedence clarified.
1.5	14 Nov 2019	REDACTED	Added notes and highlighting to indicate what should be filled in and issued with the ITT
1.5.1	15/05/2020	REDACTED	Amendments for the CFA Call off Contract

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Part 1 - Order Form

Section A

This Order Form is issued in accordance with the provisions of the Framework Agreement between the Authority and the Supplier dated 7 March 2018. The Supplier agrees to supply the Services specified below on and subject to the terms of this Call Off Contract and for the avoidance of doubt this Call Off Contract consists of the terms set out in this Order Form and the Call Off Terms.

From	The Secretary of State for Business, Energy and Industrial Strategy of 1 Victoria Street, London SW1H 0ET, acting as part of the Crown, the "Customer"
To	PriceWaterhouseCoopers LLP of 1 Embankment Place, London WC2N 6RH, United Kingdom the "Supplier" or "the Contractor"
jointly the Parties.	

Section B

1. Call Off Contract Period	
1.1 Call Off Commencement Date:	16/11/2020
1.2 Call Off Expiry Date:	15/11/2025
(a) End date of Call Off Initial Period	15/11/2024
(b) End date of Call Off Extension Period	15/11/2025
1.3 Date of invitation to tender	27/05/2020
1.4 Order reference number:	TRN 2205/01/2020
2. Customer Services Requirements	
2.1 Services and Reports required	are as set out in Call Off Schedule 2 (Services and Reporting).
2.2 Sites of Delivery	See the Specification of Requirements for countries of operation.
2.3 Project Plan	In Part A of Call Off Schedule 4 (Project Plan, Customer Responsibilities and Key Personnel).

2.4	Standards	In Call Off Schedule 6 (Code of Conduct and Standards). For the purposes of this Call Off Compliance Level 3 (CL3) is required.
2.5	Service Levels and Service Credits	In Part A of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring).
2.6	Critical Service Level Failure	In Annex 2 to Part A of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring):
2.7	The Customer logical framework (the "Logframe") is set out in	The logical framework will be developed with the Contractor during delivery and will be agreed between the Customer and the Supplier as a Contract Variation
2.8	Additional Performance Monitoring Requirements	Annex 1 to Part B (Additional Performance Monitoring Requirements) of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring) is as set out in the Schedule 2 (Services and Reporting).
2.9	Security	In Call Off Schedule 7 (Security).
2.10	Exit Management	In Call Off Schedule 9 (Exit Management).
2.11	Delay Period Limit	N/A

3. Supplier's Information		
3.1	Supplier Representative	REDACTED
3.2	Commercially Sensitive Information	Please see Appendix to Call Off Schedule 2 (Services and Reporting) – Tender submission.

4. Customer Responsibilities		
4.1	Customer Responsibilities	Are as stated in Part B of Call Off Schedule 4 (Project Plan, Customer Responsibilities and Key Personnel).

5. Call Off Contract Charges and Payment		
5.1	Call Off Contract Charges payable by the Customer (including any applicable Milestone Payments and/or discount(s), but excluding VAT) and payment	In Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).

	terms/profile including method of payment (e.g. Government Procurement Card (GPC) or BACS)	
5.2	Reimbursable Expenses	All Reimbursable expenses shall be included in the Call Off Contract Charges.
5.3	Estimated Year 1 Call Off Contract Charges	REDACTED
5.4	Maximum Permitted Profit Margin	These will be capped at the Margin / Surplus rates per day provided for each identified individual in the Staff Rates worksheet of the Pricing Schedule (Column H)
5.5	Total Delivery Cost	Up to nine million pounds sterling £9,000,000 (including VAT)
5.6	Total Retained Fees	N/A
5.7	Permitted increase in Call Off Contract Changes during Implementation Phase shall not exceed	N/A
5.8	The Supplier shall send invoices directly to:	REDACTED

6.	Service Credit Cap	
6.1	From the Commencement date to the end of the first Call Off Contract Year	20% of the quarterly invoice those deductions occur
6.2	During the remaining of the Call off Contract Period	20% of the quarterly invoice those deductions occur

7.	Security	
7.1	Schedule 7 SHORT FORM	Does apply
7.2	Schedule 7 LONG FORM	Does not apply. However, the Authority reserves the right to request the LONG FORM does apply in those circumstances that the Authority has been advised by its security colleagues that this is more

		appropriate than the SHORT FORM.
7.3	Customer security representative	N/A
7.4	Supplier security representative	N/A
7.5	Security Policy (customer)	Annex 1 of Schedule 6 of the Call Off Terms are set out
7.6	Security Management Plan (Supplier)	To be provided as part of the Inception Phase deliverables as detailed in Schedule 2 Part A

REDACTED

Section C

8. Customer and other Contractual Requirements

8.1 Call Off Guarantee

A Call Off Guarantee is not required as the Supplier's entity is its Parent Company.

8.2 Key Personnel

In Part C of Call Off Schedule 4 (Project Plan, Customer Responsibilities and Key Personnel)

8.3 Schedule of Processing, Personal Data and Data Subjects

(a) The Supplier shall comply with any further written instructions with respect to processing by the Customer.

(b) Any such further instructions shall be incorporated into this paragraph 8.3.

9. The contact details of the Authority's Data Protection Officer are:

BEIS Data Protection Officer Department for Business, Energy and Industrial Strategy 1
Victoria Street London SW1H 0ET Email: dataprotection@beis.gov.uk

10. The contact details of the Contractor's Data Protection Officer (or if not applicable, details of the person responsible for data protection in the organisation) are:

REDACTED

Description	Details
Subject matter of the processing	<p>The processing is needed in order to ensure that the Contractor can effectively deliver the contract to deliver the CFA programme, including stakeholder management, communications, market engagement and sub-contracting activities.</p> <p>The processing of names and business contact details of staff of both the Authority and the Contractor will be necessary to deliver the services exchanged during the course of the Contract, and to undertake contract and performance management.</p> <p>The Contract itself will include the names and business contact details of staff of both the Authority and the Contractor involved in managing the Contract.</p>
Responsibilities of the Processor and Controller	<p>As per clause 34.1 the Supplier will be the Processor and will be accountable the responsibilities associated with the position this is set out in clause 34. BEIS will be the Controller and will be accountable for the responsibilities associated with this position.</p>

Description	Details
Reporting and monitoring of Processor's responsibilities	<p>As per clause 34 the Processor must as a minimum provide the information outlined in the clause to the Controller ahead of processing data.</p> <p>Clause 34 sets out when the Processor must inform the Controller without due delay. Additionally, an annual review of the Processors' responsibilities and compliance with protection of personal data will take place.</p>
Duration of the processing	<p>Processing will take place from 16/11/2020 for the duration of the Contract, five years. The Contract will end on 15/11/2025 but there is a possibility for it to be extended.</p>
Nature and purposes of the processing	<p>The nature of the processing will include collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, use, disclosure by transmission, dissemination or otherwise making available of data.</p> <p>Processing takes place for the purposes of stakeholder management, communications, and recruitment.</p> <p>The nature of processing will include the storage and use of names and business contact details of staff of both the Authority and the Contractor as necessary to deliver the services and to undertake contract and performance management. The Contract itself will include the names and business contact details of staff of both the Authority and the Contractor involved in managing the Contract.</p>
Type of Personal Data	<p>Names, business telephone numbers and email addresses, office location and position of staff of both the Authority and the Contractor as necessary to deliver the services and to undertake contract and performance management. The Contract itself will include the names and business contact details of staff of both the Authority and the Contractor involved in managing the Contract.</p> <p>Names, business telephone numbers and email addresses, office location and position of CFA stakeholders, including organisations participating in and benefiting from the programme activities in recipient countries</p> <p>Opinions of all stakeholders listed above on programme performance, for monitoring, evaluation and learning purposes.</p>
Categories of Data Subject	<ul style="list-style-type: none"> • UK or host country government employees • Individuals within the low carbon development sector who are listed on the CFA's stakeholder database • Project proponents which are recipients of CFA support • Finance expert facilitators and members of the advisory board, who support the programme on an ad-hoc and pro-bono basis. • Staff of the Authority and the Contractor, including where those employees are named within the Contract itself or involved within contract management.

Description	Details
Plan for return and destruction of the data once the processing is complete UNLESS requirement under European Union or European member state law to preserve that type of data	The Contractor will delete the Personal Data and erase the Personal Data from any computers, storage devices and storage media that are to be retained by the Contractor after the expiry of the Contract. The Contractor will certify to the Authority that it has completed such deletion. Where Personal Data is contained within the Contract documentation, this will be retained in line with the Department's privacy notice found within the Invitation to Tender. The Contractor will transfer all the data that is requested to the Authority at the end of the Contract.

10.1 Benchmarking

Clause 21 and Call Off Schedule 12 (Benchmarking) shall apply

10.2 Warranty Period

Not applicable.

10.3 Project Specific IPR

The Project Specific IPR shall be assigned to the Customer and the terms of Clause 28.3 shall apply

10.4 Limitations on Liability

In Clause 36 of the Call Off Terms

10.5 Insurance

Clause 37 of the Call Off Terms shall apply

10.6 Termination without cause notice period

The minimum number of days for the purposes of Clause 41.6 of the Call Off Terms shall be ten days

11. Notices

11.1 For the purposes of Clause 60, notices shall be sent to the following persons in the Customer and the Supplier:

	Customer	Supplier
Name	REDACTED	REDACTED
Address	International Climate Finance, Floor 2, Department for Business, Energy & Industrial	PwC, 7 More London Riverside,

	Strategy, 1 Victoria Street, London SW1H 0ET	London SE1 2RT
Email	REDACTED	REDACTED

12. Additional Clauses

12.1 Supplemental requirements to the Call Off Terms

Please see the updated version of the Call Off Terms in Part 2 which incorporates the Customer's additional requirements.

12.2 Amendments to/refinements of the Call Off Terms

Amendments made to Schedule 3 and Schedule 5.

13. Formation of Call Off Contract

13.1 BY SIGNING AND RETURNING THIS ORDER FORM (which may be done by electronic means) the Supplier agrees to enter a Call Off Contract with the Customer to provide the Services.

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

13.3 In accordance with paragraph 7 of Framework Schedule 6 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of the Order Form from the Supplier within two (2) Working Days from receipt.

For and on behalf of the Supplier:

Name and Title	REDACTED
Signature	REDACTED
Date	REDACTED

For and on behalf of the Customer:

Name and Title	REDACTED
Signature	REDACTED
Date	REDACTED

Section D

Further Negotiated Terms

Call Off Schedule 2: Services and Reporting

Part A: Services

Customer Statement of Requirements



Statement of
Requirements.pdf

Customer clarifications received on Statement of Requirements



Clarification Log
Issued 29062020.pdf

Supplier's Tender comprised the following documents

REDACTED

REDACTED

Part B: Reports

Are set out in Task 13 of Section B: Scope of Work, in the Statement of Requirements.

Call Off Schedule 3: Call Off Contract Charges, Payments and Invoicing Services and Reporting

1. The Price of this contract is based on fixed price for Known Deliverables, and a maximum price for Variable Deliverables, which will be determined during the course of the Call Off Contract and paid on a time and expense basis in line with the provisions in Clause 7 of Schedule 3. Further detail of Known and Variable Deliverables is included in the Invitation to Tender. Performance management payment deductions will apply to the Contract (based on Key Performance Indicators), which will contribute to overall Contract value.

2. The elements of the Price will be made up of the following:

Supplier known deliverable cost elements + Supplier variable deliverable cost elements + expenses - performance management deductions = price

3. The expected maximum price of the Services to be delivered by the Supplier in this Contract, is **£9,000,000** (including VAT and applicable non-UK taxes).
4. The Customer is liable to the Supplier only for their respective payments in accordance with this Schedule.
5. Any overpayment to the Supplier made by the Customer, whether of Project price or of VAT, shall be a sum of money recoverable by the Customer from the Supplier.
6. The price of Known Deliverables is detailed in Annex 1 below.

7. The price of Variable Deliverables will be agreed between the Customer and the Supplier during delivery. Once the exact scope of a Variable Deliverable has been defined by the Customer, the Supplier must provide a proposal of how they will go about delivering this task including a proposed timeline and a full breakdown of the associated costs; fees and expenses. This will need to be approved by the Customer in writing prior to any activity taking place and any associated cost being incurred. The Customer will not be liable for any costs incurred by the Supplier delivering any Variable Deliverables before the Supplier has received such written approval from the Customer. The Supplier's proposed costs must be consistent with the staff rates provided in Annex 1 and the indicative pricing as provided in Annex 2, subject to justified variations from this, as agreed by the Customer and Supplier in writing.
8. The Supplier is required to manage the budget for Variable Deliverables (which is the amount provided in Paragraph 3 of Schedule 3 above, minus expenses and the cost of Known Deliverables) so that all of the Customer's requirements, as detailed in Call off Schedule 2, are delivered within the Call Off Contract duration.
9. Expenses have been allocated to the budget for Variable Deliverables, given that these cannot be determined at the time of Contract Award. The Customer requires that the Supplier allocates a minimum budget of £500,000 for expenses, although it is noted that incurred expenses could be significantly higher than this value.
10. The Supplier must include all non-UK taxes in its pricing.
11. Deliverables are to be invoiced only upon delivery of that task to the Customer's satisfaction, unless otherwise agreed by the Customer.
12. For avoidance of doubt, the allocation of days to Known Deliverables in Annex 1 may be amended, by transferring the allocation of days between tasks (if one task were to require fewer days than expected, and another were to require additional days). However, this should be reflected in the price of both tasks, so that the sum of all Known Deliverables does not exceed the agreed budget in Annex 1. Furthermore, and changes to budget lines including reallocation of costs between tasks is subject to Customer approval in writing.
13. The Contract Years identified in Annex 1 are indicative and Known Deliverables may occur in different Contract Years than those identified in Annex 1 during delivery, subject to confirmation by the Customer in writing.
14. Where the Customer is not satisfied with the standard of any deliverable, the Customer may withhold payment for that task until any required rectifications and amendments are made by the Supplier, at their own cost, until the deliverable is to the satisfaction of the Customer.
15. The Supplier will invoice the nominated Customer representative electronically on a quarterly basis, detailing the price of completed tasks in arrears, with a breakdown of the categories of costs.
16. Only expenditure actually incurred, and in accordance with this Section, will be reimbursed. Receipts for expenditure incurred will be required before any payment is made under this Contract. Expense claims must be accompanied by detailed and properly referenced expense breakdowns and supporting receipts in line with the expenses policy at Annex C.
17. The invoice should clearly state where VAT is applicable and where it is not.
18. Within 30 days of receiving an invoice of a satisfactory standard to the Customer, the Customer shall pay to the Supplier the amount which it reasonably considers the Supplier to have actually incurred by carrying out the agreed deliverables for that invoicing period.
19. Payments to the Supplier will be subject to performance management deductions. These will be measured according to the KPIs in Call Off Schedule 5 of this Contract and will be confirmed by email.
20. See additional payment terms in Annex 2 which is repetition from that which is detailed Schedule 2.

Annex 1 Call Off Contract Charges

REDACTED

Annex 2 Payment Terms / Profile

Part D: Commercial requirements

1. Costs and budget

- 1.1 The Authority has estimated the cost of the Contract, which has been informed by pilot activities and other ICF programmes. The CFA DP Contract has a budget of up to £9,000,000 including VAT and any applicable international taxes, which is the maximum value that can be awarded for this scope of work inclusive of expenses.¹
- 1.2 The Authority reserves the right to amend the contract to increase the scope of activities required of the Contractor, so long as the budget permits this and any additional activities meet the objectives of the CFA programme. Contract amendments would be managed by a formal variation process.
- 1.3 The Authority reserves the right to increase the programme budget during delivery, if funding is available, the performance of the Contractor is deemed by the Authority to be satisfactory and the service will continue to deliver value for money. In such an instance, the Contractor will be required to provide revised cost for any additional activities based on the rates submitted as part of tendering.
- 1.4 The Authority also reserves the right to reduce programme funding and will work with the Contractor to revise costs and activities, which will be formalised as a variation to the Call off Contract.
- 1.5 The Authority reserves the right to disqualify any Bidder whose proposed budget exceeds £9,000,000, even if they score highly on technical criteria. In such instances, the Authority may consider awarding the contract to a Bidder that has scored lower, but whose costs can be accommodated in this budget.
- 1.6 A cost breakdown by activity and team member should be provided for as part of the commercial response. This should also include detail on the resourcing/costs for each known activity. This, as well as a proposed invoicing schedule, will inform the Pricing Schedule of the agreed contract. Day rates for individual team members must not exceed the PFA's maximum daily fee rate for that identified grade of staff.
- 1.7 Reimbursable expenses incurred throughout delivery are not expected to be finalised at the point of tendering and will not be evaluated. The Authority has estimated that a budget of at least £500,000 will be required to cover all expenses for programme activities, which will include flights and other travel, accommodation, venue hire, and any other general expenses. This figure will form part of the variable budget.
- 1.8 The Authority will only pay for expenses which can be evidenced with receipts and which adhere to BEIS's Expenses Policy (Annex C). Where expenses exceed the limits set out in this policy, the DP will be required to cover any excess, unless a strong justification can be provided.

¹ Please note that the Call Off Contract Charges are exclusive of VAT, but the Authority shall pay to the Contractor, in addition to the Charges, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Contract.

- 1.9 The Authority reserves the right to increase or decrease the reimbursable expenses budget, depending on the activities agreed between the Contractor and Authority during delivery.
- 1.10 Bidders will be required to confirm in writing that their price proposal will be valid for a minimum of 150 calendar days from the date of submission. This should be adequate time for a delivery partner review to be completed and the contract to be awarded to the preferred delivery partner.

2 Value for money

- 2.1 This project is funded by the UK's Official Development Assistance budget and will mostly operate in middle-income countries; there is therefore an extremely strong focus on value for money.² All Bidders should take this into account when preparing their tenders, as well as – if selected – throughout the implementation of the programme.

3 Invoicing and prompt payment

- 3.1 When invoicing, the Contractor should provide a full and detailed breakdown of costs (including options where appropriate) and expenses. This should include staff (and day rates) allocated to specific tasks. Additional requirements are included in Schedule 3 of the Call Off Contract.
- 3.2 Invoices should be submitted on a quarterly basis and linked to the delivery of known tasks and variable tasks, rather than time and expense monthly invoices, for example. The indicative milestones for known tasks and phasing of payments will be included in the Contractor's tender submission.
- 3.3 Any payment conditions applicable to the Contractor must also be replicated with sub-contractors.
- 3.4 The Authority will aim to process all payments as soon as possible, and within a maximum of 30 days from receipt of correctly submitted invoices, in line with the Call Off Contract Terms and Conditions.
- 3.5 The Contractor should pay any sub-contractors within 30 days of receiving a valid invoice. If this 30-day deadline is inconsistent with the Contractor's invoice schedule to the Authority (i.e. next invoice to the Authority is greater than 30 days after receipt of a valid invoice from a sub-contractor), and if the invoice is below £5,000 (including VAT) in total, the Contractor is expected to resolve this directly with the sub-contractor. If the amount exceeds £5,000 (including VAT), and it could create issues in terms of the Contractor's own cash flow, the Contractor is permitted to invoice the Authority ad hoc for any sub-contractor payments outside of the agreed invoicing schedule. However, the Authority expects the Contractor to limit these incidences as much as possible.
- 3.6 The Contractor must have management measures in place to avoid disputes on sub-contractor invoices, which could impact the time for payments to issued.

4 Benchmarking and indexation

- 4.1 Prices identified for tasks at the point of tender submission will be fixed for the duration of the Contract. However, subject to Contractor performance, the Contractor is permitted to adjust (increase or decrease) day rates of staff in line with the retail price index excluding mortgage payments (RPIX) in Contract Year 4. However, these new rates must not exceed the sum of the Prosperity Fund daily fee rate maximum, and the total budget for the programme will remain the same. For the purpose of evaluation, costed activities proposed in the Pricing Schedule will exclude this RPIX calculation.
- 4.2 It is not the Authority's intention to undertake a benchmarking exercise as detailed in Schedule 12 of the Call-Off Contract. However, it reserves the right to do so, or suitable a similar activity, at the point of agreeing a contract extension.

² Note that BEIS ICF measure Value for Money using the '4 E's', taking into account the economy, efficiency, effectiveness and equity of programme spend.

- 4.3 Attention is drawn to Paragraph 7 of Schedule 3 of the Call Off Contract, relating to the review of contract charges, which states that the Authority expects to see evidence of this taking place, which should be documented in quarterly reports. Likewise, Paragraph 13 of Part 2 of the Call off Contract must also be demonstrated in a similar reporting manner.

5 Profit margin

- 5.1 The Customer will not impose a maximum profit margin, but the Supplier is required to provide margin rates for each individual. This margin for each individual will be capped at the Margin / Surplus rates per day provided for each identified individual in the Staff Rates worksheet of the Pricing Schedule (column H)" and will be subject to the clauses detailed in Schedule 3 of the Call off Contract, on contract charges, payments and invoicing.

6 Payment by results

- 6.1 Payment by results does not apply to this Service. However, the Authority reserves the right to consider introducing payment by results prior to any extension period, if one is implemented.

Call Off Schedule 4: Project Plan, Customer Responsibilities and Key Personnel

1. Introduction

- 1.1 This Call Off Schedule specifies:

- (a) In Part A, the Project Plan³ in accordance with which the Supplier shall provide the Services;
- (b) In Part B, the Customer Responsibilities in respect of facilitating the Supplier's achievement of the Project Plan; and
- (c) In Part C, The Key Personnel and their Key Roles assigned by the Supplier to this Call Off Contract in accordance with Clause 22.1 of this Call Off Contract (Key Personnel).

2. General

- 2.1 The ongoing uncertainty related to the Coronavirus (COVID-19) pandemic may impact the Customer and the Supplier's ability to perform obligations under the agreement as set out in the project plan and by the milestones and KPIs identified in this agreement. In instances where COVID-19 will affect the Supplier's ability to deliver contracted services and outputs, they are required to notify and agree with the Customer, in advance, a contingency plan and/or alternative arrangements. The Customer will agree in writing any approved alternative course of action and may amend milestones or KPIs accordingly where justified. If the Customer is affected by COVID-19 and it has an impact on its responsibilities under this agreement, the Customer notify the Supplier at its earliest convenience to outline the process for agreeing an alternative or mitigating course of action.
- 2.2 The Project Plan is set out below:

³ Please note that in the Tender documentation, the Project Plan is referred to as a Delivery Plan.

REDACTED

2.3 The Milestones to be Achieved are identified below:

2.4 Note that all the below are considered to be key milestones for Known Deliverables only. The pricing of Known Deliverables relating to each of the below are provided in Section D Annex 2 (Payment Schedule). Delay Payments relate to KPIs which are part of Schedule 5. Note that key milestones will be updated to reflect Variable Deliverables, which will be agreed once the Contract has commenced, and will be formalised through Contract Variation. Any future changes to milestones based on agreed proposals for Variable Deliverables will be formalised in a Contract Variation.

Milestone	Deliverables (refer to the Pricing Schedule and the ITT for further detail)	Milestone Acceptance Criteria	Milestone Date	Key Milestone?	Customer Responsibilities	Milestone Payments	Delay Payments
1	Prepare a delivery plan for the CFA (Task 1 in the Scope of Work)	Approval of completed delivery plan by the Authority	Within 16 weeks of Contract signing	Y	Provide comment on drafts and sign-off final deliverable	Y	As per KPIs
2	Agree M&E, reporting and communications approach (Task 2 in the Scope of Work)	Approval of the approach by the Authority	Within 16 weeks of Contract signing	Y	Provide comment on drafts and sign-off final deliverable	Y	As per KPIs
3	Agree the process for selecting in-country partners (Task 3 in the Scope of Work)	Approval of the process by the Authority	Within 2 week of Contract signing	Y	Provide feedback on the approach proposed in Tender document and sign-off final deliverable	Y	As per KPIs
4	Produce a programme Closure Plan (Task 4 in the Scope of Work)	Approval of the completed Closure Plan by the Authority	Within 16 weeks of Contract signing	Y	Provide comment on drafts and sign-off final deliverable	Y	As per KPIs
5	Undertake scoping in Peru, South Africa and Turkey to prepare them for engaging in CFA activities (Task 5 in the Scope of Work)	Countries are sufficiently prepared to participate in a London workshop and the subsequent CFA process	Within Contract Year 1 (exact date to be determined)	Y	Engage local HMG staff to support scoping work. Supervise and feed into scoping as required, by facilitating meetings with relevant stakeholders. Provide comments on, and sign-off, any deliverables.	Y	As per KPIs
6	Deliver a London Workshop, involving representatives from Peru, South Africa & Turkey(as	Workshop successfully delivered	Within Contract Year 1 (exact date to be determined)	Y	Attend London workshop and support delivery where required, such as by securing the participation of relevant stakeholders and	Y	As per KPIs

Milestone	Deliverables (refer to the Pricing Schedule and the ITT for further detail)	Milestone Acceptance Criteria	Milestone Date	Key Milestone?	Customer Responsibilities	Milestone Payments	Delay Payments
	per Task 6 in the Scope of Work)				speakers. Provide comments on and, sign-off, any deliverables.		
7	Deliver a pilot in-country CFA process in Turkey (as per Task 7 in the Scope of Work)	In-country process piloted, culminating in the successful delivery of a workshop	Within Contract Year 2 (exact date to be determined)	Y	Engage local HMG staff to support in-country process. Supervise and feed into process as required, e.g. by facilitating connections with stakeholders. Attend and support workshop delivery. Provide comments on, and sign-off, any deliverables.	Y	As per KPIs
8	Deliver a pilot in-country CFA process in South Africa (as per Task 7 in the Scope of Work)	In-country process piloted, culminating in the successful delivery of a workshop	Within Contract Year 2 (exact date to be determined)	Y	Engage local HMG staff to support in-country process. Supervise and feed into process as required, e.g. by facilitating connections with stakeholders. Attend and support workshop delivery. Provide comments on, and sign-off, any deliverables.	Y	As per KPIs
9	Deliver a pilot in-country CFA process in Peru (as per Task 7 in the Scope of Work)	In-country process piloted, culminating in the successful delivery of a workshop	Within Contract Year 2 (exact date to be determined)	Y	Engage local HMG staff to support in-country process. Supervise and feed into process as required, e.g. by facilitating connections with stakeholders. Attend and support workshop delivery. Provide comments on, and sign-off, any deliverables.		
10	Deliver a second London Workshop, involving three new countries (as per Task 6 in the Scope of Work)	Workshop successfully delivered	Within Contract Year 3 (exact date to be determined)	Y	Attend London workshop and support delivery where required, such as by securing the participation of relevant stakeholders and speakers. Provide comments on and, sign-off, any deliverables.	Y	As per KPIs

Milestone	Deliverables (refer to the Pricing Schedule and the ITT for further detail)	Milestone Acceptance Criteria	Milestone Date	Key Milestone?	Customer Responsibilities	Milestone Payments	Delay Payments
11	Deliver a 3-day CFA conference in London (as per Task 9 in the Scope of Work)	Conference successfully delivered	Within Contract Year 4 (exact date to be determined)	Y	Attend conference and support delivery where required, such as by securing the participation of relevant stakeholders and speakers. Provide comments on, and sign-off the agenda.	Y	As per KPIs
12	Complete all programme closure activities, as per agreed Closure Plan (Task 11 in the Scope of Work)	All activities in the Closure Plan have been undertaken, allowing the programme to be closed.	Within Contract Year 4	Y	Provide comment on drafts and sign-off final deliverables	Y	As per KPIs
13	Manage programme engagement, coordination & communications (Task 12 in the Scope of Work)	Programme communications effectively managed and monitored, and HMG has visibility for CFA funding and outcomes.	Ongoing	Y	Support stakeholder engagement (including managing certain relationships) and provide guidance on external communications. Provide comments on drafts and sign off final deliverables.	Y	As per KPIs
14	Conduct all programme management & reporting requirements (Task 13 in the Scope of Work)	Reporting delivered according to agreed schedule, the management plan is upheld, and meetings are attended/updates are provided as required.	Ongoing	Y	Chair and attend meetings according to agreed schedule. Provide comments on drafts and sign off final deliverables.	Y	As per KPIs
15	Conduct all financial management requirements (Task 14 in the Scope of Work)	Annual budgets and regular financial forecasts provided. Fraud/fiduciary risk systems in place. Quarterly financial and management	Ongoing	Y	Provide comments on drafts and sign off final deliverables. Process and pay invoices.	Y	As per KPIs

Milestone	Deliverables (refer to the Pricing Schedule and the ITT for further detail)	Milestone Acceptance Criteria	Milestone Date	Key Milestone?	Customer Responsibilities	Milestone Payments	Delay Payments
		reports submitted.					
16	Conduct all ME&L requirements (Task 15 in the Scope of Work)	Programme monitoring requirements fulfilled, and the CFA Evaluation Partner has access to information required. Lessons learned are shared.	Ongoing	Y	Provide guidance on monitoring approach, comments on drafts and sign off final deliverables.	Y	As per KPIs

Part B: Customer Responsibilities in the Project Plan

3. General

3.1 NOT USED

Part C: Key Personnel

4. General

4.1 The Supplier has assigned the following Key Personnel to this Call Off Contract in the Key Roles detailed below:

Name	Role
REDACTED	Contract Lead
REDACTED	Programme Director
REDACTED	Technical Lead
REDACTED	Operations Lead

Call Off Schedule 5: Service Levels, Service Credits and Performance Monitoring

Unlike typical Prosperity Framework Agreement programme, CFA programme performance will be primarily be measured using Key Performance Indicators (KPI), as opposed to standard Service Levels and Service Credits. The two approaches are very similar, although the scoring method varies slightly and the terminology used to describe the performance management approach is different. The requirements of Schedule 5 of the Call Off Contract will apply throughout service delivery, which has been amended slightly to reflect the KPI approach. Additionally, it is noted that in this Contract there is no “Critical Service Level Failure” as all Service Levels are of importance to the Authority. Note that KPIs will be updated to reflect Variable Deliverables, which will be agreed once the Contract has commenced and will be formalised through Contract Variation. Any future changes to KPIs based on agreed proposals for Variable Deliverables will be formalised in a Contract Variation.

Key Performance Indicators

- 1.1 Key Performance Indicators (KPIs) – otherwise referred to as Service Levels - will be used to align the Supplier’s performance with the requirements of the Customer. KPIs must be realistic and achievable, and also have to be met, in order to demonstrate that the service is being delivered to an adequate quality. KPIs are included in the Schedule 2 Schedule of Requirements and repeated below. The Customer reserves the right to amend the existing KPI’s detailed below or add any new KPI’s throughout delivery. Any changes to the KPI’s will be agreed with the Supplier and be confirmed by way of a formal contract amendment.
- 1.2 KPIs will need to be monitored on a regular basis by the Customer and will be reported on each quarter. The Customer will reserve the right to request reporting of KPIs on a more frequent basis if performance levels would suggest increased monitoring is required.
- 1.3 Performance of each KPI will be recorded against a red, amber, green “score”, as described below, with a red score constituting a Service Level Failure. These levels of performance are detailed in the table below, along with the frequency of reporting. As a minimum, the Supplier will be required to report against KPIs (where possible) in each quarterly invoice submitted to the Customer.
- 1.4 The Supplier is required to develop and implement – at their own cost – a Remediation Plan for KPIs which are scored as an amber or a red (see 1.8 and 1.9 below).
- 1.5 For each KPI scores a red, the Customer will impose a 5% reduction on that invoicing period’s total fee, where financial penalties apply. This is the total amount excluding disbursements and expenses. The sum of KPI deductions will be capped at a maximum of 20% in total for each invoicing period.
- 1.6 Where KPI’s have not been met as a result of measures of activities outside of the Supplier’s direct control, the Customer may choose to disregard the KPI penalties and corrective measures in that instance.

Scoring Methodology for KPI Criteria:

- 1.7 **Green Score:** If a green score has been awarded to a KPI then no further action is required from the Supplier, with the exception of continuing activities to maintain this score for the next reporting period.
- 1.8 **Amber Score:** If an amber score is awarded, the Supplier should examine and implement measures to prevent this KPI being scored an amber in subsequent reporting periods. The Customer will not expect formal improvement measures at that stage. If a single KPI is awarded amber in two consecutive invoice periods, or twice in four consecutive invoicing periods then the Supplier should create a Remediation Plan at their own cost. This should detail how they will change their practices to prevent another amber score being awarded for this KPI. The timeline for producing this Remediation Plan should be agreed between the Customer and the Supplier and should only be implemented following approval by the Customer. The Customer reserves the right to terminate the Contract if a satisfactory Remediation Plan cannot be agreed.
- 1.9 **Red Score:** If a red score is awarded, this is considered a Service Level Failure. The Supplier should create a Remediation Plan at their own cost. This Remediation Plan should detail how they

will change practices to prevent another red score being awarded for this KPI. As above, the Customer must agree to the timelines and contents of the Remediation Plan prior to implementation and reserves the right to terminate the Contract if a satisfactory plan cannot be agreed. If, following implementation of a Remediation Plan, the Supplier scores a red in the same KPI in any subsequent period throughout the duration of the Contract, the Customer reserves the right to terminate the Contract. The Customer also reserves the right to terminate this Contract if a KPI red score has been awarded without requesting a Remediation Plan if it is of the opinion of the Customer that a material Default (Clause 41.2 of the Call off Contract) has occurred. The Customer reserves the right to suspend, or partially terminate this Contract, while a Remediation Plan is being developed and agreed, where there is justification to do so.

Annex 1 to Part A: Service Levels and Service Credits Table

Note that in the below table: “Service Credit for each Service Period” is 5% of the invoice period for those KPIs which are listed in the table below as having Financial Penalties applying, as detailed in this Section of the Call off Contract.

REDACTED

Service Level Performance Criterion (KPI Category)	Ref. No.	Key Performance Indicator	Service Level Performance Measure	Service Level Threshold				Frequency	Notes	Financial penalties apply (Yes/No)
				Target	Target: Green	Target: Amber	Target: Red			
Programme Delivery	1	Successful delivery of London workshops	Timeliness of workshop: delay measured based on cumulative working days missed from agreed deadline	On time	On time	Delay of 10 working days	Delay of >10 working days	N/A	Two London workshops are expected to take place	Y
	2		% of key stakeholders, agreed in advance with BEIS & the CFA Advisor, that participate in workshops	100-75% participation	75%	74-55%	<55%	N/A		Y
	3		% of positive feedback from workshop participants, measured using a survey	100-75% "positive" feedback (definition to be agreed between Authority and Contractor)	75%	74-55%	<55%	N/A		Y
	4	Successful delivery of in-	Timeliness of workshop, delay measured based on cumulative working days	On time	On time	Delay of 10	Delay of >10	N/A		Y

Service Level Performance Criterion (KPI Category)	Ref. No.	Key Performance Indicator	Service Level Performance Measure	Service Level Threshold				Frequency	Notes	Financial penalties apply (Yes/No)
				Target	Target: Green	Target: Amber	Target: Red			
		country workshops	missed from agreed deadline			working days	working days			
	5		% of key stakeholders, agreed in advance with BEIS & the CFA Advisor, that participate in workshops	100-75% participation rate	75%	74-55%	<55%	N/A		Y
	6		% of positive feedback from workshop participants, measured using a survey	100-75% "positive" feedback (definition to be agreed between the Authority and Contractor)	75%	74-55%	<55%	N/A		Y
	8	CFA reports	High-quality reports are produced and approved by BEIS in a timely manner following CFA workshops	Reports submitted and approved on time	On time	1-10 working days after deadline	>10 working days after deadline	N/A	Deadlines to be agreed in advance	Y
	9	Knowledge products	High-quality knowledge products are produced and approved by BEIS in a	Knowledge products submitted and	On time	1-10 working days	>10 working	N/A	Exact products and timelines	Y

Service Level Performance Criterion (KPI Category)	Ref. No.	Key Performance Indicator	Service Level Performance Measure	Service Level Threshold				Frequency	Notes	Financial penalties apply (Yes/No)
				Target	Target: Green	Target: Amber	Target: Red			
			timely manner, according to agreed deadlines	approved on time		after deadline	days after deadline		to be agreed in advance	
	10	CFA conference	% of positive feedback from conference participants measured using a survey	100-75% "positive" feedback (definition to be agreed by the Authority and Contractor)	75% positive feedback	74-55%	<55%	N/A		Y
			% of key stakeholders, agreed in advance with BEIS & the CFA Advisor, that participate in the conference	100-75% participation rate	75%	74-55%	<55%	N/A		Y
	11	CFA advisory board	Attendance of appropriate representatives at quarterly advisory board meetings	100% attendance	81-100%	61-80%	<60%	Quarterly	Advisory board representatives to be agreed in advance	N
External Communications	12	External communication	Number of events or speaking engagements	TBD	To be agreed with the delivery partner			As required		N

Service Level Performance Criterion (KPI Category)	Ref. No.	Key Performance Indicator	Service Level Performance Measure	Service Level Threshold				Frequency	Notes	Financial penalties apply (Yes/No)
				Target	Target: Green	Target: Amber	Target: Red			
			organised to promote the CFA with key stakeholders							
	13	Stakeholder monitoring	Build and maintain a CFA stakeholder database and register of engagements	Database up to date	Database up to date	Gaps identified	Database not functional	N/A		Y
	14	Information sent to evaluation partner	Information required by the evaluation partner is sent in timely manner, where reasonable deadlines are given and information is within DPs control and ownership	As agreed between DP and evaluation partner	Deadlines are met	5 working days after deadline	>5 working days after deadline	As required		Y
Programme management	15	Reporting - provided in a timely, accurate and concise manner	Quarterly narrative/risk/performance management reports submitted on time, unless otherwise agreed with BEIS	Reports submitted on time	On time	1-10 working days after deadline	>10 working days after deadline	Quarterly		Y
	16	Annual review	A comprehensive and high-quality annual review, as judged by BEIS, is submitted on time,	Reports submitted on time	On time	1-10 working days	>10 working	Annually		Y

Service Level Performance Criterion (KPI Category)	Ref. No.	Key Performance Indicator	Service Level Performance Measure	Service Level Threshold				Frequency	Notes	Financial penalties apply (Yes/No)
				Target	Target: Green	Target: Amber	Target: Red			
			unless otherwise agreed with BEIS			after deadline	days after deadline			
	17	Programme management meetings	Attendance of appropriate representatives at monthly programme management meetings, as agreed with BEIS at programme outset	100% attendance	81-100%	61-80%	<60%	Monthly	Attendees should be reviewed and may be modified biannually	N
	18	Logframe	An updated logframe is issued and signed off within the timeline specified by BEIS	Logframe submitted on time	On time	1-10 working days after deadline	>10 working days after deadline	Annually		Y
Financial management	19	Adherence to budget	% variance against agreed forecast (DP spending should be within 10% of forecast against budget categories)	% variance cumulatively per invoice period	0-10% variance cumulatively	10-25%	>25%	Quarterly		N
	20	Accurate and timely invoicing	% of invoices and quarterly financial reports submitted on time	Financial reports/invoices	On time	1-5 working days	>5 working	Quarterly		N

Service Level Performance Criterion (KPI Category)	Ref. No.	Key Performance Indicator	Service Level Performance Measure	Service Level Threshold				Frequency	Notes	Financial penalties apply (Yes/No)
				Target	Target: Green	Target: Amber	Target: Red			
				submitted on time		after deadline	days after deadline			

REDACTED

Part 2: Call Off Terms

Terms and Conditions

A. Preliminaries

1. Definitions and Interpretation

- 1.1 In this Call Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions) or the relevant Call Off Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Call Off Schedule 1 (Definitions) or relevant Call Off Schedule, it shall have the meaning given to it in the Framework Agreement.
- 1.3 The interpretation and construction of the Call Off Contract shall be subject to the following provisions:
 - (a) Clause headings shall not affect the interpretation of the Call Off Contract;
 - (b) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - (c) words in the singular shall include the plural and vice versa;
 - (d) reference to a gender includes the other gender and the neuter;
 - (e) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - (f) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
 - (g) references to Clauses are to clauses in this Call Off Contract.
- 1.4 In the event and to the extent only of a conflict between any of the provisions of the Framework Agreement and this Call Off Contract, the conflict shall be resolved, in accordance with the following descending order of precedence:
 - (a) the Framework Agreement;
 - (b) the Order Form; and
 - (c) the Call Off Terms excluding Schedule 2 of these Call Off Terms;
 - (d) the Tender set out at Schedule 2 Part a of these Call Off Terms; and
 - (e) the Statement of Requirements set out at Schedule 2 Part a of these Call Off Terms.
- 1.5 In the event that there is a conflict between the Exit Plan required in accordance with Clause 24.1 of the Framework Agreement and any Call Off Exit Plan, the Call Off Exit Plan shall take precedence.

- 1.6 Any permitted changes by the Customer to the Template Call Off Terms and the Template Call Off Form under Clause 4 (Call Off Procedure) of the Framework Agreement and Framework Schedule 6 (Call Off Procedure) prior to them becoming the Call Off Terms and the Call Off Form and the Parties entering this Call Off Contract shall prevail over the Framework Agreement.

2. Due Diligence

- 2.1 The Supplier acknowledges that:

- (a) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Call Off Commencement Date) and has entered into this Call Off Contract in reliance on its own due diligence alone; and
- (b) it shall not be excused from the performance of any of its obligations under this Call Off Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
- (c) misinterpretation of the requirements of the Customer in the Order Form or elsewhere in this Call Off Contract; and/or
- (d) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3. Representations and Warranties

- 3.1 Each Party represents and warrants that:

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

- 3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) its execution, delivery and performance of its obligations under this Call Off Contract do not and will not constitute a breach of any Law or obligation applicable to it and do not and will not cause or result in a Default under any agreement by which it is bound;
- (c) as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including the SQ (if applicable), its Tender and any other documents submitted remain true and

accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract or to the extent that the Supplier has otherwise disclosed to the Customer in writing prior to the date of this Call Off Contract;

- (d) as at the Call Off Commencement Date, it has notified the Customer in writing of any Occasion of Tax Non-Compliance or any litigation that it is involved in connection with any Occasion of Tax Non Compliance;
- (e) it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Services by the Customer;
- (f) it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;
- (g) it shall perform all its obligations under this Call Off Contract with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts;
- (h) it is not affected by an Insolvency Event and no proceedings or other steps have been taken or discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's Assets or revenue;
- (i) all Deliverables which are software shall, for the Warranty Period:
 - (i) be free from material design and programming errors; and
 - (ii) perform in all material respects in accordance with the description in Call Off Schedule 2 (Services and Reports); and
- (j) for the Call Off Contract Period and for a period of twelve (12) months after the termination or expiry of this Call Off Contract, the Supplier shall not employ or offer employment to any staff of the Customer who have been associated with the provision of the Services without Approval or the prior written consent of the Customer which shall not be unreasonably withheld.

3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.

3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

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

3.6 Except as expressly stated in this Call Off Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

4. Call Off Guarantee

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

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

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

B. Duration of Call off Contract

5. Call Off Contract Period

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

C. Call Off Contract Performance

6. Project Plan

6.1 Formation of and compliance with Project Plan

- (a) Where the Parties agree in the Order Form (or elsewhere in this Call Off Contract) that a Project Plan (or parts thereof) shall be provided in draft by the Supplier prior to the commencement of the provision of the Services, the Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively and as the Customer may require. The draft Project Plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- (b) The Supplier shall submit the draft Project Plan to the Customer for Approval (such decision of the Customer to Approve or not shall not be unreasonably delayed or withheld) within such period as specified by the Customer in the Order Form (or elsewhere in this Call Off Contract).
- (c) The Supplier shall perform each of the Deliverables identified in the Project Plan by the applicable date assigned to that Deliverable in the Project Plan so as to ensure that each Milestone identified in the Project Plan is Achieved on or before its Milestone Date.
- (d) The Supplier shall monitor its performance against the Project Plan and Milestones (if any) and any other requirements of the Customer as set out in this Call Off Contract and report to the Customer on such performance.

6.2 Delay Payments

- (a) If Delay Payments have been included in the Project Plan and a Milestone has not been Achieved by the relevant Milestone Date, the Supplier shall pay to the Customer such Delay Payments and the following provisions shall apply:
 - (i) the Supplier acknowledges and agrees that any Delay Payment is a price adjustment which is reasonable and proportionate to protect the Customer against delayed performance of the Services.
 - (ii) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
 - (A) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause); or
 - (B) the delay exceeds the number of days (the "**Delay Period Limit**") specified in Part A of Call Off Schedule 4 (Project Plan, Customer Responsibilities and Key Personnel) for the purposes of this sub-Clause, commencing on the relevant Milestone Date;
 - (iii) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified by the Customer in the Project Plan); and
 - (iv) Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 36 (Liability).

7. Services

7.1 Provision of the Services

- (a) The Supplier shall ensure that the Services comply in all respects with any description of the Services in Call Off Schedule 2 (Services and Reports) or elsewhere in this Call Off Contract.
- (b) The Supplier shall perform its obligations under this Call Off Contract in accordance with:
 - (i) the overarching principles set out in Framework Schedule 2 (Overarching Principles);
 - (ii) all applicable Law;
 - (iii) the Tender;
 - (iv) Good Industry Practice;
 - (v) the Standards;
 - (vi) the Customer Policies; and

- (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.1(b)(i) to 7.1(b)(v) (Provision of the Services).
- (c) The Supplier shall:
- (i) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Call Off Contract;
 - (ii) obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary for the provision of the Services;
 - (iii) ensure that any products or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or the Services to meet the requirements of the Customer;
 - (iv) ensure that the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer);
 - (v) ensure that the Services are fully compatible with any Customer Property or Customer Assets described in Part B of Call Off Schedule 4 (Project Plan);
 - (vi) Customer Responsibilities and Key Personnel) (or elsewhere in this Call Off Contract) or otherwise used by the Supplier in connection with this Call Off Contract;
 - (vii) minimise any disruption to the Sites and/or the Customer's operations when providing the Services;
 - (viii) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - (ix) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier and, on the Call Off Expiry Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Customer and/or to any Replacement Supplier;
 - (x) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and
 - (xi) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

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

7.2 Not used.

7.3 Time of Delivery of the Services

- (a) The Supplier shall provide the Services on the date(s) and at the location(s) specified in the Order Form (or elsewhere in this Call Off Contract) and the Milestone Dates (if any). Such provision shall include compliance with the obligation on the Supplier set out in Clause 6 (Project Plan).
- (b) The Customer may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

7.4 Undelivered Services

In the event that any of the Services are not Delivered in accordance with Clauses 7.1 (Provision of the Services); 7.3(a) (Time of Delivery of the Services); or 7.3(b)(Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.

7.5 Continuing Obligation to Provide the Services

- (a) 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:
 - (i) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call Off Contract;
 - (ii) the existence of an unresolved Dispute; and/or
 - (iii) any failure by the Customer to pay any Call Off Contract Charges,unless the Supplier is entitled to terminate this Call Off Contract under Clause 42.1 (Termination on Customer Cause for Failure to Pay) for failure by the Customer to pay undisputed Call Off Contract Charges.

8. Code of Conduct and Standards

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

9. Service Levels and Service Credits

- 9.1 Where specified in the Order Form, the Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring).
- 9.2 The Supplier shall at all times during the Call Off Contract Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 9.3 The Supplier acknowledges and agrees that any Service Credit is a price adjustment which is reasonable and proportionate to protect the Customer against under performance of the Services.
- 9.4 A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:
- (a) the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;
 - (b) the Service Level Failure:
 - (i) exceeds the relevant Service Level Threshold;
 - (ii) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
 - (iii) results in:
 - (A) the corruption or loss of any Customer Data (in which case the remedies under Clause 30 (Protection of Customer Data) shall also be available); and/or
 - (B) the Customer being required to make a compensation payment to one or more third parties; and/or
 - (c) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause).

10. Critical Service Level Failure

N/A

11. Business Continuity and Disaster Recovery

- 11.1 Where specified in the Order Form, or elsewhere in this Call Off Contract, the Parties shall comply with the provisions of Call Off Schedule 8 (Business Continuity and Disaster Recovery).

12. Supplier Notification of Customer Cause

- 12.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 42.1(a) (Termination on Customer Cause for Failure to Pay), the Supplier shall:

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

13. Continuous Improvement

- 13.1 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause 13 with a view to reducing the Customer's costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Customer.

D. Call Off Contract Governance

14. Performance Monitoring and Reporting

- 14.1 Unless otherwise Approved or notified by the Customer, the Supplier shall comply with the monitoring requirements set out in Part B of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring).
- 14.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels. Unless the Customer specifies otherwise, the Supplier shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.
- 14.3 In addition to the Performance Monitoring Reports, the Supplier shall provide the Reports in the format and at the frequency set out in Part B of Schedule 2 (Services and Reports).

MREL System

- 14.4 The Supplier and the Customer acknowledges that the Customer has established a central monitoring, reporting, evaluation and learning system to provide reporting on expenditure and outcomes achieved across the Prosperity Fund and delivery of tailored evaluations to determine of the quality and effectiveness of the Prosperity Fund. These evaluations will be used to inform the Customer about whether the operation of the Prosperity Fund is meeting the required objectives (the "**MREL System**"). As this service is being delivered through UK Government International Climate Finance, rather than the Prosperity Fund, this clause does not apply.

15. Representatives

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

- 15.2 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 23 (Supplier Personnel).
- 15.3 The Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Call Off Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

16. Governance

- 16.1 The Supplier shall upon receipt of reasonable notice and during normal office hours attend all meetings arranged by the Customer for the discussion of matters connected with the performance of the Services.
- 16.2 The Supplier shall ensure that appropriate Supplier Personnel attend such meetings who have the authority to make decisions on behalf of the Supplier.

17. Records, Audit Access and Open Book Data

- 17.1 The Supplier shall keep and maintain (in accordance with Good Industry Practice and the Law) for seven (7) years after the Call Off Expiry Date (or as long a period as may be agreed between the Parties):
- (a) the Open Book Data; and
 - (b) full and accurate records of the operation of this Call Off Contract including the Services provided under it and any Sub-Contracts.
- 17.2 Within ten (10) Working Days of the end of each Contract Year, the Supplier shall issue to the Customer (in the format reasonably required by the Customer) an annual self-audit certificate signed by a director of the Supplier which confirms:
- (a) that all Call Off Contract Charges (including VAT on such Call Off Contract Charges) have been correctly calculated and charged to the Customer; and
 - (b) that all Call Off Contract Charges have been appropriately accounted for to enable the appropriate taxes to be paid by the Supplier.
- 17.3 The Customer, acting by itself or through its representatives, shall have the right during the Call Off Contract Period and for a period of eighteen (18) Months thereafter, to assess compliance by the Supplier and/or its Key Sub-Contractors of the Supplier's obligations under this Call Off Contract Agreement, including for the following purposes:
- (a) to verify the accuracy of the Call Off Contract Charges and any other amounts payable by the Customer under this Call Off Contract (and proposed or actual variations to such Call Off Contract Charges and payments);
 - (b) to verify the Open Book Data;
 - (c) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

- (d) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources; and/or
 - (e) to audit the Personal Data processing activity performed under this Call Off Contract;
 - (f) to review the integrity, confidentiality and security of the Customer Data.
- 17.4 Subject to the Customer 's obligations of confidentiality, the Supplier shall on demand provide the Customer and its representatives with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-Contractors) in relation to each audit, including:
- (a) all information requested by the Customer within the permitted scope of the audit;
 - (b) reasonable access to any Sites and to any equipment used (whether exclusively or nonexclusively) in the performance of the Services;
 - (c) access to the Supplier System; and
 - (d) access to Supplier Personnel.
- 17.5 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.
- 17.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 17, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.
- 17.7 As an alternative to the Customer's right pursuant to Clause 17.3 to exercise an audit either itself or through its representatives, the Customer may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Clause 17.3.
- Following the receipt of such a request from the Customer, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Customer has unfettered access to:
- (a) the resultant audit reports; and
 - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.
- 17.8 Nothing in this Call Off Contract shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-Contractors for the purposes of and pursuant to applicable Law.
- 18. Change**
- 18.1 Variation Procedure

- (a) Subject to the provisions of this Clause 18 and of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented called a **"Variation"**.
- (b) A Party may request a Variation by completing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- (c) The Customer may require the Supplier to carry out an impact assessment of the Variation on the Services (the **"Impact Assessment"**). The Impact Assessment shall be completed in good faith and shall include:
 - (i) details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Call Off Contract;
 - (ii) details of the cost of implementing the proposed Variation;
 - (iii) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Call Off Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - (iv) a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - (v) such other information as the Customer may reasonably request in (or in response to) the Variation request.
- (d) The Parties may agree to adjust the time limits specified in the Variation request to allow for the preparation of the Impact Assessment.
- (e) Subject to Clause 18.1(d) above, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Order and the proposed Variation.
- (f) If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Call Off Contract.

18.2 Legislative Change

- (a) The Supplier shall neither be relieved of its obligations under this Call Off Contract nor be entitled to an increase in the Call Off Contract Charges as the result of a:
 - (i) General Change in Law; or
 - (ii) Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Call Off Commencement Date.
- (b) If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 18.2(a)(ii) above, the Supplier shall:

- (i) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
 - (A) whether any Variation is required to the provision of the Services, the Call Off Contract Charges or this Call Off Contract; and
 - (B) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
- (ii) provide to the Customer with evidence:
 - (A) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (B) as to how the Specific Change in Law has affected the cost of providing the Services; and
- (c) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 13 (Continuous Improvement), has been taken into account in amending the Call Off Contract Charges.
- (d) Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 18 (a)(ii)) shall be implemented in accordance with the Variation Procedure.

E. Payment, Taxation and Value for Money

19. Call Off Contract Charges and Payment

19.1 Call Off Contract Charges

- (a) In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Services, the Customer shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).
- (b) Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clause 17 (Records, Audit Access and Open Book Data), 33 (Freedom of Information), 34 (Protection of Personal Data).
- (c) If the Customer fails to pay any undisputed Call Off Contract Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- (d) If at any time during this Call Off Contract Period the Supplier reduces its Maximum Day Rates in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce any Call Off Contract Charges which are based on day rates by the same amount.

19.2 VAT and Other Taxes

- (a) The Parties agree that the Call Off Contract Charges are exclusive of VAT which shall be payable by the Customer in addition to the Call Off Contract Charges.
- (b) The Supplier acknowledges that the VAT which is applied to the Call Off Contract Charges (for example standard rated, zero rated or outside the scope of VAT) will depend on the place of supply of the Services and the existence of the Customer's establishments in those places of supply. The Supplier shall ensure that it correctly applies the Law and rules on VAT in order to determine the VAT applicable to the Call Off Contract Charges. The Supplier acknowledges that the Customer may dispute an invoice where it believes that the correct VAT has not been applied to such invoice.
- (c) The Supplier shall ensure that it recovers (at the earliest opportunity) any recoverable local taxes and any other recoverable costs which apply or are incurred during the course of delivery of the Services to ensure that these are not charged to the Customer.

19.3 Retention and Set Off

- (a) The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call Off Contract or under any other agreement between the Supplier and the Customer.
- (b) If the Customer wishes to exercise its right pursuant to Clause 19.3(a) it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Call Off Contract Charges.
- (c) The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

19.4 Income Tax and National Insurance Contributions

- (a) Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call Off Contract, the Supplier shall:
 - (i) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions in respect of that consideration; and
 - (ii) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.

20. Promoting Tax Compliance

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

- (a) notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and

- (b) promptly provide to the Customer:
 - (i) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

20.2 In the event that the Supplier fails to comply with this Clause 20 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable, then the Customer reserves the right to terminate this Call Off Contract for material Default.

21. Benchmarking

21.1 This Clause 21 shall apply if so specified by the Customer in the Order Form.

21.2 The Parties shall comply with their respective obligations in Call Off Schedule 12 (Benchmarking).

F. Supplier Personnel and Supply Chain Matters

22. Key Personnel

22.1 This Clause 22.1 shall apply if so specified in the Order Form, or elsewhere in this Call Off Contract. Part C of Call Off Schedule 4 (Project Plan, Customer Responsibilities and Key Personnel) lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call Off Commencement Date.

22.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.

22.3 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Call Off Schedule 9 (Exit Management)) unless:

- (a) requested to do so by the Customer;
- (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
- (c) the person concerned employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
- (d) the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).

22.4 The Supplier shall:

- (a) notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
- (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
- (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a

material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;

- (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services;
- (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced; and
- (f) shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.

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

23. Supplier Personnel

23.1 Supplier Personnel

- (a) The Supplier shall:
 - (i) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
 - (ii) ensure that all Supplier Personnel:
 - (A) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (B) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards; and
 - (C) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule 7 (Security);
 - (iii) subject to Call Off Schedule 10 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
 - (iv) be liable at all times for all acts or omissions of Supplier Personnel, so that any
 - (v) act or omission of any Supplier Personnel which results in a Default under this Call Off Contract shall be a Default by the Supplier;

- (vi) if and when directed by the Customer, procure that any person employed or engaged by the Supplier or by a Sub Contractor, who is specified in the direction or is one of a class of persons who may be so specified, shall sign a statement that he understands that the Official Secrets Acts 1911 to 1989 shall apply to him both during the term of and after the expiry or termination of this Call Off Contract;
 - (vii) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - (viii) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
 - (ix) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - (x) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.
- (b) If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Call Off Contract, it may:
- (i) refuse admission to the relevant person(s) to the Customer Premises; and/or
 - (ii) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - (iii) require the Supplier to replace the relevant person(s) without direct or indirect charge to the Customer and the Supplier shall fully indemnify and hold the Customer harmless against any claims of any kind that may arise with regard to the replacement of such Supplier Personnel.
- (c) The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

23.2 Duty of Care

- (a) The Supplier owes a duty of care to the Supplier Personnel and is responsible for the health, safety, security of life and property and general wellbeing of such persons and their property and this includes where the Supplier Personnel carry out the Services.
- (b) The Supplier warrants that it has and will throughout the Call Off Contract Period:
 - (i) carry out the appropriate risk assessment with regard to its delivery of the Services;
 - (ii) provide the Supplier Personnel with adequate information, instruction, training and supervision; and
 - (iii) have appropriate emergency procedures in place to enable their provision of the Services so as to prevent damage to the Supplier Personnel's health, safety, security of life and property and general wellbeing.
- (c) The provision of information of any kind whatsoever by the Customer to the Supplier shall not in any respect relieve the Supplier from responsibility for its obligations under this

Clause 23. The positive evaluation of the Supplier's proposal for the provision of the Services and the award of this Call Off Contract is not an endorsement by the Customer of any arrangements which the Supplier has made for the health, safety, security of life and property and wellbeing of the Supplier Personnel in relation to the provision of the Services.

- 23.3 Save to the extent such responsibility cannot be excluded at law, the Supplier acknowledges that the Customer accepts no responsibility for the health, safety, security of life and property and general wellbeing of the Supplier Personnel with regard to the Supplier Personnel carrying out the Services.
- 23.4 The Supplier shall indemnify and keep indemnified the Customer in respect of:
- (a) any loss, damage or claim, howsoever arising out of, or relating to any negligent act or omission by the Supplier, or the Supplier Personnel in connection with the performance of this Call Off Contract; or
 - (b) any claim, howsoever arising, by the Supplier Personnel or any person employed or otherwise engaged by the Supplier, in connection with the performance of this Call Off Contract.
- 23.5 The Supplier will ensure that such insurance arrangements as are made to cover the Supplier Personnel, or any person employed or otherwise engaged by the Supplier, and pursuant to the Supplier's duty of care as referred to in this Clause 23, are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.
- 23.6 The Supplier shall provide training on a continuing basis for all Supplier Personnel, in compliance with the Security Policy.
- 23.7 Relevant Convictions
- (a) The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Services without Approval.
 - (b) Notwithstanding Clause 23.7(a), for each member of Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):
 - (i) carry out a check with the records held by the Department for Education (DfE);
 - (ii) conduct thorough questioning regarding any Relevant Convictions; and
 - (iii) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

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

- 23.8 Misconduct

- (a) The Supplier shall take all appropriate measures to prevent actual, attempted or threatened Sexual Exploitation, Sexual Abuse or Sexual Harassment (whether or not such conduct would amount to a criminal offence in (or punishable in) the United Kingdom or an offence under the laws of the territory in which it takes place) (together, “**Misconduct**”), whether by the Supplier Personnel or any other employees or persons engaged and controlled by it to perform any activities under this Call Off Contract (together, “**Relevant Individuals**”), and shall adopt robust procedures for the reporting of such Misconduct.
- (b) Without prejudice to the generality of Clause 23.8(a), but subject to Clause 23.8(c), the Supplier shall:
 - (i) take all appropriate measures to ensure that the Relevant Individuals do not engage in sexual activity with children (all persons under the age of 18), regardless of the age of majority or age of consent under the laws of the territory in which it takes place, and regardless of any mistaken belief (by a Relevant Individual) as to the age of a child;
 - (ii) report any Misconduct by the Relevant Individuals to the relevant authorities (including local law enforcement and the Customer (the “**Relevant Authorities**”)), and shall take all appropriate measures (including through the provision by the Supplier of supportive, confidential and accountable reporting mechanisms) to ensure that the Relevant Authorities are able to onwards report such Misconduct; and
 - (iii) take all necessary measures to investigate allegations or suspicions of Misconduct by the Relevant Individuals and take all appropriate corrective action (including disciplinary action) against the Relevant Individuals, following which the Supplier shall as soon as reasonably practicable report details of such corrective action taken to the Relevant Authorities.
- (c) Where the Supplier (acting reasonably) considers in a particular case that it is unable fully to comply with one or more of the obligations in Clause 23.8(b) as a result of the operation of legally binding provisions relating to the protection of personal data, human rights or employment rights (or equivalent provisions in the relevant territory), the Supplier shall notify the Customer without undue delay (providing all such information as the Customer may reasonably request) and the Parties shall meet and commence good faith negotiations to amend Clause 23.8(b) (with effect only in relation to that particular case) so that, as amended, the Supplier is able to comply with it in a manner that achieves the Parties' original intention.
- (d) In the event of a failure by the Supplier to comply with Clauses 23.8(a) to 23.8(c), the Customer reserves the right to terminate this Call Off Contract for material Default in accordance with the provisions of Clause 41.2(a)(v).

24. Staff Transfer

24.1 The Parties agree that:

- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Call Off Schedule 10 (Staff Transfer) shall apply as follows:
 - (i) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Call Off Schedule 10 (Staff Transfer) shall apply;

- (ii) where the Relevant Transfer involves the transfer of Transferring Former;
 - (iii) Supplier Employees, Part B of Call Off Schedule 10 (Staff Transfer) shall apply;
 - (iv) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Call Off Schedule 10 (Staff Transfer) shall apply; and
- (b) Part C of Call Off Schedule 10 (Staff Transfer) shall not apply;
 - (c) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Call Off Schedule 10 (Staff Transfer) shall apply and Parts A and B of Call Off Schedule 10 (Staff Transfer) shall not apply;
 - (d) Part D of Call Off Schedule 10 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

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

25. Supply Chain Rights and Protection

25.1 Appointment of Sub-Contractors

- (a) The Customer has consented to the appointment of the Sub-Contractors set out in Schedule 14 (Approved Sub-Contractors).
- (b) The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
 - (i) manage any Sub-Contractors in accordance with Good Industry Practice;
 - (ii) comply with its obligations under this Call Off Contract in the delivery of the Services; and
 - (iii) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Call Off Contract.
- (c) The Supplier shall put in place and maintain throughout the Call Off Contract Period robust systems and procedures for the management of Sub-Contractors, to ensure that the work carried out by such Sub-Contractors are delivered in the manner and to the standard required by this Call Off Contract. Such management systems shall include effective monitoring of service delivery and price management approaches.
- (d) Prior to sub-contacting any of its obligations under this Call Off Contract, the Supplier shall provide the Customer with:
 - (i) the proposed Sub-Contractor's name, registered office and company registration number;
 - (ii) the scope of any Services to be provided by the proposed Sub-Contractor; and

- (iii) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- (e) If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 25.1(d), the Supplier shall also provide:
 - (i) a copy of the proposed Sub-Contract; and
 - (ii) any further information reasonably requested by the Customer.
- (f) The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 25.1(d) (or, if later, receipt of any further information requested pursuant to Clause 25.1(e)), object to the appointment of the relevant Sub-Contractor they consider that:
 - (i) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Customer under this Call Off Contract;
 - (ii) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (iii) the proposed Sub-Contractor employs unfit persons,in which case, the Supplier shall not proceed with the proposed appointment.
- (g) The Supplier shall ensure that all Sub-Contracts contain provisions equivalent to those set out in Clauses 23.8(a), 23.8(b) and 23.8(c), and shall further ensure that:
 - (i) the Supplier has all appropriate rights to be able to onwards report Misconduct on the part of the Sub-Contractor's own employees, agents or contractors to the Relevant Authorities; and
 - (ii) written confirmation is sought and obtained from its Sub-Contractors that they accept the standards set out in Clauses 23.8(a) and 23.8(b).

25.2 Appointment of Key Sub-Contractors

- (a) Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Customer and the Authority (the decision to consent or not will to be unreasonably withheld or delayed). The Customer and the Authority may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:
 - (i) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
 - (ii) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (iii) the proposed Key Sub-Contractor employs unfit persons.
- (b) Except where the Customer has given its prior written consent under Clause 25.2(a) the Supplier shall ensure that each Key Sub-Contract shall include:

- (i) provisions requiring the Sub-Contractor to comply with the Code of Conduct at all times;
- (ii) provisions requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
- (iii) provisions requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (iv) provisions conferring a right to the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
- (v) provisions giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law;
- (vi) provisions requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 7.7;
- (vii) provisions which will enable the Supplier to discharge its obligations under this Call Off Contract;
- (viii) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
- (ix) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
- (x) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
- (xi) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Call Off Contract in respect of:
 - (A) data protection requirements set out in Clauses 29 (Security Requirements), 30 (Protection of Customer Data) and 34 (Protection of Personal Data);
 - (B) FOIA requirements set out in Clause 33 (Freedom of Information);
 - (C) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in Clause 7.1(c)(ix) (Provision of Services);
 - (D) the keeping of records in respect of the Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and

- (E) the conduct of audits set out in Clause 16 (Records, Audit Access & Open Book Data);
- (xii) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 41 (Customer Termination Rights), 43 (Termination by Either Party) and 44 (Consequences of Expiry or Termination) of this Call Off Contract;
- (xiii) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all
- (xiv) or any part of the provision of the Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer.; and
- (xv) a provision, where a provision in Call Off Schedule 10 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

25.3 The Supplier shall:

- (a) maintain records of small and medium sized organisations' activity in the supply chain used by the Supplier in the delivery of the Services including the value of relevant payments made to them. The Supplier shall provide a report on such activity within fifteen (15) Working Days of a request from the Customer in a format acceptable to the Customer; and
- (b) maintain an up-to-date and accurate record of named downstream delivery partners in receipt of Customer funds and/or Customer funded inventory or assets. This record should demonstrate how funds flow from initial source to end beneficiaries. This record should be made available to the Customer upon written request and within the time set out in the request. This record should be updated by the Supplier:
 - (i) as required in Schedule 2 (Services and Reporting);
 - (ii) annually;
 - (iii) when there are material changes in the delivery chain; and
 - (iv) as part of the project completion process.

25.4 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;
- (b) include within the Performance Monitoring Reports a summary of its compliance with this Clause, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading; and
- (c) not include in any Sub-Contract any provision the effect of which would be to limit or restrict the ability of the Sub-Contractor to contract directly with the Customer, a Replacement Supplier, or with any other organisation and Sub-Contractors shall be free to assert their rights independently regarding contractual exclusivity.

25.5 Termination of Sub-Contracts

- (a) The Customer may require the Supplier to terminate:
 - (i) a Sub-Contract where:
 - (A) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant any of the termination events in Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause); and/or
 - (B) the relevant Sub-Contractor or its Affiliates has embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or
 - (ii) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
 - (A) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (B) the Customer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

25.6 Competitive Terms

- (a) If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Customer may:
- (b) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or
- (c) subject to Clause 25.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.
- (d) Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 25 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

G. Property Matters

26. Customer Premises

26.1 Licence to occupy Customer Premises

- (a) Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of

performing its obligations under this Call Off Contract. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call Off Contract and in accordance with Call Off Schedule 9 (Exit Management).

- (b) The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

27. Supplier Equipment

- 27.1 Unless otherwise stated in the Order Form (or elsewhere in this Call Off Contract), the Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.
- 27.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.
- 27.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Call Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.
- 27.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property located on Customer Premises which is due to the negligent act or omission of the Customer.

H. Intellectual Property and Information

28. Intellectual Property Rights

28.1 Allocation of title to IPR

- (a) Save as expressly granted elsewhere under this Call Off Contract:
 - (i) the Customer 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 Background IPR;
 - (B) the Third Party IPR; and
 - (C) the Project Specific IPR (where the Order Form states that the Project Specific IPR will be licensed to the Customer or is otherwise silent).
 - (ii) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the:
 - (A) Customer Background IPR;

(B) Customer Data; and

(C) the Project Specific IPR (where the Order Form states that the Project Specific IPR will be assigned to the Customer).

(b) Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in this Clause 28.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

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

28.2 Licence granted by the Supplier: Project Specific IPR

(a) This Clause 28.2 shall apply where Project Specific IPR is stated in the Order Form to be licensed to the Customer or is otherwise silent.

(b) The Supplier hereby grants to the Customer, or shall procure the direct grant to the Customer of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use the Project Specific IPR including but not limited to the right to copy, adapt, publish and distribute such Project Specific IPR. Where the Project Specific IPR is software, such Project Specific IPR shall include the source code and object code of such software.

(c) The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 28.2(a) (Licence granted by the Supplier: Project Specific IPR).

28.3 Assignment by the Supplier: Project Specific IPR

(a) This Clause 28.3 shall apply where Project Specific IPR is stated in the Order Form to be assigned to the Customer.

(b) The Supplier hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPR or shall procure that the first owner of the Project Specific IPR assigns them to the Customer on the same basis.

(c) The assignment under Clause 28.3(b) shall either take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.

(d) The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under this Call Off Contract.

28.4 If requested to do so by the Customer, the Supplier shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 28.3(b) or shall procure that the owner of the Project Specific IPRs does so on the same basis.

28.5 Where the Project Specific IPR is software, the Supplier will deliver to the Customer both source code and object code of such software within seven (7) days of Acceptance and shall provide updates of the source code on each new release of the software on such media that is reasonably acceptable to the Customer.

28.6 Licence granted by the Supplier: Supplier Background IPR

- (a) The Supplier hereby grants to the Customer a perpetual, irrevocable, royalty-free and non-exclusive licence to use the Supplier Background IPR for any purpose relating to the Services (or substantially equivalent Services) and any Deliverables or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.
- (b) The Customer may sub-license:
 - (i) the rights granted under Clause 28.6(a) (Licence granted by the Supplier: Supplier Background 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 Customer; and
 - (B) the sub-licence only authorises the third party to use the rights licensed in Clause 28.6(a) (Licence granted by the Supplier: Supplier Background IPR) for purposes relating to the Services (or substantially equivalent Services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
 - (ii) the rights granted under Clause 28.6(a) (Licence granted by the Supplier: Supplier Background IPR) to any Approved sub-licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Customer.

28.7 Customer's right to assign/novate licences

- (a) The Customer shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 28.2 (Licence granted by the Supplier: Project Specific IPR); and
- (b) The Customer may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 28.6 (Licence granted by the Supplier: Supplier Background IPR) to:
 - (c) a Central Government Body; or
 - (d) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.

28.8 Third Party IPR

- (a) The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 28.6 (Licence granted by the Supplier: Supplier Background IPR); and
- (b) Clause 28.7 (Customer's right to assign/novate licences). If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in Clause 28.6 (Licences granted by the Supplier: Supplier Background IPR); and

- (c) Clause 28.7 (Customer's right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:
 - (i) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
 - (ii) only use such Third Party IPR if the Customer Approves the terms of the licence from the relevant third party.

28.9 Licence granted by the Customer

- (a) The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call Off Contract Period to use the Customer Background IPR, the Project Specific IPR (where such Project Specific IPR is assigned to the Customer) and the Customer Data solely to the extent necessary for providing the Services in accordance with this Call Off Contract, including the right to grant sublicences to Sub-Contractors.

28.10 Termination of licenses

- (a) All licences granted pursuant to this Clause 28 (Intellectual Property Rights) (save for Clause 28.9 (Licence granted by the Customer)) shall survive the Call Off Expiry Date.
- (b) The Supplier shall, if requested by the Customer in accordance with Call Off Schedule 9 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 28.6 (Licence granted by the Supplier: Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- (c) The licence granted pursuant to Clause 28.9 (Licence granted by the Customer) shall terminate automatically on the Call Off Expiry Date and the Supplier shall:
- (d) immediately cease all use of the Customer Background IPR, the Project Specific IPR (where such Project Specific IPR is assigned to the Customer) and the Customer Data (as the case may be);
- (e) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Background IPR, the Project Specific IPR (where such Project Specific IPR is assigned to the Customer) and the Customer Data, provided that if the Customer has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Background IPR, the Project Specific IPR and the Customer Data (as the case may be); and
- (f) ensure, so far as reasonably practicable, that any Customer Background IPR, the Project Specific IPR (where such Project Specific IPR is assigned to the Customer) and Customer Data that are held in electronic, digital or other machine-readable form ceases are readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Background IPR, Project Specific IPR and/or Customer Data.

28.11 IPR Indemnity

- (a) The Supplier shall during and after the Call Off Contract Period, on written demand indemnify the Customer against all Losses incurred by, awarded against or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- (b) If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
 - (i) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
 - (ii) 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 Services;
 - (C) there is no additional cost to the Customer; and
 - (D) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Services.
- (c) If the Supplier elects to procure a licence in accordance with Clause 28.11(b)(i) or to modify or replace an item pursuant to Clause 28.11(b)(ii), but this has not avoided or resolved the IPR Claim, then:
- (d) the Customer may terminate this Call Off Contract (in whole or in part) by written notice with immediate effect; and
- (e) without prejudice to the indemnity set out in Clause 28.11(a), the Supplier shall be liable for all reasonable and unavoidable costs of the substitute Services including the additional costs of procuring, implementing and maintaining the substitute items.

29. Security Requirements

- 29.1 The Supplier shall comply with (and shall ensure that its Staff and Sub-Contractors comply with) the Security Policy and the requirements of Call Off Schedule 7 (Security) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 29.2 The Supplier shall co-operate with any investigation relating to security which is carried out by the Customer or by any person who is responsible to the Customer for security matters and when required by the Customer Representative:
 - (a) shall make any Supplier Personnel identified by the Customer Representative available to be interviewed by the Customer Representative, or by a person who is responsible to the Customer for security matters, for the purposes of the investigation.
 - (b) shall provide all documents, records or other material of any kind which may reasonably be required by the Customer or by a person who is responsible to the Customer for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Supplier from performing the Services. The Customer shall

have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Supplier with a copy of any material retained.

30. Protection of Customer Data

- 30.1 To the extent that the Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Call Off Contract and in any event as specified by the Customer from time to time in writing.
- 30.2 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 30.3 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with any BCDR Plan or otherwise.
- 30.4 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 30.5 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 30.6 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:
 - (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Call Off Schedule 8 (Business Continuity and Disaster Recovery) or as otherwise required by the Customer, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
 - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Call Off Schedule 8 (Business Continuity and Disaster Recovery) or as otherwise required by the Customer.
- 30.7 The Supplier shall (and shall procure that its Sub-Contractors shall) ensure that from the Call Off Commencement Date and during the Call Off Contract Period it has and maintains certification under the HM Government Cyber Essentials Scheme at the level set out in tender documentation issued by the Customer.

31. Transparency

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

- 31.3 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives his consent for the Customer to publish this Call Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Call Off Contract agreed from time to time, to the general public.
- 31.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Call Off Contract.
- 31.5 The Supplier acknowledges that publication of this Call Off Contract will include the publication of the name and contact details of the Supplier Representative. Such details will not be redacted. By executing this Call Off Contract, the Supplier confirms that it has ensured that the Supplier Representative has given their consent to the publication of their name and contact details or otherwise taken steps to ensure that publication will not breach the Data Protection Legislation. The name and contact details of any subsequent Supplier Representative details will also be published and in every such case the Supplier will ensure that consent is obtained or otherwise takes steps to ensure that publication of those details will not amount to a breach of the Data Protection Legislation.
- 31.6 The Supplier acknowledges that the Customer endorses and supports the requirements of the IATI standard and shall assist and cooperate with the Customer, to enable the Supplier to understand the different elements of IATI implementation and to comply with the different data, policy and technical considerations that need to be taken into account.
- 31.7 The Supplier shall:
- (a) publish information data to the IATI standard, that relates to a specific activity in a single, common, electronic format for the transparent, accurate, timely and comprehensive publishing of data, on all activities in the supply chain, in the delivery of development cooperation and humanitarian aid; and
 - (b) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the IATI requirements.

32. Confidentiality

- 32.1 For the purposes of this Clause 32, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 32.2 Except to the extent set out in this Clause 32 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call Off Contract or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and

- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 32.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 33 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (c) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;
 - (d) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Services provided under this Call Off Contract; or
 - (e) the conduct of a Central Government Body review in respect of this Call Off Contract; or
 - (f) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 32.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 32.5 Subject to Clauses 32.3 and 32.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Call Off Contract; and
 - (b) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.
- 32.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 32, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.
- 32.7 The Customer may disclose the Confidential Information of the Supplier:
- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
 - (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;

- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Customer or any of the entities described in Clauses 32.7(a) and 32.7(b) (including any Benchmarker) for any purpose relating to or connected with this Call Off Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 32.

- 32.8 Nothing in this Clause 32 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 32.9 In the event that the Supplier fails to comply with Clauses 32.2 to 32.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

33. Freedom of Information

- 33.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA, the Environmental Information Regulations and associated codes of practice and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 33.2 The Supplier shall and shall ensure that its Sub-Contractors shall:
 - (a) transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
 - (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 33.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call Off Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA, the Environmental Information Regulations and associated codes of practice.
- 33.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.

33.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 32) the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the **Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:

- (a) in certain circumstances without consulting the Supplier; or
- (b) following consultation with the Supplier and having taken their views into account,

provided that where Clause 33.5(a) applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

33.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clause 33.7 and shall permit the Customer to inspect such records as requested by the Customer from time to time.

33.7 The Supplier shall, during this Call Off Contract and for a period of at least seven (7) years following the expiry or termination of this Call Off Contract, retain and maintain all Information:

- (a) in accordance with the requirements of the Public Records Office and in accordance with the exercise of the degree of care that would be expected from a leading company within the relevant industry or business sector;
- (b) in chronological order;
- (c) in a form that is capable of audit; and
- (d) at its own expense.

33.8 Wherever practical, original Information shall be retained and maintained in hard copy form.

34. Protection of Personal Data

34.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Section C of the Order Form by the Customer and may not be determined by the Supplier.

34.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

34.3 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and

- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

34.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Call Off Contract:

- (a) process that Personal Data only in accordance with paragraph 6.3 of the Order Form, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Supplier Personnel do not process Personal Data except in accordance with this Call Off Contract (and in particular paragraph 6.3 of the Order Form);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is

transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

- (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer in accordance with Schedule 9 (Exit Management) on termination or expiry of the Call Off Contract unless the Supplier is required by Law to retain the Personal Data.

34.5 Subject to Clause 34.6, the Supplier shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Call Off Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

34.6 The Supplier's obligation to notify under Clause 34.5 shall include the provision of further information to the Customer in phases, as details become available.

34.7 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 34.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) the Customer with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Customer following any Data Loss Event;
- (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

34.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Supplier employs fewer than two hundred and fifty (250) staff, unless:

- (a) the Customer determines that the processing is not occasional;

- (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 34.9 The Supplier shall allow for audits of its Personal Data processing activity by the Customer or the Customer's designated auditor in accordance with Clause 17.
- 34.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 34.11 Before allowing any Sub-processor to process any Personal Data related to this Call Off Contract, the Supplier must:
 - (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written contract with the Sub-processor which give effect to the terms set out in this Clause 34 such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 34.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 34.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Call Off Contract).
- 34.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this Call Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

35. Publicity and Branding

- 35.1 The Supplier shall not:
 - (a) make any press announcements or publicise this Call Off Contract in any way; or
 - (b) use the Customer's name or brand in any promotion or marketing or announcement of orders,without Approval.
- 35.2 The Customer shall be entitled to publicise this Call Off Contract in accordance with any legal obligation upon the Customer, including any examination of this Call off Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

I. Liability and Insurance

36. Liability

36.1 Unlimited Liability

- (a) Neither Party excludes or limits its liability for:
 - (i) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
 - (ii) bribery or Fraud committed by it or its employees;
 - (iii) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - (iv) breach of Clause 32 (Confidentiality); or
 - (v) any liability to the extent it cannot be excluded or limited by Law.
- (b) The Supplier does not exclude or limit its liability in respect of:
 - (i) the indemnity in Clause 28.11 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein; or
 - (ii) breach of Clause 33 (Freedom of Information) or Clause 34 (Protection of Personal Data).

36.2 Financial Limits

- (a) Subject to Clause 36.1 (Unlimited Liability), the Supplier's total aggregate liability:
 - (i) in respect of all:
 - (A) Service Credits; and
 - (B) Compensation for Critical Service Level Failure,incurred in any rolling period of 12 Months shall be subject in aggregate to the Service Credit Cap;
- (b) in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, a sum equal to one hundred and twenty five per cent (125%) of the Estimated Year 1 Call Off Contract Charges;
 - (ii) in relation to any Defaults occurring in each subsequent Call Off Contract Year that commence during the remainder of the Call Off Contract Period, and a sum equal to one hundred and twenty five (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
 - (iii) in relation to any Defaults occurring in each Call Off Contract Year that commence after the end of the Call Off Contract Period, a sum equal to one hundred and twenty five per cent (125%) of the Call Off Contract Charges

payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

- (c) Subject to Clauses 36.1 (Unlimited Liability) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:
 - (i) in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, a sum equal to the Estimated Year 1 Call Off Contract Charges;
 - (ii) in relation to any Customer Causes occurring in each subsequent Call Off Contract Year that commence during the remainder of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
 - (iii) in relation to any Customer Causes occurring in each Call Off Contract Year that commence after the end of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

36.3 Non-recoverable Losses

- (a) Subject to Clause 36.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:
 - (i) indirect, special or consequential Loss; or
 - (ii) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

36.4 Recoverable Losses

- (a) Subject to Clause 36.2 (Financial Limits), and notwithstanding Clause 36.3 (Nonrecoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:
- (b) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
 - (i) any wasted expenditure or charges;
 - (ii) the additional cost of procuring Replacement Services for the remainder of the Call Off Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Call Off Contract;
 - (iii) any compensation or interest paid to a third party by the Customer; and
 - (iv) any fine, penalty or costs incurred by the Customer pursuant to Law.

36.5 Miscellaneous

- (a) Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call Off Contract.
- (b) Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 36.2 (Financial Limits).

37. Insurance

- 37.1 This Clause 37 will only apply where specified in the Order Form or elsewhere in this Call Off Contract.
- 37.2 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 30 (Insurance) of the Framework Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all typically insurable risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract.
- 37.3 The Supplier shall effect and maintain the policy or policies of insurance referred to in this Clause 37 for six (6) years after the Call Off Expiry Date.
- 37.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 37.5 The Supplier shall give the Customer, immediately on request, copies of all insurance policies referred to in this Clause 37 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 37.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under this Clause 37 the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 37.7 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

J. Remedies and Relief

38. Supplier Defaults

- 38.1 Without prejudice to any other rights or remedies of the Customer, if the Supplier becomes aware that there is, or there is reasonably likely to be, a Default by the Supplier (including a Delay or a Service Level Failure) it shall:

- (a) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Default or anticipated Default;
- (b) include in its notification an explanation of the actual or anticipated impact of the Default;
- (c) comply with the Customer's instructions in order to address the impact of the Default or anticipated Default (which may include a requirement to produce and comply with an agreed rectification plan); and
- (d) use all reasonable endeavours to eliminate or mitigate the consequences of any Default or anticipated Default; and

39. Supplier Relief Due to Customer Cause

39.1 If the Supplier has failed to:

- (a) achieve a Milestone by its Milestone Date;
- (b) provide the Services in accordance with the Service Levels; and
- (c) comply with its obligations under this Call Off Contract,

(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 12 (Supplier Notification of Customer Cause)):

- (i) the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (ii) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Agreement pursuant to Clause 41.2 (Termination on Material Default); or
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
 - (B) if the Customer, acting reasonably, considers it appropriate, the Project Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;
 - (C) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone; and
- (iv) where the Supplier Non-Performance constitutes a Service Level Failure:
 - (A) the Supplier shall not be liable to accrue Service Credits or to pay any Compensation for Critical Service Level Failure; and

- (B) the Supplier shall be entitled to invoice for the Call Off Contract Charges for the relevant Services affected by the Customer Cause,

in each case, to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause.

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

- (a) comply with its obligations under Clause 12 (Supplier Notification of Customer Cause); and
- (b) within ten (10) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a "**Relief Notice**") setting out details of:
 - (i) the Supplier Non-Performance;
 - (ii) the Customer Cause and its effect on the Supplier's ability to meet its obligations under this Call Off Contract; and
 - (iii) the relief claimed by the Supplier.

39.3 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier where necessary.

40. Force Majeure

40.1 Neither party shall be liable for any default in performing its obligations under this Call Off Contract if such default is due to a Force Majeure Event.

40.2 Either party may terminate this Call Off Contract with immediate effect, if the Force Majeure continues for a period of more than three (3) Months.

K. Termination and Exit Management

41. Customer Termination Rights

41.1 Termination in Relation to Guarantee

- (a) Where this Call Off Contract is conditional upon the Supplier procuring a Call Off Guarantee pursuant to Clause 4 (Call Off Guarantee), the Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where:
 - (i) the Call Off Guarantor withdraws the Call Off Guarantee for any reason whatsoever;
 - (ii) the Call Off Guarantor is in breach or anticipatory breach of the Call Off Guarantee;
 - (iii) an Insolvency Event occurs in respect of the Call Off Guarantor; or

- (iv) the Call Off Guarantee becomes invalid or unenforceable for any reason whatsoever,

and in each case the Call Off Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Customer; or

- (v) the Supplier fails to provide the documentation required by Clause 4.1 by the date so specified by the Customer.

41.2 Termination on Default

- (a) The Customer may terminate this Call Off Contract for Default by issuing a Termination Notice to the Supplier where:
 - (i) the Supplier fails to meet a Key Milestone by its corresponding Milestone Date;
 - (ii) the Supplier commits a Critical Service Level Failure;
 - (iii) the representation and warranty given by the Supplier pursuant to Clause 3.2(d) (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable;
 - (iv) as a result of any Defaults, the Customer incurs Losses in any Call Off Contract Year which exceed 80% (eighty per cent) of the value of the Supplier's aggregate annual liability limit for that Call Off Contract Year as set out in Clauses 36.2(a)(i)(A) and 36.2(a)(i)(B) (Financial Limits);
 - (v) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: 10 (Critical Service Level Failure), 17.6 (Records, Audit Access and Open Book Data), 20 (Promoting Tax Compliance), Clause 23.8(d) (Misconduct), 32.9 (Confidentiality), 53.6(b) (Prevention of Fraud and Bribery), paragraph 1.2(d) of the Annex to Part A and paragraph 1.2(d) of the Annex to Part B of Call Off Schedule 10 (Staff Transfer);
 - (vi) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy;
 - (vii) in the reasonable opinion of the Customer, the Supplier commits a Default of Clause 32 (Equality and Diversity) of the Framework Agreement or Clause 46 (Equality and Diversity) of this Call Off Contract;
 - (viii) the Supplier commits a material Default, which in the opinion of the Customer is capable of remedy but has not remedied such Default to the satisfaction of the Customer within twenty (20) Working Days of notice by the Customer.
- (b) For the purpose of Clause 41.2(a), a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

41.3 Termination in Relation to Financial Standing

- (a) The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Customer there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
 - (i) adversely impacts the Supplier's ability to supply the Services under this Call Off Contract; or
 - (ii) could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Services under this Call Off Contract.

41.4 Termination on Insolvency

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

41.5 Termination on Change of Control

- (a) The Supplier shall notify the Customer immediately if the Supplier undergoes or is intending to undergo a Change of Control (save for a bona fide internal re-structuring and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation or has taken place. The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier within six (6) Months of:
 - (i) being notified in writing that a Change of Control has occurred or is planned or in contemplation; or
 - (ii) where no notification has been made, the date that the Customer becomes aware that a Change of Control has occurred or is planned or is in contemplation,

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

41.6 Termination Without Cause

The Customer shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving written notice of at least the number of days stipulated, for the purposes of this Clause 41.6(a), in the Order Form or elsewhere in this Call Off Contract.

41.7 Termination in Relation to Framework Agreement

The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier if the Framework Agreement is terminated for any reason whatsoever.

41.8 Termination In Relation to Benchmarking

The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Call Off Schedule 12 (Benchmarking).

41.9 Customer Break Right

The Supplier acknowledges that Customer will be conducting a spending review during March 2021 to approve funding for the Services for the remainder of the Call Off Contract Period. If such funding is not approved, the Customer may terminate this Call Off Contract by issuing a

Termination Notice to the Supplier. The Parties agree that there shall be no termination payments or other Supplier costs payable by the Customer as a result of such termination.

41.10 Suspension and Partial Termination

- (a) Where the Customer has the right to terminate this Call Off Contract, the Customer shall be entitled to terminate or suspend all or part of this Call Off Contract provided always that, if the Customer elects to terminate or suspend this Call Off Contract in part, the parts of this Contract not terminated or suspended can, in the Customer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Call Off Contract.
- (b) Any suspension of this Call Off Contract under Clause 41.10(a) shall be for such period as the Customer may specify and shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.
- (c) The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the procedure set out in Clause 18 (Change), including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Call Off Contract Charges, provided that the Supplier shall not be entitled to:
 - (i) an increase in the Call Off Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause); or
 - (ii) reject the Variation.

42. Supplier Termination Rights

42.1 Termination on Customer Cause for Failure to Pay

- (a) The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract (in whole but not in part) if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract and the said undisputed sum due remains outstanding for ninety (90) Working Days (the "**Undisputed Sums Time Period**") after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:
 - (i) the Customer's failure to pay;
 - (ii) the correct overdue and undisputed sum;
 - (iii) the reasons why the undisputed sum is due; and
 - (iv) the requirement on the Customer to remedy the failure to pay, and

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 19.3 (Retention and Set Off).

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

43. Termination by either Party

Either Party may, by issuing a Termination Notice to the other Party terminate this Call Off Contract (in whole or in part), in accordance with Clause 40 (Force Majeure).

44. Consequences of Expiry or Termination

44.1 Where this Call Off Contract has been terminated pursuant to Clause 41.6 (Termination Without Cause), the Supplier shall:

- (a) take such steps as are necessary to terminate the provision of the Services or any part of the Services (including suspending or terminating any Sub-Contracts) in a cost-effective, timely and orderly manner;
- (b) provide to the Customer, not more than 60 days after the Customer notifies the Supplier of the termination of this Call Off Contract an account in writing with detailed supporting evidence, stating:
 - (i) any costs, if any, due before the date of termination, which cannot be avoided by the Supplier using reasonable endeavours; and
 - (ii) costs to be expended after the date of termination which the Supplier necessarily incurred in the proper performance of this Call Off Contract and which the Supplier cannot reasonably avoid or recover using reasonable endeavours;

and, subject to Approval, the Customer shall pay such amount stated pursuant to Clause 44.1(b) to the Supplier within 30 days of receipt from the Supplier of a Valid Invoice in respect of the amount due.

44.2 Where this Contract is terminated under Clause 41 (Customer Termination Rights) other than Clause 41.6 (Termination Without Cause) and the Customer makes other arrangements for the provision of Services the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period provided that the Customer shall take all reasonable steps to mitigate such additional expenditure.

44.3 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Call Off Contract for a continuing Force Majeure Event pursuant to Clause 40 (Force Majeure).

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

- (a) termination or expiry of this Call Off Contract (in whole or in part) shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- (b) termination of this Call Off Contract (in whole or in part) shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 17 (Records, Audit Access & Open Book Data), 28 (Intellectual Property Rights), 32

(Confidentiality), 33 (Freedom of Information) 34 (Protection of Personal Data), 36 (Liability), 44 (Consequences of Expiry or Termination), 54 (Severance), 57 (Entire Agreement), 59 (Third Party Rights) 61 (Dispute Resolution) and 62 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 9 (Exit Management) and Call Off Schedule 10 (Staff Transfer) and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

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

L. Miscellaneous and Governing Law

45. Health and Safety

- 45.1 The Supplier shall perform its obligations under this Call Off Contract (including those in relation to the Services) in accordance with:
 - (a) all applicable Law regarding health and safety; and
 - (b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer Premises.
- 45.2 Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Call Off Contract.
- 45.3 While on the Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Personnel and other persons working there and any instructions from the Customer on any necessary associated safety measures.

46. Equality and Diversity

- 46.1 The Supplier shall not unlawfully discriminate either directly or indirectly against protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010, the International Development (Gender Equality) Act 2014 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof ("**Equality Laws**").
- 46.2 The Supplier shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission or any successor organisation. The Supplier shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all suppliers, employees or agents of the Supplier and all suppliers and Sub-Contractors employed in the execution of this Call Off Contract.
- 46.3 The Supplier will comply with any request by the Customer to assist the Customer in meeting its obligations under the Equality Laws and to allow the Customer to assess the Supplier's compliance with its obligations under the Equality Laws.

- 46.4 Where any investigation is concluded or proceedings are brought under the Equality Laws which arise directly or indirectly out of any act or omission of the Supplier, its agents or Sub-Contractors, or Supplier Personnel, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier will indemnify the Customer with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Customer may have been ordered or required to pay to a third party.

47. Official Secrets Act and Finance Act

- 47.1 The Supplier shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) section 182 of the Finance Act 1989.

48. Environmental Requirements

- 48.1 The Supplier shall provide the Services and equipment required under this Call Off Contract in accordance with applicable national and international Laws, including those of the country or countries in which the Services and equipment are to be provided, and the Customer's environmental operations policy, which is to conserve energy, water and other resources, reduce waste, phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 48.2 The UK Government is committed to promoting a low carbon, high growth, global economy. The Supplier shall work with the Customer and the populations that are potentially affected by its operations under this Call Off Contract regarding any environmental issues that could affect the sustainable development provisions of the International Development Act 2002, comply with special conditions as stipulated in Call Off Schedule 2 (Services and Reporting) and carry out any reasonable additional request to ensure the protection of the environment, society and the economy throughout the Call Off Contract Period.
- 48.3 The Supplier shall ensure it has the requisite expertise and controls to identify and mitigate all factors that may affect compliance with the conditions outlined in Clauses 48.1 and 48.2 as a result of its own operations or those of Sub-Contractors working on its behalf.
- 48.4 The Supplier shall promptly notify the Customer of any changes in potential material adverse effects from its operations under this Call Off Contract and of the occurrence of any incident or accident related to the Services that has or is likely to have a significant adverse effect on the environment.
- 48.5 Nothing in Clauses 48.1 and 48.2 shall relieve the obligations of the Supplier to comply with its statutory duties and Good Industry Practice.

49. Anti-Terrorism Regulations

- 49.1 In accordance with the Terrorism Act 2000 and all subsequent regulations pursuant to this Act, the Supplier will assure itself to the best of its knowledge that UK funding, including financial assets or economic resources is not made available, either directly or indirectly to, or for the benefit of persons, groups or entities listed in accordance with European Council Regulation EC/2580/2001 (as amended) and/or the Terrorism (United Nations Measures) Orders 2009 of the United Kingdom, or contravene the provisions of those and any subsequent applicable terrorism legislation.

- 49.2 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, servants, agents or sub-contractors, or any person acting on their behalf, have at any time prior to the Call Off Commencement Date and/or during the term of this Call Off Contract appeared on the Home Office Proscribed Terrorist Organisations List.
- 49.3 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clauses 49.1 and/or 49.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or sub-contractors, or any person acting on their behalf has:
- (a) been subject to an investigation or prosecution which relates to an alleged infringement of these Clauses 49.1 and / or 49.2; or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts.
- 49.4 Where the Supplier or any of its Personnel, servants, agents or sub-contractors, or any person acting on their behalf, breaches any of the acts mentioned in Clauses 49.1 or 49.2 commits any offence under the Terrorism Act 2000, with or without the knowledge of the Supplier, in relation to this Call Off Contract or any other contract with the Crown, the Customer shall be entitled:
- (a) to terminate this Call Off Contract with immediate effect for material default by written notice to the Supplier and recover from the Supplier the amount of any Losses resulting from the termination; and
 - (b) to recover from the Supplier any other Losses sustained as a result of any breach of this Clause 49, whether or not the Framework Agreement and/or any Call Off Contract has been terminated.

50. Assignment, Novation and Delegation

- 50.1 The Supplier shall not assign, novate, Sub-Contract (save to the extent permitted by Clause 25) or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Call Off Contract or any part of it without Approval.
- 50.2 The Customer may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Call Off Contract or any part thereof to:
- (a) any other Contracting Body;
 - (b) any Central Government Body or any other body established by the Crown or under statute substantially in order to perform any of the functions that had previously been performed by the Customer; or
 - (c) any private sector body which substantially performs the functions of the Customer,
- and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 50.2.
- 50.3 A change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 50.4 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.

- 50.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a body which is not a Contracting Body or if a body which is not a Contracting Body succeeds the Customer (both "**Transferee**" in the rest of this Clause) the right of termination of the Customer in Clause 41.4 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause 41.4 (Termination on Insolvency) and to Supplier or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).
- 50.5 The Customer may delegate any or all of the day to day management of the Services (including the exercise of any of its rights and/or the performance of any of its obligations under this Call Off Contract) to a third party (the "**Contract Manager**") by notice in writing to the Supplier. The Customer shall specify in such notice the identity of the Contract Manager and the details of such delegation (including the rights and/or obligations which have been delegated). In such event the Supplier shall:
- (a) comply with any instructions from and the exercise of any rights by the Contract Manager which are in scope of the delegation;
 - (b) provide to the Contract Manager any information including notices or reports required under this Call Off Contract which are in scope of the delegation; and
 - (c) treat the Contract Manager's performance of any of the delegated obligations as performance by the Customer.
- 50.6 Notwithstanding any delegation to the Contract Manager in accordance with Clause 50.5, the Customer shall at all times remain responsible for the performance of any of its obligations under this Call Off Contract.

51. Waiver and Cumulative Remedies

- 51.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 60 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Call Off Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of it.
- 51.2 Unless otherwise provided in this Call Off Contract, rights and remedies under this Call Off Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

52. Relationship of the Parties

Except as expressly provided otherwise in this Call Off Contract, nothing in this Call Off Contract, nor any actions taken by the Parties pursuant to this Call Off Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

53. Prevention of Fraud and Bribery

- 53.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Call Off Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 53.2 The Supplier, their servants, agents or Sub-Contractors, or any person acting on their behalf shall not during the Call Off Contract Period:
 - (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 53.3 The Supplier shall during the Call Off Contract Period:
 - (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - (b) keep appropriate records of its compliance with its obligations under Clause 53.3(a) and make such records available to the Customer on request;
 - (c) if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call Off Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
 - (d) have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 53.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 53.1, or has reason to believe that it has or any of the Supplier Personnel have:
 - (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Contract has committed or attempted to commit a Prohibited Act.
- 53.5 If the Supplier makes a notification to the Customer pursuant to Clause 53.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant Documentation in accordance with Clause 16 (Records, Audit Access and Open Book Data).
- 53.6 If the Supplier breaches Clause 53.3, the Customer may by notice:

- (a) require the Supplier to remove from performance of this Call Off Contract any of the Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
- (b) immediately terminate this Call Off Contract for material Default.

53.7 Any notice served by the Customer under Clause 53.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

54. Severance

54.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Call Off Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected.

54.2 In the event that any deemed deletion under Clause 54.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

54.3 If the Parties are unable to resolve the Dispute arising under this Clause 54 within twenty (20) Working Days of the date of the notice given pursuant to Clause 54.2, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to this Clause 54.

55. Further Assurances

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Call Off Contract.

56. Conflict of Interest

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

56.2 The Supplier shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between its obligations to and Services undertaken for the Customer and those for other clients. The Supplier shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against the Customer, including conflicts of interest which are likely to prejudice their independence and objectivity in performing this Call Off Contract, howsoever arising.

56.3 The Supplier shall notify the Customer immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and its other obligations to the Customer and shall advise the Customer of how they intend to avoid such a conflict arising

or remedy such situation. The Supplier shall, subject to any obligations of confidentiality it may have to third parties, provide all information and assistance reasonably necessary (at the Supplier's cost) that the Customer may request of the Supplier in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with the Customer with the aim of avoiding a conflict or remedy a conflict.

- 56.4 The Customer shall have the right to require that the Supplier puts in place **"Ethical Walls"** and will ensure and satisfy the Customer that all information relating to this Call Off Contract and to the Services and Deliverables completed pursuant to it (to include all working papers, draft reports in both tangible and intangible form) are not shared or made available to other employees, suppliers or agents of the Supplier and that such matters are not discussed by the relevant staff with other employees, suppliers or agents of the Supplier.
- 56.5 In the event of a failure to maintain the Ethical Walls as described in Clause 56.4 arising during the course of this Call Off Contract, the Customer reserves the right to immediately terminate this Call Off Contract on giving written notice to the Supplier.
- 56.6 The Customer reserves the right to terminate this Call Off Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Call Off Contract. The action of the Customer pursuant to this Clause 56 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

57. Entire Agreement

- 57.1 This Call Off Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the subject matter of this Call Off Contract and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 57.2 Neither Party has been given, nor entered into this Call Off Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call Off Contract.
- 57.3 Nothing in this Clause 57 shall exclude any liability in respect of misrepresentations made fraudulently.

58. Joint Ventures/Unincorporated Consortiums

- 58.1 If the Supplier is a joint venture or an Unincorporated Consortium then each of the joint venture or Unincorporated Consortium partners shall bear joint and several liability where liability may arise in respect of the Supplier under this Call Off Contract.

59. Third Party Rights

- 59.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Call Off Schedule 10 (Staff Transfer) and the provisions of paragraph 9.9 of Schedule 9 (Exit Management) (together **"Third Party Provisions"**) confer benefits on persons named in such provisions other than the Parties (each such person a **"Third Party Beneficiary"**) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

- 59.2 Subject to Clause 59.1, a person who is not a Party to this Call Off Contract has no right under the CTRPA to enforce any term of this Call Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 59.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 59.4 Any amendments or modifications to this Call Off Contract may be made, and any rights created under Clause 59.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

60. Notices

- 60.1 Any notice to be given under this Call Off Contract must be in writing and may be given by fax, post or personal delivery. Notices to the Customer and the Supplier shall be sent to name, address and fax number set out in the Order Form, or to such other place or fax as the relevant Party shall have notified to the other pursuant to this Clause 60.
- 60.2 Any notice to be given shall be deemed effective (a) when actually received (if sent by fax) or (b) when left at the address mentioned above (if delivered personally) or (c) two (2) Working Days after posting by first class post addressed as required above (if given by post).

61. Dispute Resolution

- 61.1 The Parties will attempt in good faith to negotiate a settlement to any claim or dispute between them arising out of or in connection with this Call off Contract. If the matter is not resolved by negotiation within forty-five (45) days of when either Party first made contact in respect of the same, either Party may refer the dispute to mediation in accordance with CEDR (Centre for Effective Dispute Resolution in London, UK) procedures. If the Parties fail to agree terms of settlement within ninety (90) days of the initiation of the procedure the dispute may be referred to an arbitrator as agreed between the Parties or failing such agreement as may be nominated by the President of the Law Society of England and Wales upon application of any Party. The initiation of the procedure is defined as the written request to CEDR by any Party for mediation provided that such request is copied to the other Party.
- 61.2 The decision of the arbitrator shall be final and binding on the Parties.
- 61.3 The seat and place of arbitration shall be London.

62. Governing Law and Jurisdiction

- 62.1 This Call Off Contract and any issues, Disputes or claims (whether contractual or noncontractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 62.2 Subject to Clause 61 (Dispute Resolution) (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation. The submission to such jurisdiction will not (and will not be construed so as to) limit the right of the Customer to take proceedings against the Supplier in any other court of competent jurisdiction, nor will the taking of proceedings by the Customer in any one or more jurisdictions preclude the taking of proceedings by the Customer in any other jurisdiction, whether concurrently or not.

REDACTED

Schedule 1

Definitions

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

"Achieve" means the acceptance by the Customer that the Milestone has met the corresponding milestone achievement criteria as set out in the Project Plan and **"Achieved"**, **"Achieving"** and **"Achievement"** shall be construed accordingly;

"Achieved Profit Margin" the cumulative Supplier Profit Margin calculated from (and including) the Call Off Commencement Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to paragraph 9.3 of Schedule 3 (Call Off Contract Charges, Payment and Invoicing) to (and including) the last day of the previous Contract Year;

"Acquired Rights Directive" means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;

"Affected Party" means the party seeking to claim relief in respect of a Force Majeure;

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

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

"Approved Sub-Licensee" means any of the following:

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

"Auditor" means:

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

"Authority" means THE SECRETARY OF STATE for FOREIGN AND COMMONWEALTH AFFAIRS of the Foreign and Commonwealth Office, King Charles Street, London SW1A 2AH;

"BCDR Plan" means the plan prepared pursuant to paragraph 2 of Call Off Schedule 8 (Business Continuity and Disaster Recovery), as may be amended from time to time;

"Benchmark Report" means the report that is required to be prepared by the Benchmarker in accordance with paragraph 4 of Call Off Schedule 12 (Benchmarking);

"Benchmark Review" means a review of the Services carried out in accordance with Call Off Schedule 12 (Benchmarking) to determine whether these Services represent Good Value;

"Benchmarked Service" means a Service that the Customer elects to include in a Benchmark Review under paragraph 1.3 of Call Off Schedule 12 (Benchmarking);

"Benchmarker" an organisation on the list of organisations set out in Annex 1 of Call Off Schedule 12 (Benchmarking) which the Customer shall appoint to carry out the Benchmark Review;

"Call Off Commencement Date" means the date of commencement of this Call Off Contract set out in paragraph 1.1 of the Order Form;

"Call Off Contract" means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form and the Call Off Terms;

"Call Off Contract Charges" means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract, as set out in Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Call Off Contract less any Deductions;

"Call Off Contract Period" means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date;

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

"Call Off Expiry Date" means:

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

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

"Call Off Guarantee" means a deed of guarantee that may be required under this Call Off Contract in favour of the Customer in the form set out in Call Off Schedule 13 (Call Off Guarantee) and granted pursuant to Clause 4 (Call Off Guarantee);

"Call Off Guarantor" means the person, in the event that a Call Off Guarantee is required under this Call Off Contract, acceptable to the Customer to give a Call Off Guarantee and set out in the Order Form;

"Call Off Initial Period" means the initial term of this Call Off Contract from the Call Off Commencement Date to the end date of the initial term stated in the Order Form;

"Call Off Schedule" means a schedule to this Call Off Contract;

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

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

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

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

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

"Code" has the meaning given to it in Clause 33.5;

"Code of Conduct" means the code of conduct set out in paragraph 1 of Schedule 6;

"Commercially Sensitive Information" means the Confidential Information listed in the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;

"Comparable Supply" means the supply of Services to another customer of the Supplier that are the same or similar to the Services;

"Comparable Services" means Services to another customer of the Supplier that are the same or similar to the Services for the purposes of the Benchmark Review;

"Comparison Group" means the entities to be used in the Benchmark Review in accordance with paragraph 3 of the Call Off Schedule 12 (Benchmarking);

"Compensation for Critical Service Level Failure" has the meaning given to it in Clause 10.1(b) (Critical Service Level Failure);

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

"Contracting Body" means the Authority, the Customer and any other bodies listed in paragraph VI.3 of the OJEU Notice;

"Control" means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;

"Controller" has the meaning given in the GDPR;

"Conviction" means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;

"Costs" means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:

- (a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per FTE Day, of engaging the Supplier Personnel, including:
 - (i) base salary paid to the Supplier Personnel;
 - (ii) employer's national insurance contributions;
 - (iii) pension contributions;
 - (iv) car allowances;
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and
 - (ix) reasonable recruitment costs, as agreed with the Customer;
- (b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Customer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;
- (d) Reimbursable Expenses to the extent these are incurred in delivering any Services; but excluding:
- (e) Overhead;
- (f) financing or similar costs;
- (g) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Call Off Contract Period whether in relation to Supplier Assets or otherwise;
- (h) taxation;

- (i) fines and penalties;
- (j) amounts payable under Clause 21 (Benchmarking); and
- (k) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"Critical Service Level Failure" means any instance of critical service level failure specified in Annex 2 to Part A of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring);

"Crown" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

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

"CRTPA" means the Contracts (Rights of Third Parties) Act 1999;

"Customer" means the customer(s) identified in the Order Form;

"Customer Assets" means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Services;

"Customer Background IPR" means:

- (a) IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, software, processes and procedures;
- (b) IPRs created by the Customer independently of this Call Off Contract; and/or Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract;

"Customer Cause" means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Supplier;

"Customer Data" means:

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

"Customer Expenses Policy" means the Customer's expenses policy as notified to the Supplier from time to time in writing. The Customer Expenses Policy applicable on the Call Off Commencement Date is set out in Annex 3 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);

"Customer Policies" means the Customer's policies as notified to the Supplier by the Customer from time to time including the ICT Policy, the Customer Expenses Policy and the Security Policy;

"Customer Premises" means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (or any of them);

"Customer Property" means the property, other than real property and IPR, including any equipment issued or made available to the Supplier by the Customer in connection with this Call Off Contract;

"Customer Representative" means the representative appointed by the Customer from time to time in relation to this Call Off Contract;

"Customer Responsibilities" means the responsibilities of the Customer set out in the Part B of Call Off Schedule 4 (Project Plan, Customer Responsibilities and Key Personnel) and any other responsibilities of the Customer in the Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;

"Customer's Confidential Information" means:

- (a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR);
- (b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Call Off Contract; and
- (c) information derived from any of the above;

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

"Data Protection Impact Assessment" means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

"Data Protection Legislation" means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

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

"DPA 2018" means Data Protection Act 2018;

"Data Subject" has the meaning given in the GDPR;

"Data Protection Officer" has the meaning given in the GDPR;

"Deductions" means all Service Credits, Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;

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

"Delay" means:

- (a) a delay in the Achievement of a Milestone by its Milestone Date; or
- (b) a delay in the design, development or implementation of a Deliverable by the relevant date set out in the Project Plan;

"Delay Payments" means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in the Project Plan;

"Delay Period Limit" shall be the number of days specified in Part A of Call Off Schedule 4 (Project Plan, Customer Responsibilities and Key Personnel), for the purposes of 6.2(a)(ii)(B);

"Deliverable" means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Project Plan (if any) or at any other stage during the performance of this Call Off Contract;

"Delivery" means, in respect of Services, the time at which the Services have been provided or performed by the Supplier as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Call Off Contract and accepted by the Customer and "Deliver" and "Delivered" shall be construed accordingly;

"Disaster" means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable);

"Disaster Recovery Services" means the services embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster, as detailed further in Call Off Schedule 8 (Business Continuity and Disaster Recovery);

"Disclosing Party" has the meaning given to it in Clause 32.1 (Confidentiality);

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

"Dispute Notice" means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

"Dispute Resolution Procedure" means the dispute resolution procedure set out in Clause 61;

"Documentation" means all documentation as:

- (a) is required to be supplied by the Supplier to the Customer under this Call Off Contract;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;

- (c) is required by the Supplier in order to provide the Services; and/or
- (d) has been or shall be generated for the purpose of providing the Services;

"DOTAS" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

"Due Diligence Information" means any information supplied to the Supplier by or on behalf of the Customer prior to the Call Off Commencement Date;

"EL Provider" has the meaning given to it in clause 14.5 of this Call Off Contract;

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

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- (f) claims whether in tort, contract or statute or otherwise; or
- (g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"Employment Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

"Environmental Information Regulations or EIRs" means the Environmental Information Regulations 2004 together with any guidance and / or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations including any written environmental policy of the Customer;

"Equality Laws" has the meaning given to it in Clause 46.1;

"Equivalent Services Data" means the data derived from the Comparison Group for the purposes of the Benchmarking Review;

"Estimated Year 1 Call Off Contract Charges" means the sum in pounds estimated by the Customer to be payable by it to the Supplier as the total aggregate Call Off Contract Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year stipulated in the Order Form or elsewhere in this Call Off Contract;

"Expert Determination" means the decision by an expert selected by agreement of the Parties to whom a Dispute over whether the Benchmark has followed the procedure for the Benchmark Review will be referred in accordance with paragraph 4 of Call Off Schedule 12 (Benchmarking);

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

"Force Majeure Event" means any event outside the reasonable control of either Party affecting its performance of its obligations under this Call Off Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel, servants, agents or sub-contractors, or any person acting on their behalf or any other failure in the Supplier's or a Sub-Contractor's supply chain;

"Former Supplier" means a supplier supplying the Services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

"Framework Agreement" means the framework agreement between the Authority and the Supplier referred to in the Order Form;

"Framework Commencement Date" means the date of commencement of the Framework Agreement as stated in the Call Off Schedule 1 (Definitions);

"Framework Period" means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;

"Framework Schedule" means a schedule to the Framework Agreement;

"Fraud" means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;

"FTE Day" means seven and a half (7.5) FTE Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;

"FTE Hours" means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks; **"GDPR"** means the General Data Protection Regulation (Regulation (EU) 2016/679);

"General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013 and; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"General Change in Law" means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;

"Good Industry Practice" means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Customer, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

"Good Value" in relation to a Benchmarked Service means that:

- (a) having taken into account the Service Levels, the value for money of the Call Off Contract Charges attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and
- (b) any Service Levels applicable to that Benchmarked Service are, having taken into account the Call Off Contract Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data;

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

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others;

"HM Government Cyber Essentials Scheme" means the scheme as more particularly described at <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview> and as amended from time to time;

"HMRC" means Her Majesty's Revenue and Customs;

"ICT Policy" means the Customer's ICT policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;

"Impact Assessment" has the meaning given to it in Clause 18.1(c) (Variation Procedure);

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

"Insolvency Event" means, in respect of the Supplier or Call Off Guarantor (as applicable):

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) where the Supplier or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- (i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

"Intellectual Property Rights" or "IPR" means

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

"IPR Claim" means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or contained within the Deliverables or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations under this Call Off Contract;

"Key Milestone" means a Milestone identified as such in the Project Plan;

"Key Performance Indicators" or "KPIs" means a set of quantifiable measures that the Authority and Supplier will use to measure the Supplier's performance under the Framework Agreement (as defined in Framework Schedule 3 (Key Performance Indicators));

"Key Personnel" means the individuals (if any) identified as such in Part C of Call Off Schedule 4 (Project Plan, Customer Responsibilities and Key Personnel);

"Key Role(s)" has the meaning given to it in Clause 22.1 (Key Personnel);

"Key Sub-Contract" means each Sub-Contract with a Key Sub-Contractor;

"Key Sub-Contractor" means any Sub-Contractor:

- (a) which, in the opinion of the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or
- (b) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;

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

"Law" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

"LED" means the Law Enforcement Directive (Directive (EU) 2016/680)

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

"Misconduct" has the meaning given to it in Clause 23.8(a);

"MREL Providers" has the meaning given to it in Clause 14.5;

"MREL System" has the meaning given to it in Clause 14.4;

"MR Provider" has the meaning given to it in Clause 14.5;

"Maximum Day Rate(s)" means the maximum day rate applicable to the provision of the Services set out in Framework Schedule 5 (Maximum Day Rates and Charging Structure);

"Maximum Permitted Profit Margin" means the maximum profit margin that the Supplier shall be entitled to achieve during the Call Off Contract Period as set out in the Order Form;

"Milestone" means an event or task described in the Project Plan which, if applicable, must be completed by the relevant Milestone Date;

"Milestone Date" means the target date set out against the relevant Milestone in the Project Plan by which the Milestone must be Achieved;

"Milestone Payment" means a payment identified in the Project Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;

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

"Occasion of Tax Non-Compliance" means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or

- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a civil penalty for fraud or evasion;

"Open Book Data" means complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Call Off Contract Charges already paid or payable and Call Off Contract Charges forecast to be paid during the remainder of this Call Off Contract, including details and all assumptions relating to:

- (a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs);
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) the unit costs and quantity of any consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin;
 - (iv) Reimbursable Expenses;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier Profit achieved over the Call Off Contract Period and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Service Period.

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

"Order Form" means the form, as completed and forming part of this Call Off Contract, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;

"Other Supplier" means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;

"Overhead" means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding

allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of **"Costs"**;

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

"Performance Monitoring System" has the meaning given to it in paragraph 1.1(b) in Part B of Schedule 5 (Service Levels, Service Credits and Performance Monitoring);

"Performance Monitoring Reports" has the meaning given to it in paragraph 3.1 of Part B of Schedule 5 (Service Level, Service Credit and Performance Monitoring);

"Personal Data" has the meaning given in the GDPR;

"Personal Data Breach" has the meaning given in the GDPR;

"Processor" has the meaning given in the GDPR;

"Prohibited Act" means any of the following:

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

"Project Plan" means the plan set out in the Order Form for implementation of the Services;

"Project Specific IPR" means:

- (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including any database schema; and/or
- (c) IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same;

but shall not include the Supplier Background IPR;

"Prosperity Fund" has the meaning given to it in the Introduction to the Framework Agreement;

"Protective Measures" means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

"Recipient" has the meaning given to it in Clause 32.1 (Confidentiality);

"Registers" has the meaning given to in paragraph 1.1 of Call Off Schedule 9 (Exit Management);

"Regulations" means the Public Contracts Regulations 2006 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;

"Reimbursable Expenses" means the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Customer Expenses Policy current from time to time, but not including:

- (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Customer otherwise agrees in advance in writing; and
- (d) Subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed

"Relevant Authorities" has the meaning given to it in Clause 23.8(b)(ii);

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

"Relevant Individual" has the meaning given to it in Clause 23.8(a);

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

"Relevant Tax Authority" means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;

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

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

"Relief Notice" has the meaning given to it in Clause 39.2(b) (Supplier Relief Due to Customer Cause);

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

"Replacement Sub-Contractor" means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);

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

"Reports" means the reports to be provided by the Supplier to the Customer as referred to Part B of Call Off Schedule 2 (Services and Reporting);

"Request for Information" means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;

"Security Management Plan" means the Supplier's security management plan prepared pursuant to paragraph 4 of Call Off Schedule 7 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 4 of Call Off Schedule 7 (Security) and as updated from time to time;

"Security Policy" means the Customer's security policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;

"Security Policy Framework" the HMG Security Policy Framework (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf);

"Service Credit Cap" has the meaning given to it in paragraph 7 of Part A of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring);

"Service Credits" means any service credits specified in Annex 1 to Part A of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring) being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels;

"Service Failure" means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;

"Service Level Failure" means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;

"Service Level Performance Criteria" has the meaning given to it in paragraph 4.2 of Part A of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring);

"Service Level Performance Measure" shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring);

"Service Level Threshold" shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring);

"Service Levels" means any service levels applicable to the provision of the Services under this Call Off Contract specified in Annex 1 to Part A of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring);

"Service Period" has the meaning given to in paragraph 5.1 of Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring);

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

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

"Services" means the services to be provided by the Supplier to the Customer as referred to Part A of Call Off Schedule 2 (Services and Reports);

"Sexual Abuse" means the physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions, and all sexual activity with someone under the age of 18, regardless of the age of majority or age of consent under the laws of the territory in which it takes place and regardless of any mistaken belief (by the relevant individual) as to the age of a child, shall constitute Sexual Abuse;

"Sexual Exploitation" means any abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including profiting monetarily, socially, or politically from sexual exploitation of another;

"Sexual Harassment" means any unwelcome sexual advances (with or without touching), including requests for sexual favours, or other verbal or physical behaviour of a sexual nature, which may create a hostile or offensive environment;

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

- (a) the Services are (or are to be) provided; or
- (b) the Supplier manages, organises or otherwise directs the provision or the use of the Services as listed in the Order Form.

"Specific Change in Law" means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;

"Staffing Information" has the meaning given to it in paragraph 1 of Call Off Schedule 10 (Staff Transfer);

"Standards" means any:

- (a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
- (b) standards detailed by the Customer in paragraph 2 of Call Off Schedule 6 (Code of Conduct and Standards) or agreed between the Parties from time to time;
- (c) relevant Government codes of practice and guidance applicable from time to time.

"Sub-Contract" means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the provision of the Services or any part thereof;

"Sub-Contractor" means any third party engaged by the Supplier, including any Key Sub-Contractor, from time to time under a Sub-Contract permitted pursuant to the Framework Agreement and this Call Off Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;

"Sub-processor" means any third Party appointed to process Personal Data on behalf of the Supplier related to this Call Off Contract;

"Supplier" means the person, firm or company with whom the Customer enters into this Call Off Contract as identified in the Order Form;

"Supplier Assets" means all assets and rights used by the Supplier to provide the Services in accordance with this Call Off Contract but excluding the Customer Assets;

"Supplier Background IPR" means

- (a) Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Supplier independently of this Call Off Contract which in each case is or will be used before or during the Term for designing, implementing or providing the Services,

"Supplier Equipment" means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Call Off Contract;

"Supplier Non-Performance" has the meaning given to it in Clause 39.1 (Supplier Relief Due to Customer Cause);

"Supplier Personnel" means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;

"Supplier Profit" means, in relation to a period or a Milestone (as the context requires), the difference between the total Call Off Contract Charges (in nominal cash flow terms but excluding any Deductions) and Total Delivery Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;

"Supplier Profit Margin" in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Call Off Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;

"Supplier Representative" means the representative appointed by the Supplier named in the Order Form;

"Supplier's Confidential Information" means

- (a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier;
- (b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Call Off Contract; or
- (c) information derived from any of the above.

"Template Call Off Terms" means the template terms and conditions in Attachment 2 of Framework Schedule 9 (Template Order Form and Template Call Off Terms);

"Template Order Form" means the template order form in Attachment 1 of Framework Schedule 9 (Template Order Form and Template Call Off Terms);

"Tender" means the tender submitted by the Supplier to the Customer;

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

"Third Party Beneficiary" has the meaning given in Clause 59.1(Third Party Rights);

"Third Party Provisions" has the meaning given in Clause 59.1(Third Party Rights);

"Third Party IPR" means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Services;

"Total Retained Fees" means that element of the Call Off Contract Charges paid by the Customer to the Supplier subject to Annex 4 of Schedule 3 of these Call Off Terms;

"Transferring Customer Employees" means those employees of the Customer and/or the Customer's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date;

"Transferring Former Supplier Employees" means those former employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date;

"Transferring Supplier Employees" means those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

"Undelivered Services" has the meaning given to it in Clause 7.4;

"Unincorporated Consortium" means groups of economic operators, including temporary associations, may participate in procurement procedures and shall not be required by contracting authorities to have a specific legal form in order to submit a tender or request to participate ([The Public Contracts Regulations 2015 – Economic Operators 19.3](#));

"Upper Quartile" means the top twenty five percent of data derived from the Equivalent Services Data for the purposes of the Benchmarking Review;

"Valid Invoice" means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 6 (Invoicing Procedure) of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);

"Variation" has the meaning given to it in Clause 18.1 (Variation Procedure);

"Variation Form" means the form set out in Call Off Schedule 11 (Variation Form);

"Variation Procedure" means the procedure set out in Clause 18.1 (Variation Procedure);

"VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994 and all the then current VAT rules and regulations pertaining to such Act;

"Warranty Period" means the period defined as such in the Order Form;

"Worker" means any one of the Supplier Personnel which the Customer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 0712 – Tax Arrangements of Public Appointees <https://www.gov.uk/government/publications/procurement-policy-note-0712-tax-arrangements-of-public-appointees> applies in respect of the Services; and

"Working Day" means any Day other than a Saturday or Sunday or public holiday in England and Wales.

REDACTED

Schedule 2

Services and Reporting

Services and Reporting are as stated in the Order Form.

REDACTED

Schedule 3

Call Off Contract Charges, Payment and Invoicing

1. General Provisions

1.1 This Call Off Schedule details:

- (a) the Call Off Contract Charges for the Services under this Call Off Contract;
- (b) the payment terms/profile for the Call Off Contract Charges;
- (c) the invoicing procedure; and
- (d) the procedure applicable to any adjustments of the Call Off Contract Charges.

2. Call Off Contract Charges

2.1 The Call Off Contract Charges which are applicable to this Call Off Contract are set out in Annex 1 of this Call Off Schedule.

2.2 The Supplier acknowledges and agrees that:

- (a) in accordance with paragraph 1 (General Provisions) of Framework Schedule 5 (Maximum Day Rates and Charging), the Call Off Contract Charges which are based on day rates can in no event exceed the Maximum Day Rates set out in Annex 1 to Framework Schedule 5 (Maximum Day Rates and Charging); and
- (b) the Call Off Contract Charges cannot be increased during the Call Off Contract Period apart from that exception noted in the Statement of Requirements relating to indexation and Contract Year 4.

3. Costs and Expenses

3.1 Except as expressly set out in paragraph 4 of this Call Off Schedule (Reimbursable Expenses) (where Reimbursable Expenses apply), the Call Off Contract Charges include all costs and expenses relating to the Services and/or the Supplier's performance of its obligations under this Call Off Contract and no further amounts shall be payable by the Customer to the Supplier in respect of such performance, including in respect of matters such as:

- (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges;
- (b) the cost of salary, overseas inducements, leave allowances, bonuses, profit, taxes, insurances, superannuation, non-working days and all other costs including clothing, passports, visas and vaccinations, overheads and expenses of whatsoever nature that may be incurred by the Supplier in the delivery of the Services; or
- (c) any amount for any services provided or costs incurred by the Supplier prior to the Call Off Commencement Date.

4. Reimbursable Expenses

- 4.1 Where the Order Form states that Reimbursable Expenses are separately recoverable, the Supplier shall be entitled to be reimbursed by the Customer for Reimbursable Expenses (in addition to being paid the relevant Call Off Contract Charges under this Call Off Contract),
- 4.2 provided that such Reimbursable Expenses are supported by Supporting Documentation and are in line with the Customer Expenses Policy.
- 4.3 The Customer Expenses Policy as at the Call Off Commencement Date is set out in Annex 3 of this Schedule. The Customer may update its Customer Expenses Policy from time to time on notice in writing to the Supplier and such updated Customer Expenses Policy shall apply from the date of such notice.

5. Payment Terms/Payment Profile

- 5.1 The payment terms/profile which are applicable to this Call Off Contract are set out in Annex 2 of this Call Off Schedule.
- 5.2 All payments shall be made in sterling in the UK. Reimbursable Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in OANDA (www.oanda.com) on the Friday immediately preceding the date on which the purchase was made or services acquired by the Supplier or, if this took place on a Friday, at the rate so stated on that date.

6. Invoicing Procedure

- 6.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Customer in paragraph 6.6 of this Call Off Schedule and in accordance with the provisions of this Call Off Contract.
- 6.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Customer may specify):
- (a) contains:
 - (b) all appropriate references, including the unique Order reference number as set out in the Order Form; and
 - (c) a detailed breakdown of the Delivered Services, including the Milestone(s) (if any) and Deliverable(s) within this Call Off Contract to which the Delivered Services relate, against the applicable due and payable Call Off Contract Charges; and
 - (d) shows separately:
 - (e) any Service Credits due to the Customer; and
 - (f) the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 6.2(a) of this Call Off Contract (VAT) and the tax point date relating to the rate of VAT shown; and
 - (g) is supported by any other documentation reasonably required by the Customer to substantiate that the invoice is a Valid Invoice.

- 6.3 If the Customer, acting in good faith, has a dispute in respect of any invoice, the Customer shall be entitled to withhold payment of the disputed amount, provided that it has notified the Supplier of the disputed amount and the nature of the dispute prior to the due date for payment of the invoice, and has paid any undisputed portion of the invoice to the Supplier. The parties will negotiate in good faith to resolve the dispute, and, failing resolution within five (5) Working Days after receipt by the Supplier of the Customer's notification, the dispute will be referred to the
- 6.4 Dispute Resolution Procedure. In the event of such dispute, the Supplier shall continue to perform all its obligations under this Call Off Contract notwithstanding any withholding or reduction in payment by the Customer.
- 6.5 The Supplier shall accept the Government Procurement Card as a means of payment for the Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.
- 6.6 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- 6.7 The Supplier shall submit invoices directly to the address as set out in the Order Form.

7. Supplier Periodic Assessment of Call Off Contract Charges

- 7.1 Every six (6) Months during the Call Off Contract Period, the Supplier shall assess the level of the Call Off Contract Charges to consider whether it is able to reduce them.
- 7.2 Such assessments by the Supplier under paragraph 7 of this Call Off Schedule shall be carried out on 1 May and 1 December in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Call Off Contract Charges it shall promptly notify the Customer in writing and such reduction shall be implemented in accordance with the Change Control Procedure.

8. Payment by Results

N/A

9. Limit On Supplier Profit Margin

- 9.1 The Supplier acknowledges that the Achieved Profit Margin applicable over the Call Off Contract Period shall not exceed the Maximum Permitted Profit Margin capped at the Margin / Surplus rates per day provided for each identified individual in the Staff Rates worksheet of the Pricing Schedule (column H) as provided in Part 1 Section D Annex 1.
- 9.2 At the end of the Contract Year the Supplier shall report on its Achieved Profit Margin. If the Achieved Profit Margin as at the end of the Contract Year exceeds the Maximum Permitted Profit Margin per day provided for each identified individual:
- (a) the Supplier shall, within 5 Working Days of the end of the Contract Year, propose such adjustments to the Call Off Contract Charges as will ensure that the Achieved Profit Margin both over the next Contract Year will relate and over the remainder of the Call Off

Contract Period will not exceed the Maximum Permitted Profit Margin per day provided for each identified individual;

- (b) the Customer (acting reasonably) may agree or reject the proposed adjustments;
- (c) if the Customer rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within 10 Working Days of receiving those reasons; and
- (d) if the Parties cannot agree such revised adjustments, the Customer shall be permitted to terminate this Call Off Contract on written notice to the Supplier.

9.3 Once the adjustments to the Charges are agreed in accordance with paragraph 9.1, the Parties shall document the adjustment in a Variation Form and the adjusted Charges shall apply with effect from the first day of the month that immediately follows the month in which the Variation is executed or such other date as is specified in the Variation Form.

10. Implementation Phase Call Off Contract Charges

10.1 As part of the Tender, the Supplier has agreed that the Call Off Contract Charges during the Implementation Phase shall not exceed the Total Delivery Cost, unless formally varied by the Customer.

10.2 The Total Delivery Cost is based on information provided by the Customer which is set out in the Customer's invitation to tender for the Services dated as set out in the Order Form (the "**Relevant Information**").

10.3 Prior to completion of the Inception Phase, the Supplier shall notify the Customer in writing if:

- (a) the requirements for the Implementation Phase which have been developed by the Supplier as part of the Inception Phase; and/or
- (b) changes to the Relevant Information during the Inception Phase,

will result in the Call Off Contract Charges for the Implementation Phase exceeding the Total Delivery Cost.

10.4 In such event, the Supplier shall at the same time as providing written notice:

- (a) provide all necessary supporting documentation and information to justify the additional costs associated with the Services during the Implementation Phase; and
- (b) provide an alternative proposal(s) for the Services during the Implementation Phase which will result in the Call Off Contract Charges for such Services remaining less than or equal to the Total Delivery Cost.

10.5 Where required the Supplier shall provide any additional information reasonably requested by the Customer and/or will meet with the Customer to discuss the increase in the Call Off Contract Charges and reasons for it. Any dispute about the revised Call Off Contract Charges shall be managed in accordance with the Dispute Resolution Procedure.

10.6 Where the Customer agrees that such increase in the Call Off Contract Charges is reasonable and justified by objective factors that could not reasonably have been in the contemplation of the Supplier at the time of the Tender, the Parties shall amend this Call Off Contract to reflect the revised Call Off Contract Charges through the Change Control Procedure.

10.7 The Parties agree that:

- (a) no amendments to this Call off Contract shall be made as a result of this paragraph 10 which alter the overall nature of the Call Off Contract; and
- (b) the increase in Call Off Contract Charges during the Implementation Phase shall not exceed the value as a per cent of the Total Delivery Cost as set out in the Order Form.

10.8 For the purposes of this paragraph 10, "Inception Phase" and "Implementation Phase" shall have the meaning given them in Schedule 2 (Services and Reporting).

REDACTED

Annex 3

Customer Expenses Policy

Travel, subsistence and accommodation

See Statement of Requirements.

REDACTED

Annex 4

N/A

REDACTED

Schedule 4

Project Plan, Customer Responsibilities, and Key Personnel
are as stated in the Order Form.

REDACTED

Schedule 5

Service Levels, Service Credits and Performance Monitoring

1. Scope

- 1.1 This Call Off Schedule 5 (Service Levels, Service Credits and Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Services, the mechanism by which Service Level Failures will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.
- 1.2 This Call Off Schedule comprises:
- (a) Part A: Service Levels and Service Credits;
 - (b) Annex 1 to Part A - Service Levels and Service Credits Table;
 - (c) Annex 2 to Part A –Service Level Failures;
 - (d) Part B: Performance Monitoring; and
 - (e) Annex 1 to Part B: Additional Performance Monitoring Requirements.

Part A: Service Levels and Service Credits

2. General Provisions

- 2.1 The Supplier shall provide a proactive Call Off Contract manager to ensure that all Service Levels in this Call Off Contract and Key Performance Indicators in the Framework Agreement are achieved to the highest standard throughout the Call Off Contract Period and the Framework Period respectively.
- 2.2 The Supplier shall provide a managed service through the provision of a dedicated Call Off Contract manager where required on matters relating to:
- (a) Supply performance;
 - (b) Quality of Services;
 - (c) Customer support;
 - (d) Complaints handling; and
 - (e) Accurate and timely invoices.
- 2.3 The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Call Off Schedule will result in Service Credits being issued to Customers.

3. Principal Points

The objectives of the Service Levels and Service Credits are to:

- (a) ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
- (b) provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to Deliver the level of service for which it has contracted to Deliver; and
- (c) incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.

4. Service Levels

4.1 Annex 1 to this Part A of this Call Off Schedule sets out the Service Levels the performance of which the Parties have agreed to measure.

4.2 The Supplier shall monitor its performance of this Call Off Contract by reference to the relevant performance criteria for achieving the Service Levels (otherwise referred to as Key Performance Indicators, or KPIs) shown in Annex 1 to this Part A of this Call Off Schedule (the "**Service Level Performance Criteria**") and shall send the Customer a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Call Off Schedule.

4.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Levels are achieved.

4.4 If the level of performance of the Supplier of any element of the provision by it of the Services during the Call Off Contract Period:

- (a) is likely to or fails to meet a Green Score of any Service Level Performance Measure; or
- (b) is likely to cause or causes a Red Score to occur,

the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause 9 (Service Levels and Service Credits), may:

- (i) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a Red or Amber Score occurring again for the same performance management criteria through production of a Remediation Plan; and
- (ii) if a Red Score, or a Service Level Failure has occurred, deduct from the Call Off Contract Charges the applicable Service Level Credits payable by the Supplier to the Customer in accordance with the calculation formula set out in Annex 1 of this Part A of this Call Off Schedule;

5. Service Credits

5.1 Annex 1 to this Part A of this Call Off Schedule sets out the formula used to calculate a Service Credit payable to the Customer as a result of a Service Level Failure in a given service period

which, for the purpose of this Call Off Schedule, shall be a recurrent period of one quarter during the Call Off Contract Period (the "**Service Period**").

- 5.2 Annex 1 to this Part A of this Call Off Schedule includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Supplier.
- 5.3 The Customer shall use the Performance Monitoring Reports supplied by the Supplier under Part B (Performance Monitoring) of this Call Off Schedule to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 5.4 Service Credits are a reduction of the amounts payable in respect of the Services 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 Annex 1 of Part A of this Call Off Schedule.

6. Nature of Service Credits

The Supplier confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Call Off Contract Charges. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

7. Service Credit Cap

- 7.1 For the purposes of this Call Off Contract the **Service Credit Cap** means: a cap of 20% of total quarterly invoice deductions payable to the Supplier under this Call Off Contract.

Annex 1 to Part A: Service Levels and Service Credits Table

is as stated in the Order Form.

Annex 2 to Part A: Service Level Failure

Part B: Performance Monitoring

1. Principal Points

- 1.1 Part B to this Call Off Schedule provides the methodology for monitoring the provision of the Services:
- (a) to ensure that the Supplier is complying with the Service Levels; and
 - (b) for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services ("**Performance Monitoring System**").
- 1.2 The Supplier shall provide the Customer 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.

2. Reporting of Service Failures

The Supplier shall report all failures to achieve Service Levels and any Service Level Failures to the Customer in accordance with the processes agreed in paragraph 1.2 of Part B of this Call Off Schedule above.

3. Performance Monitoring and Performance Review

- 3.1 The Supplier shall provide the Customer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to this Call Off Schedule Statement of Requirements .
- 3.2 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
- (a) take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
 - (b) take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
 - (c) be attended by the Supplier Representative and the Customer Representative; and
 - (d) be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier Representative and the Customer Representative at each meeting.
- 3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.

- 3.4 The Supplier shall provide to the Customer such supporting documentation as the Customer 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 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Call Off Contract.
- 4.3 All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 13 of this Call Off Contract (Continuous Improvement).

REDACTED

5. Code of Conduct

Part A: Non-Programme Spend

Not used

Part B: Programme Spend

- 5.1 The Supplier shall comply with this Code of Conduct and any changes made to the Code of Conduct from time to time by the Customer.
- 5.2 The Supplier shall submit a Declaration of Compliance, as set out at Appendix B (Declaration of Compliance) of this Schedule, on the Call-Off Effective Date and thereafter annually on the via the Customer's eSourcing Portal.
- 5.3 The Customer shall notify the Supplier during any Call-Off, made pursuant to this Framework Agreement, of the level of compliance required for the Call-Off, the level of compliance to be determined at the sole discretion of the Customer and taking into consideration the risk and value of the Services.
- 5.4 The Supplier shall ensure that the evidence outlined in Appendix A (Compliance Level Matrix) to this Annex for the required level of compliance is made available at the Call-Off stage where appropriate and at the frequency set out herein. The Customer reserves the right to request further evidence demonstrating the Supplier's compliance with the Code and to conduct spot checks from time-to-time.

6. Compliance Area 1: Value for Money and Governance

- 6.1 Value for Money is an essential requirement of all Customer commissioned work. All suppliers must seek to maximise results, whilst driving cost efficiency, throughout the life of commissioned programmes. This includes budgeting and pricing realistically and appropriately to reflect delivery requirements and levels of risk over the life of the programme. It also includes managing uncertainty and change to protect value in the often challenging environments that we work in.
- 6.2 Suppliers must demonstrate that they are pursuing continuous improvement to reduce waste and improve efficiency in their internal operations and within the delivery chain. The Customer expects suppliers to demonstrate openness and honesty and to be realistic about capacity and capability at all times, accepting accountability and responsibility for performance along the full delivery chain, in both every-day and exceptional circumstances.
- 6.3 Specific requirements include:
 - (a) Provision of relevant VfM and governance policies and a description of how these are put into practice to meet the Customer's requirements (e.g. codes on fraud and corruption, due diligence);
 - (b) A transparent, open book approach, which enables scrutiny of value for money choices, applies pricing structures that align payments to results and reflects an appropriate balance of performance risk;
 - (c) Processes for timely identification and resolution of issues and for sharing lessons learned.

7. Compliance Area 2: Ethical Behaviour

- 7.1 Suppliers and their Sub-Contractors act on behalf of government and interact with citizens, public sector/third sector organisations and the private sector. These interactions must therefore meet the highest standards of ethical and professional behaviour that upholds the reputation of government.
- 7.2 Arrangements and relationships entered into, whether with or on behalf of the Customer, must be free from bias, conflict of interest or the undue influence of others. Particular care must be taken by staff who are directly involved in the management of a programme, procurement, contract or relationship with the Customer, where key stages may be susceptible to undue influence. In addition, Suppliers and their Sub-Contractors must not attempt to influence an Customer member of staff to manipulate programme monitoring and management to cover up poor performance.
- 7.3 Suppliers and their Sub-Contractors must declare to the Customer any instances where it is intended that any direct or delivery chain staff members will work on Customer funded business where those staff members have any known conflict of interest or where those staff members have been employed by the Crown in the preceding two years. Suppliers and their Sub-Contractors must provide proof of compliance with the HMG approval requirements under the Business Appointment Rules.
- 7.4 Suppliers and their Sub-Contractors must have the following policies and procedures in place:
- (a) recruitment policy (which must address circumstances where there may be potential or actual conflict of interest);
 - (b) ongoing conflict of interest, mitigation and management;
 - (c) refresher ethical training and staff updates (including awareness of modern day slavery and human rights abuses);
 - (d) a workforce whistleblowing policy;
 - (e) procedures setting out how, staff involved in FCO funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to FCO's Anti-Fraud and Corruption Unit (AFCU) at afcu@fco.gov.uk or on +44(0)7771 573944/ +44(0)7881 249938.

8. Compliance Area 3: Transparency and Delivery Chain Management

- 8.1 The Customer requires full delivery chain transparency from all suppliers. All delivery chain partners must adhere to wider HMG policy initiatives including the support of micro, small and medium sized enterprises (MSMEs), prompt payment, adherence to human rights and modern slavery policies and support for economic growth in developing countries.
- 8.2 Suppliers must engage their delivery chain supply partners in a manner that is consistent with the Customer's treatment of its Suppliers. This includes, but is not limited to: pricing; application of delivery chain risk management processes; and taking a zero tolerance approach to tax evasion, corruption, bribery and fraud in subsequent service delivery or in partnership agreements.
- 8.3 Specific requirements for Suppliers include:
- (a) provide assurance to the Customer that the policies and practices of their delivery chain supply partners and affiliates are aligned to this Code;

- (b) maintaining and sharing with the Customer up-to-date and accurate records of all downstream partners in receipt of Customer funds and/or Customer funded inventory or assets. This should map how funds flow from them to end beneficiaries and identify risks and potential risks along the delivery chain;
- (c) ensuring delivery chain partner employees are aware of the FCO's Anti-Fraud and Corruption Unit (AFCU) and how to contact them at afcu@fco.gov.uk or on +44(0)7771 573944/ +44(0)7881 249938;
- (d) publication of Customer funding data in accordance with the International Aid Transparency Initiative (IATI)⁴; and
- (e) Suppliers shall adhere to HMG prompt payment policy⁵ and shall not use restrictive exclusivity agreements with sub-partners.

9. Compliance Area 4: Environmental Issues

- 9.1 Suppliers must be committed to high environmental standards, recognising that the Customer's activities may change the way people use and rely on the environment, or may affect or be affected by environmental conditions. Suppliers must demonstrate they have taken sufficient steps to protect the local environment and community they work in, and to identify environmental risks that are imminent, significant or could cause harm or reputational damage to the Customer.
- 9.2 Commitment to environmental sustainability may be demonstrated by:
 - (a) formal environmental safeguard policies in place;
 - (b) publication of environmental performance reports on a regular basis; and
 - (c) membership or signature of relevant Codes, both directly and within the delivery chain such as conventions, standards or certification bodies (e.g. the Extractive Industries Transparency Initiative⁶).

10. Compliance Area 5: Terrorism and Security

- 10.1 Suppliers must implement due diligence processes to provide assurance that UK Government funding is not used in any way that contravenes the provisions of applicable terrorism legislation.
- 10.2 Specific requirements:
 - (a) Suppliers must safeguard the integrity and security of their IT and mobile communications systems in line with the HMG Cyber Essentials Scheme⁷. Award of the Cyber Essentials or Cyber Essential Plus badges would provide organisational evidence of meeting the UK Government-endorsed standard;

⁴ <https://www.aidtransparency.net/>

⁵ <https://www.gov.uk/guidance/prompt-payment-policy>

⁶ <https://eiti.org/>

⁷ <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

- (b) Suppliers who manage aid programmes with a digital element must adhere to the global Principles for Digital Development⁸, which sets out best practice in technology-enabled programmes
- (c) Ensure that Customer funding is not linked to terrorist offences, terrorist activities or financing.

11. Compliance Area 6: Safeguarding, Social Responsibility and Human Rights

- 11.1 Safeguarding, social responsibility and respect for human rights are central to the Customer's expectations of its Suppliers. Suppliers must ensure that robust procedures are adopted and maintained to eliminate the risk of poor human rights practices within their complex delivery chain environments funded by the Customer. These practices include sexual exploitation, abuse and harassment; all forms of child abuse and inequality or discrimination on the basis of race, gender, age, religion, sexuality, culture or disability. Suppliers must place an emphasis on the control of these and further unethical and illegal employment practices, such as modern day slavery, forced and child labour and other forms of exploitative and unethical treatment of workers and aid recipients. The Customer will expect a particular emphasis on management of these issues in high risk fragile and conflict affected states (FCAS), with a focus on ensuring remedy and redress if things go wrong.
- 11.2 Specific requirements:
- (a) Development and proof of application and embedding of a Safeguarding Policy;
 - (b) Delivery of Social Responsibility, Human Rights and Safeguarding training throughout the delivery chain;
 - (c) All Supply Partners must be fully signed up to the UN Global Compact⁹;
 - (d) Practices in line with the International Labour Organisation (ILO) 138¹⁰ and the Ethical Trading Initiative (ETI) Base Code¹¹ are to be encouraged throughout the delivery chain;
 - (e) Policies to embed good practice in line with the UN Global Compact Guiding Principles 1 & 2 on business and human rights, as detailed in Annex 3 to this Schedule 6;
 - (f) a Compliance level 1 Suppliers to submit a Statement of Compliance outlining how the organisation's business activities help to develop local markets and institutions and contribute to social and environmental sustainability, whilst complying with international principles on Safeguarding and Human Rights labour and ethical employment, social inclusion and environmental protection and
 - (g) overarching consideration given to building local capacity and promoting the involvement of people whose lives are affected by business decisions.

⁸ <https://digitalprinciples.org/>

⁹ <https://www.unglobalcompact.org/what-is-gc/mission/principles>

¹⁰ http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138

¹¹ <https://www.ethicaltrade.org/eti-base-code>

Annex A

Compliance Level matrix

The table below sets out the evidence that Suppliers are required to make available when requested by the Customer to demonstrate compliance with the Code.

For Call-Off Contracts requiring adherence to Compliance Level 1 (CL1) or Compliance Level 2 (CL2) the Supplier shall provide the evidence below at the frequency stated below to the Customer.

Compliance Area and requirement		Evidence Required	Frequency	CL1	CL2	CL3
i.	Declaration of compliance with the Supplier Code of Conduct	Declaration set out at Appendix 1B provided.	Annually	X	X	X
ii.	Declaration of sign up to the UN Global Compact	Certificate/Confirmation of membership	Annually	X	X	X
1.Value for Money (VfM) and Governance						
a.	Economic and governance policies in practice	Relevant organisation policies, including detailed annual financial breakdown related to the contract	Annually	X	X	0
b.	VfM being maximized over the life of a contract.	Relevant documentation to include: <ul style="list-style-type: none"> - Confirmation of annual profit level fluctuations since contract award; - Evidence of timely resolution of identified issues; - Evidence of lessons learned 	Annually	X	X	0
c.	Tax declaration (HMRC format)	<ul style="list-style-type: none"> - Tax the organisation paid on profits made in the last 3 years, and in which countries; 	Annually	X	X	0

		- Compliance with relevant country level tax regulations fully understood and met				
2.Ethical Behaviour						
a.	Adherence to conflict of interest management procedures	Relevant organisation policies, including recruitment policy which must address circumstances where there may be potential or actual conflict of interest	Annually	X	X	0
b.	Ethical training and staff updates	Copy of training programme; Training logs; Relevant communication to staff	Annually	X	X	0
c.	A workforce whistleblowing policy	Relevant organisation policy and evidence of continuous staff awareness maintained.	Annually	X	X	0
d.	Staff involved in Customer funded programmes are aware of how to report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism to the Customer.	Relevant organization policy and evidence of regular communication to staff.	Annually	X	X	0
e.	Declaration of direct or delivery chain staff members proposed to work on Customer funded programmes if employed by the Crown in the preceding two years.	Proof of compliance with the HMG approval requirements under the business appointments rules.	Annually (and when a new member of staff who this applies to joins the project team)	X	X	0

3. Transparency and Delivery Chain Management						
a.	IATI compliance for Suppliers and delivery chain partners	Proof of compliance with IATI	Annually	X	0	0
b.	Provision of up-to-date and accurate records of all downstream supply partners provided within the required frequencies, including annual contractual spend on MSME's, women owned businesses and apprenticeships in place	Record of all downstream supply partners	Annually	X	0	0
c.	Policies and practices for the management of delivery chain partners and affiliates aligned to the Code of Conduct	Verification that policies and practices for the management and governance of delivery chain supply partners is in place	Annually	X	0	0
d.	Tax evasion, bribery, corruption and fraud compliance	Statement of assurance that there has been no change to previous statements	Annually	X	X	0
e.	HMG prompt payment policy adhered to by all delivery chain partners	Confirmation of adherence to HMG prompt payment policy	Annually	X	0	0
4. Environmental Issues						
a.	Processes in place to identify environmental risks (e.g. by maintaining a risk register) ensuring legislative requirements are	Documentation demonstrating how environmental risks are identified (e.g. risk register) with formal context specific environmental	Annually	X	0	0

	met and context specific environmental issues addressed	safeguarding policies in place				
b.	Annual environmental performance reports	Published reports	Annually	X	0	0
5.Terrorism and Security						
a.	Reporting of terrorist offences or offences linked to terrorist activities or financing	Status declaration	Annually	X	X	0
b.	Confirmation that no engaged employees or deliver chain personnel appears on the Home Office Prescribed Terrorist Organization List.	Appropriate certification or documentation	Annually	X	X	0
c.	Data is managed in accordance with DFID security policy and all systems are in accordance with the HMG cyber essentials scheme	Appropriate certification or documentation	Annually	X	X	0
d.	Adherence to best practice global principles for digital development	Appropriate certification or documentation	Annually	X	0	0
6.Social Responsibility and Human Rights						
a.	Compliance with key legislation on international principles on labour and ethical employment	Confirmation of UN Global Compact Membership; Internal documentation demonstrating best practice and compliance	Annually	X	X	0

b.	Measures in place and cascaded to assure the prevention of actual, attempted or threatened sexual exploitation or abuse or other forms of inequality or discrimination by Relevant Individuals. Robust procedures for the reporting of suspected misconduct, illegal acts or failures to investigate in place.	Proof of application and embedding of a safeguarding policy	Annually	X	X	X
c.	Membership of the International Labour Organisation or Ethical Trading Initiative	Membership Number	Annually	X	0	0
d.	Principles cascaded to employees and sub-contractors via an internal policy or written outline of good practice service deliver approaches to Human Rights and Safeguarding reflecting UN Global Compact Principles 1 & 2	Internal policies or communication demonstrating communication to staff and delivery chain partners showing appropriate level of commitment to the UN Compact. Report on number and details of organization safeguarding allegations reported.	Annually	X	0	0

Annex B

Declaration of Compliance

<i>Signed on behalf of the supplier</i>	REDACTED
Full Name	REDACTED
Position held on behalf of Supplier	REDACTED
Date	REDACTED

Annex C

UN Global Compact –Principles

Principle 1: businesses should support and respect the protection of internationally proclaimed Human Rights

Principle 2: businesses should ensure they are not complicit in Human Rights abuse

Organisations should do this by giving attention to vulnerable groups including women, children, people with disabilities, indigenous groups, migrant workers and older people.

Organisations should comply with all laws, honouring international standards and giving particular consideration to high risk areas with weak governance.

Examples of how suppliers and partners should do this are set out below:

In the Community

- by preventing the forcible displacement of individuals, groups or communities
- by working to protect the economic livelihood of local communities
- by contributing to the public debate. Companies interact with all levels of government in the countries where they operate. They therefore have the right and responsibility to express their views on matters that affect their operations, employees, customers and the communities of which they are a part
- through differential pricing or small product packages create new markets that also enable the poor to gain access to goods and services that they otherwise could not afford
- by fostering opportunities for girls to be educated to empower them and also helps a company to have a broader and more skilled pool of workers in the future, and
- perhaps most importantly, a successful business which provides decent work, produces quality goods or services that improve lives, especially for the poor or other vulnerable groups, is an important contribution to sustainable development, including human rights
- If companies use security services to protect their operations, they must ensure that existing international guidelines and standards for the use of force are respected

In the Workforce

- by providing safe and healthy working conditions
- by guaranteeing freedom of association
- by ensuring non-discrimination in personnel practices

- by ensuring that they do not use directly or indirectly forced labour or child labour
- by providing access to basic health, education and housing for the workers and their families, if these are not provided elsewhere
- by having an affirmative action programme to hire victims of domestic violence
- by making reasonable accommodations for all employees' religious observance and practices

REDACTED

Schedule 6

Security

SHORT FORM

1. Definitions

1.1 In this Call Off Schedule 7, the following definitions shall apply:

"Breach of Security" means the occurrence of:

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

in either case as more particularly set out in the Security Policy.

2. Introduction

2.1 The purpose of this Call Off Schedule is to ensure a good organisational approach to security under which the specific requirements of this Call Off Contract will be met;

2.2 This Call Off Schedule covers:

- (a) principles of protective security to be applied in Delivering the Services;
- (b) the creation and maintenance of the Security Management Plan; and
- (c) obligations in the event of actual or attempted Breaches of Security.

3. Principles of Security

3.1 The Supplier acknowledges that the Customer places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on security.

3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:

- (a) is in accordance with the Law and this Call Off Contract;
- (b) as a minimum demonstrates Good Industry Practice;
- (c) complies with the Security Policy;
- (d) meets any specific security threats of immediate relevance to the Services and/or the Customer Data; and
- (e) complies with the Customer's ICT policies.

3.3 The references to standards, guidance and policies contained or set out in paragraph 3.2 of this Call Off Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer Representative of such inconsistency immediately upon becoming aware of the same, and the Customer Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

4. Security Management Plan

4.1 Introduction

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

4.2 Content of the Security Management Plan

(a) The Security Management Plan shall:

- (i) comply with the principles of security set out in paragraph 3 of this Call Off
- (ii) Schedule and any other provisions of this Call Off Contract relevant to security;
- (iii) identify the necessary delegated organisational roles defined for those responsible for ensuring it is complied with by the Supplier;
- (iv) detail the process for managing any security risks from Sub-Contractors and third parties authorised by the Customer with access to the Services, processes associated with the provision of the Services, the Customer Premises, the Sites and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- (v) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the provision of the Services, including the Customer Premises, the Sites, and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- (vi) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the provision of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the
- (vii) Services comply with the provisions of this Call Off Contract;
- (viii) set out the plans for transiting all security arrangements and responsibilities for
- (ix) the Supplier to meet the full obligations of the security requirements set out in this Call Off Contract and the Security Policy; and

- (x) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the provision of the Services and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Call Off Schedule.

4.3 Development of the Security Management Plan

- (a) Within twenty (20) Working Days after the Call Off Commencement Date (or such other period agreed by the Parties in writing) and in accordance with paragraph 4.4 (Amendment and Revision), the Supplier shall prepare and Deliver to the Customer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- (b) If the Security Management Plan submitted to the Customer in accordance with paragraph (a), or any subsequent revision to it in accordance with paragraph 4.4 (Amendment and Revision), is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter be operated and maintained in accordance with this Call Off Schedule 7. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
- (c) The Customer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to paragraph (b). However a refusal by the Customer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 shall be deemed to be reasonable.
- (d) Approval by the Customer of the Security Management Plan pursuant to paragraph (b) of this Call Off Schedule or of any change to the Security Management Plan in accordance with paragraph 4.4 shall not relieve the Supplier of its obligations under this Call Off Schedule.

4.4 Amendment and Revision of the Security Management Plan

- (a) The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
 - (i) emerging changes in Good Industry Practice;
 - (ii) any change or proposed change to the Services and/or associated processes;
 - (iii) any change to the Security Policy;
 - (iv) any new perceived or changed security threats; and
 - (v) any reasonable change in requirements requested by the Customer.
- (b) The Supplier shall provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security

Management Plan at no additional cost to the Customer. The results of the review shall include, without limitation:

- (i) suggested improvements to the effectiveness of the Security Management Plan;
 - (ii) updates to the risk assessments; and
 - (iii) suggested improvements in measuring the effectiveness of controls.
- (c) Subject to paragraph (d), any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with paragraph (a), a request by the Customer or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved by the Customer.
- (d) The Customer may, where it is reasonable to do so, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Call Off Contract.

5. Breach of Security

5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan if one exists) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 5.1, the Supplier shall:

- (a) immediately take all reasonable steps (which shall include any action or changes reasonably required by the Customer) necessary to:
 - (i) minimise the extent of actual or potential harm caused by any Breach of
 - (ii) Security;
 - (iii) remedy such Breach of Security to the extent possible and protect the integrity of the Customer and the provision of the Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - (iv) prevent an equivalent breach in the future exploiting the same root cause failure; and
 - (v) as soon as reasonably practicable provide to the Customer, where the Customer so requests, full details (using the reporting mechanism defined by the Security Management Plan if one exists) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.

5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security policy or the requirements of this Call Off Schedule, then any required change to the Security Management Plan shall be at no cost to the Customer.

LONG FORM

1. Definitions

1.1 In this Call Off Schedule 7, the following definitions shall apply:

"Breach of Security" means the occurrence of:

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

in either case as more particularly set out in the security requirements in the Security Policy;

"ISMS" means the information security management system and process developed by the Supplier in accordance with paragraph 3 (ISMS) as updated from time to time in accordance with this Call Off Schedule 7; and

"Security Tests" means tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

2. Introduction

2.1 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Call Off Contract will be met.

2.2 The Parties shall each appoint a security representative to be responsible for security. The initial security representatives of the Parties are

- (a) for the Customer as stated in 7.3 of the Order Form; and
- (b) for the Suppliers as stated in 7.4 of the Order Form.

2.3 If the persons named in paragraphs 2.2(a) and 2.2(b) are included as Key Personnel, Clause 22 (Key Personnel) shall apply in relation to such persons.

2.4 The Customer shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.

2.5 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.

2.6 The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Customer Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Customer Data remains under the effective control of the Supplier at all times.

2.7 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Customer.

2.8 The Customer and the Supplier acknowledge that information security risks are shared between

2.9 the Parties and that a compromise of either the Supplier or the Customer's security provisions represents an unacceptable risk to the Customer requiring immediate communication and cooperation between the Parties.

3. ISMS

3.1 The Supplier shall develop and submit to the Customer for the Customer's Approval, within twenty (20) working days after the Call Off Commencement Date or such other date as agreed between the Parties, an ISMS for the purposes of this Call Off Contract, which shall comply with the requirements of paragraphs 3.3 to 3.5 of this Call Off Schedule 7 (Security).

3.2 The Supplier acknowledges that the Customer places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.

3.3 The ISMS shall:

- (a) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the provision of the Services, including the Customer Premises, the Sites, any ICT, information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract;
- (b) meet the relevant standards in ISO/IEC 27001 and ISO/IEC27002 in accordance with paragraph 7;
- (c) at all times provide a level of security which:
 - (i) is in accordance with the Law and this Call Off Contract;
 - (ii) as a minimum demonstrates Good Industry Practice;
 - (iii) complies with the Security Policy;
 - (iv) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4)
(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf);
 - (v) takes account of guidance issued by the Centre for Protection of National Infrastructure on Risk Management
(http://www.cpni.gov.uk/Documents/Publications/2005/2005003http://www.cpni.gov.uk/Documents/Publications/2005/2005003-Risk_management.pdfRisk_management.pdf);
 - (vi) complies with HMG Information Assurance Maturity Model and Assurance Framework
(<http://www.cesg.gov.uk/publications/Documents/iammhttp://www.cesg.gov.uk/>

[publications/Documents/iamm-assessment-framework.pdf](#)assessment-framework.pdf);

- (vii) meets any specific security threats of immediate relevance to the Services and/or Customer Data; and
 - (viii) complies with the Customer's ICT policies;
 - (d) document the security incident management processes and incident response plans;
 - (e) document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware; and
 - (f) be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Customer in advance of issue of the relevant Security Management Plan).
- 3.4 The references to standards, guidance and policies contained or set out in paragraph 3.3 of this Call Off Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 3.3 of this Call Off Schedule, the Supplier shall immediately notify the Customer Representative of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
- 3.6 If the ISMS submitted to the Customer pursuant to paragraph 3.1 of this Call Off Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule. If the ISMS is not Approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of nonapproval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Customer. If the Customer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph 3 of this Call Off Schedule may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 3.3 to 3.5 of this Call Off Schedule shall be deemed to be reasonable.
- 3.7 Approval by the Customer of the ISMS pursuant to paragraph 3.6 of this Call Off Schedule or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

4. Security Management Plan

- 4.1 Within twenty (20) Working Days after the Call Off Commencement Date, the Supplier shall prepare and submit to the Customer for Approval in accordance with paragraph 4 of this Call Off Schedule a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 4.2 of this Call Off Schedule.

4.2 The Security Management Plan shall:

- (a) be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);
- (b) comply with the Security Policy;
- (c) identify the necessary delegated organisational roles defined for those responsible for ensuring this Call Off Schedule is complied with by the Supplier;
- (d) detail the process for managing any security risks from Sub-Contractors and third parties authorised by the Customer with access to the Services, processes associated with the Delivery of the Services, the Customer Premises, the Sites and any ICT,
- (e) Information and data (including the Customer's Confidential Information and the Customer Data) and any system that could directly or indirectly have an impact on that information, data and/or the Services;
- (f) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the Delivery of the Services, including the Customer Premises, the Sites and any ICT, Information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- (g) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the Delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Call Off Schedule 7 (including the requirements set out in paragraph 3.3 of this Call Off Schedule);
- (h) set out the plans for transitioning all security arrangements and responsibilities from those in place at the Call Off Commencement Date to those incorporated in the ISMS within the timeframe agreed between the Parties.
- (i) be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
- (j) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Call Off Schedule.

4.3 If the Security Management Plan submitted to the Customer pursuant to paragraph 3.1 of this Call Off Schedule 7 is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule. If the Security Management Plan is not approved by the Customer, the Supplier shall amend it within ten (10)

Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the

Customer of the Security Management Plan. If the Customer does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 of this Call Off Schedule shall be deemed to be reasonable.

- 4.4 Approval by the Customer of the Security Management Plan pursuant to paragraph 4.3 of this Call Off Schedule or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Call Off Schedule.

5. Amendment and Revision of the ISMS and Security Management Plan

- 5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:

- (a) emerging changes in Good Industry Practice;
- (b) any change or proposed change to Services and/or associated processes;
- (c) any changes to the Security Policy;
- (d) any new perceived or changed security threats; and
- (e) any reasonable change in requirement requested by the Customer.

- 5.2 The Supplier shall provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review shall include, without limitation:

- (a) suggested improvements to the effectiveness of the ISMS;
- (b) updates to the risk assessments;
- (c) proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and
- (d) suggested improvements in measuring the effectiveness of controls.

- 5.3 Subject to paragraph 5.4 of this Call Off Schedule, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 5.1 of this Call Off Schedule, a Customer request, a change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Customer.

- 5.4 The Customer may, where it is reasonable to do so, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Call Off Contract.

6. Security Testing

- 6.1 The Supplier shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the Delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to Deliver the Services so as to meet the Service Level Performance Measures, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 6.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such Security Tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 6.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Call Off Contract, the Customer and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such Security Tests (including penetration Security Tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Customer may notify the Supplier of the results of such Security Tests after completion of each such Security Test. If any such Customer's Security Test adversely affects the Supplier's ability to Deliver the Services so as to meet the Service Levels, the Supplier shall be granted relief against any resultant underperformance for the period of the Customer's Security Test.
- 6.4 Where any Security Test carried out pursuant to paragraphs 6.2 or 6.3 of this Call Off Schedule reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Customer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Call Off Schedule 7) or the requirements of this Call Off Schedule 7, the change to the ISMS or Security Management Plan shall be at no cost to the Customer.
- 6.5 If any repeat Security Test carried out pursuant to paragraph 6.4 of this Call Off Schedule reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Call Off Contract.

7. ISMS Compliance

- 7.1 The Customer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and/or the Security Policy.
- 7.2 If, on the basis of evidence provided by such security audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 and/or the Security Policy are not being achieved by the Supplier, then the Customer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement and remedy. If the Supplier

7.3 does not become compliant within the required time then the Customer shall have the right to obtain an independent audit against these standards in whole or in part.

7.4 If, as a result of any such independent audit as described in paragraph 7.2 of this Call Off Schedule the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 and/or the Security Policy then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

8. Breach of Security

8.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted Breach of Security.

8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 8.1 of this Call Off Schedule, the Supplier shall:

- (a) immediately take all reasonable steps (which shall include any action or changes reasonably required by the Customer) necessary to:
 - (i) minimise the extent of actual or potential harm caused by any Breach of
 - (ii) Security;
 - (iii) remedy such Breach of Security to the extent necessary protect the integrity of the Customer Property and/or Customer Assets to the extent within its control against any such Breach of Security or any potential or attempted Breach of Security;
 - (iv) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to provide the Services so as to meet the relevant Service Level Performance Measures, the Supplier shall be granted relief against any resultant underperformance for such period as the Customer, acting reasonably, may specify by written notice to the Supplier;
 - (v) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure;
 - (vi) supply any requested data to the Customer (or the Computer Emergency
 - (vii) Response Team for UK Government ("GovCertUK") on the Customer's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
 - (viii) as soon as reasonably practicable provide to the Customer full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.

8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy or the

requirements of this Call Off Schedule, then any required change to the ISMS shall be at no cost to the Customer.

Annex 1

Security Policy as set out in the Order Form.

Annex 2

Security Management Plan – as set out in the Order Form.

REDACTED

Schedule 7

Business Continuity and Disaster Recovery

1. Definitions

1.1 In this Call Off Schedule 8, the following definitions shall apply:

"Review Report" has the meaning given to it in paragraph 3.2 of this Call Off Schedule;

"Supplier's Proposals" has the meaning given to it in paragraph 3.2(c) of this Call Off Schedule;

2. BCDR Plan

2.1 Within thirty (30) Working Days from the Call Off Commencement Date the Supplier shall prepare and deliver to the Customer for the Customer's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
- (b) the recovery of the Services in the event of a Disaster.

2.2 Within twenty (20) Working Days of receipt of the draft BCDR Plan, the Customer shall notify the Supplier in writing whether it approves or rejects the draft BCDR Plan.

2.3 If the Customer rejects the draft BCDR Plan:

- (a) the Customer shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised draft BCDR Plan to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 2.1(b) and 2.3 of this Call Off Schedule shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3. Review and Amendment of the BCDR Plan

3.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every six (6) months; and
- (b) within three (3) calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 4.

3.2 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report (a **"Review Report"**) setting out:

- (a) the findings of the review;
- (b) any changes in the risk profile associated with the provision of Services; and
- (c) the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review

detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods, services or systems provided by a third party.

3.3 Within twenty (20) Working Days of receipt of the Review Report and the Supplier's Proposals, the Customer shall notify the Supplier in writing whether it approves or rejects the Review Report and the Supplier's Proposals.

3.4 If the Customer rejects the Review Report and/or the Supplier's Proposals:

- (a) the Customer shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Customer's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Customer for the Customer's approval within twenty (20) Working Days of the date of the Customer's notice of rejection. The provisions of paragraphs 3.3 and 3.4 of this Call Off Schedule shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3.5 The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

4. Testing of the BCDR Plan

4.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.

4.2 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:

- (a) the outcome of the test;
- (b) any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
- (c) the Supplier's proposals for remedying any such failures.

4.3 Following each test, the Supplier shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.

5. Invocation of the BCDR Plan

In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Customer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Customer.

REDACTED

Schedule 8

Exit Management

1. Definitions

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

"Exclusive Assets" means those Supplier Assets used by the Supplier or a Key Sub-Contractor which are used exclusively in the provision of the Services;

"Exit Information" has the meaning given to it in paragraph 4.1 of this Call Off Schedule;

"Exit Manager" means the person appointed by each Party pursuant to paragraph 3.4 of this Call Off Schedule for managing the Parties' respective obligations under this Call Off Schedule;

"Net Book Value" means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Customer of even date with this Call Off Contract;

"Non-Exclusive Assets" means those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor for other purposes;

"Registers" means the register and configuration database referred to in paragraphs 3.1(a) and 3.1(b) of this Call Off Schedule;

"Termination Assistance" means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Customer pursuant to the Termination Assistance Notice;

"Termination Assistance Notice" has the meaning given to it in paragraph 6.1 of this Call Off Schedule;

"Termination Assistance Period" means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Call Off Schedule;

"Transferable Assets" means those of the Exclusive Assets which are capable of legal transfer to the Customer;

"Transferable Contracts" means the Sub-Contracts, licences for Supplier Background IPR, Project Specific IPR, licences for Third Party IPR or other agreements which are necessary to enable the Customer or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation;

"Transferring Assets" has the meaning given to it in paragraph 9.2(a) of this Call Off Schedule; and

"Transferring Contracts" has the meaning given to it in paragraph 9.2(c) of this Call Off Schedule.

2. Introduction

- 2.1 This Call Off Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the Call Off Expiry Date and the transfer of service provision to the Customer and/or a Replacement Supplier.
- 2.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Supplier to the Customer and/or a Replacement Supplier at the Call Off Expiry Date.

3. Obligations During the Call Off Contract Period to Facilitate Exit

- 3.1 During the Call Off Contract Period, the Supplier shall:

- (a) create and maintain a Register of all:
 - (i) Supplier Assets, detailing their:
 - (A) make, model and asset number;
 - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (C) Net Book Value;
 - (D) condition and physical location; and
 - (E) use (including technical specifications); and
 - (ii) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
- (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Customer and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
- (c) agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and
- (d) at all times keep the Registers up to date, in particular in the event that assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

- 3.2 The Supplier shall:

- (a) procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Call Off Contract; and
- (b) (unless otherwise agreed by the Customer in writing) procure that all licences for Third Party IPR and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Customer to the Customer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Services (or part of them) without

restriction (including any need to obtain any consent or approval) or payment by the Customer.

- 3.3 Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2(b) of this Call Off Schedule which the Supplier proposes to enter into after the Call Off Commencement Date is assignable and/or capable of novation to the Customer (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Customer of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Customer so directs, may include the Supplier seeking an alternative Sub-Contractor or provider of Services to which the relevant agreement relates.
- 3.4 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Call Off Schedule and provide written notification of such appointment to the other Party within three (3) months of the Call Off Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Call Off Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Call Off Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Call Off Contract and all matters connected with this Call Off Schedule and each Party's compliance with it.

4. Obligations to Assist on Re-Tendering of Services

- 4.1 On reasonable notice at any point during the Call Off Contract Period, the Supplier shall provide to the Customer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- (a) details of the Service(s);
 - (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - (c) an inventory of Customer Data in the Supplier's possession or control;
 - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - (f) all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Call Off Contract; and
 - (g) such other material and information as the Customer shall reasonably require,
- (together, the "**Exit Information**").
- 4.2 The Supplier acknowledges that the Customer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Customer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Customer may not under this paragraph 4.2 of this Call Off Schedule

disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).

4.3 The Supplier shall:

- (a) notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Customer regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Customer.

4.4 The Supplier may charge the Customer for its reasonable additional costs to the extent the Customer requests more than four (4) updates in any six (6) month period.

4.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

5. Exit Plan

5.1 The Supplier shall, within three (3) months after the Call Off Commencement Date, deliver to the Customer an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Customer and/or its Replacement Supplier on the expiry or termination of this Call Off Contract;
- (b) complies with the requirements set out in paragraph 5.3 of this Call Off Schedule;
- (c) is otherwise reasonably satisfactory to the Customer.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.3 Unless otherwise specified by the Customer or Approved, the Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) the management structure to be employed during both transfer and cessation of the Services;
- (c) the management structure to be employed during the Termination Assistance Period;
- (d) a detailed description of both the transfer and cessation processes, including a timetable;
- (e) how the Services will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and

the segregation of the Customer's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);

- (f) details of contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon the Call Off Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
- (g) proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Services following the Call Off Expiry Date charged at rates agreed between the Parties at that time;
- (h) proposals for providing the Customer or a Replacement Supplier copies of all documentation:
 - (i) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
 - (ii) relating to the use and operation of the Services;
- (i) proposals for the assignment or novation of the provision of all services, leases,
- (j) maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
- (k) proposals for the identification and return of all Customer Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
- (l) proposals for the disposal of any redundant Services and materials;
- (m) procedures to deal with requests made by the Customer and/or a Replacement Supplier for Staffing Information pursuant to Call Off Schedule 10 (Staff Transfer);
- (n) how each of the issues set out in this Call Off Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Customer with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
- (o) proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

6. Termination Assistance

6.1 The Customer shall be entitled to require the provision of Termination Assistance at any time during the Call Off Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) months prior to the Call Off Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

- (a) the date from which Termination Assistance is required;
- (b) the nature of the Termination Assistance required; and

- (c) the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Services.

6.2 The Customer shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

7. Termination Assistance Period

7.1 Throughout the Termination Assistance Period, or such shorter period as the Customer may require, the Supplier shall:

- (a) continue to provide the Services (as applicable) and, if required by the Customer pursuant to paragraph 6.1 of this Call Off Schedule, provide the Termination Assistance;
- (b) in addition to providing the Services and the Termination Assistance, provide to the Customer any reasonable assistance requested by the Customer to allow the Services to continue without interruption following the termination or expiry of this Call Off Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Customer and/or its Replacement Supplier;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1(b) of this Call Off Schedule without additional costs to the Customer;
- (d) provide the Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and
- (e) at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer.

7.2 Without prejudice to the Supplier's obligations under paragraph 7.1(c) of this Call Off Schedule, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1(b) of this Call Off Schedule without additional costs to the Customer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.

7.3 If the Supplier demonstrates to the Customer's reasonable satisfaction that transition of the Services and provision of the Termination Assistance during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

8. Termination Obligations

- 8.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 8.2 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 Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule), the Supplier shall:
- (a) cease to use the Customer Data;
 - (b) provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the Customer);
 - (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 Customer Data and promptly certify to the Customer that it has completed such deletion;
 - (d) return to the Customer such of the following as is in the Supplier's possession or control:
 - (i) all materials created by the Supplier under this Call Off Contract in which the IPRs are owned by the Customer;
 - (ii) any equipment which belongs to the Customer;
 - (iii) any items that have been on-charged to the Customer, such as consumables; and
 - (iv) any sums prepaid by the Customer in respect of Services not Delivered by the Call Off Expiry Date;
 - (e) vacate any Customer Premises;
 - (f) remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;
 - (g) provide access during normal working hours to the Customer and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.
- 8.3 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 Services and the Termination Assistance and its compliance with the other provisions of this Call Off Schedule), 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 Services or Termination Services or for statutory compliance purposes.

- 8.4 Except where this Call Off Contract provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

9. Assets and Sub-Contracts

- 9.1 Following notice of termination of this Call Off Contract and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:

- (a) terminate, enter into or vary any Sub-Contract;
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the provision of Services.

- 9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1(e) of this Call Off Schedule, the Customer shall provide written notice to the Supplier setting out:

- (a) which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier ("**Transferring Assets**");
- (b) which, if any, of:
 - (i) the Exclusive Assets that are not Transferable Assets; and
 - (ii) the Non-Exclusive Assets, the Customer and/or the Replacement Supplier requires the continued use of; and
- (c) which, if any, of Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the "**Transferring Contracts**"), in order for the Customer and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Customer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Customer and/or its Replacement Supplier requires to provide the Services or the Replacement Services.

- 9.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Customer and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Call Off Contract Charges at the Call Off expiry Date, in which case the Customer shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Call Off Contract Charges.

- 9.4 Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) on payment for the same.

- 9.5 Where the Supplier is notified in accordance with paragraph 9.2(b) of this Call Off Schedule that the Customer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Customer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - (b) procure a suitable alternative to such assets and the Customer or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 9.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.
- 9.7 The Customer shall:
- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 9.8 The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.
- 9.9 The Supplier shall indemnify the Customer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Customer (and/or Replacement Supplier) pursuant to paragraph 9.6 of this Call Off Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

10. Supplier Personnel

- 10.1 The Customer and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Call Off Schedule 10 (Staff Transfer) shall apply.
- 10.2 The Supplier shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Customer and/or the Replacement Supplier.
- 10.3 During the Termination Assistance Period, the Supplier shall give the Customer and/or the Replacement Supplier reasonable access to the Supplier Personnel to present the case for transferring their employment to the Customer and/or the Replacement Supplier.

- 10.4 The Supplier shall immediately notify the Customer or, at the direction of the Customer, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 10.5 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Customer and/or the Replacement Supplier, unless approval has been obtained from the Customer which shall not be unreasonably withheld.

11. Charges

Except as otherwise expressly specified in this Call Off Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Customer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Call Off Schedule including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

12. Apportionments

- 12.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- (a) the amounts shall be annualised and divided by three hundred and sixty-five (365) to reach a daily rate;
 - (b) the Customer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 12.2 Each Party shall pay (and/or the Customer shall procure that the Replacement Supplier shall pay) any monies due under paragraph 12.1 of this Call Off Schedule as soon as reasonably practicable.

Schedule 9

Staff Transfer

1. Definitions

In this Schedule, the following definitions shall apply:

"Admission Agreement" means the agreement to be entered into by which the supplier agrees to participate in the Schemes as amended from time to time;

"Eligible Employee" means any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;

"Fair Deal Employees" means those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier

Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;

"Former Supplier" means a supplier supplying services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

"New Fair Deal" means the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013;

"Notified Sub-Contractor" means a Sub-Contractor identified in the Annex to this Schedule to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;

"Replacement Sub-Contractor" means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);

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

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

"Schemes" means the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);

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

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

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

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other **"employee liability information"** as such term is defined in regulation 11 of the Employment Regulations;

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

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

"Transferring Customer Employees" those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;

"Transferring Former Supplier Employees" in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

"Transferring Supplier Employees" those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. Interpretation

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Customer, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

Part A: Transferring Customer Employees at Commencement of Services

1. Relevant Transfers

1.1 The Customer and the Supplier agree that:

- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Customer Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring Customer Employee.

1.2 The Customer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Customer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Customer; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

2. Customer Indemnities

2.1 Subject to paragraph (h), the Customer shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Customer occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Customer before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Customer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of the Customer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the
- (g) Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- (h) any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer; and

- (b) the Customer may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such other reasonable steps as the Customer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in paragraph 2.3(b):
- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or (c) the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Customer shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in paragraph 2.6:
- (a) shall not apply to:
- (i) any claim for:
- (A) discrimination, including on the grounds of sex, race, disability, age,
- (B) gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (C) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer within 6 months of the Call Off Commencement Date.
- 2.8 If any such person as is referred to in paragraph 2.3 is neither re-employed by the Customer nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified

Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. Supplier Indemnities and Obligations

3.1 Subject to paragraph 3.2 the Supplier shall indemnify the Customer against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-Contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Customer Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Customer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring Customer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or

demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- (g) a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 13 of the Employment Regulations.

3.2 The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Customer and the Supplier.

4. Information

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer in writing such information as is necessary to enable the Customer to carry out its duties under regulation 13 of the Employment Regulations. The Customer shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. Principles of Good Employment Practice

5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

6. Pensions

The Supplier shall, and shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

REDACTED

Annex to Part A

Pensions

1. Participation

1.1 The Supplier undertakes to enter into the Admission Agreement.

1.2 The Supplier and the Customer:

- (a) undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
- (b) agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;
- (c) notwithstanding paragraph (b) of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and
- (d) agree that the Customer may terminate this Call Off Contract for material default in the event that the Supplier breaches the Admission Agreement.

1.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

2. Future Service Benefits

2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.

2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. Funding

3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

- 3.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. Provision of Information

The Supplier and the Customer respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. Indemnity

The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. Employer Obligation

The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7. Subsequent Transfers

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 7.3 for the period either:
- (a) after notice (for whatever reason) is given, in accordance with the other provisions of this Call Off Contract, to terminate the Agreement or any part of the Services; or
 - (b) after the date which is two (2) years prior to the date of expiry of this Call Off Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Customer (such approval not to be unreasonably withheld). Save that this subparagraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

Part B Transferring Former Supplier Employees at commencement of Services

1. Relevant Transfers

1.1 The Customer and the Supplier agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.

1.2 The Customer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Customer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2. Former Supplier Indemnities

2.1 Subject to paragraph 2.2, the Customer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Former Supplier arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment

Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

- (d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Customer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, to the Former Supplier; and
- (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the fifteen (15) Working Day period specified in paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Customer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in paragraph 2.6:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
 - (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer and, if applicable, the Former Supplier, within 6 months of the Call Off Commencement Date.

2.8 If any such person as is described in paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

3. Supplier Indemnities and Obligations

- 3.1 Subject to paragraph 3.2, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
 - (b) the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - (d) any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - (e) any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Supplier in writing;
 - (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- (g) a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.

3.2 The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. Information

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and/or at the Customer's direction, the Former Supplier, in writing such information as is necessary to enable the Customer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. Principles of Good Employment Practice

5.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

(d) the New Fair Deal.

- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

6. Procurement Obligations

Notwithstanding any other provisions of this Part B, where in this Part B the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7. Pensions

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

Annex to Part B

Pensions

1. Participation

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Customer:
- (a) undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
 - (b) agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;
 - (c) notwithstanding paragraph 1.2(b) of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and
 - (d) agree that the Customer may terminate this Call Off Contract for material default in the event that the Supplier breaches the Admission Agreement.
- 1.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

2. Future Service Benefits

- 2.1 If the Supplier is re-joining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. Funding

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. Provision of Information

The Supplier and the Customer respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. Indemnity

The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. Employer Obligation

The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7. Subsequent Transfers

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.3 for the period either:
- (a) after notice (for whatever reason) is given, in accordance with the other provisions of this Call Off Contract, to terminate this Call Off Contract or any part of the Services; or
 - (b) after the date which is two (2) years prior to the date of expiry of this Call Off Contract, ensure that no change is made to pension, retirement and death benefits provided for or

in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Customer (such approval not to be unreasonably withheld). Save that this subparagraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

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Part C

No transfer of employees at commencement of Services

1. Procedure in the Event of Transfer

- 1.1 The Customer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.
- 1.2 If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and
 - (b) the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in paragraph 1.2(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,
- the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. Indemnities

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 2.4, the Customer shall:
- (a) indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in paragraph 1.2 made pursuant to the provisions of paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of

the employees of the Former Supplier made pursuant to the provisions of paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.2 If any such person as is described in paragraph 1.2 is neither re employed by the Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.
- 2.4 The indemnities in paragraph 2.1:
- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
 - (ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in paragraph 1.2(a) is made by the Supplier and/or any Sub-Contractor to the Customer and, if applicable, Former Supplier within 6 months of the Call Off Commencement Date.

3. Procurement Obligations

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

Part D

Employment Exit Provisions

1. Pre-Service Transfer Obligations

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- (a) receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
 - (b) receipt of the giving of notice of early termination or any partial termination of this Call Off Contract;
 - (c) the date which is twelve (12) months before the end of the Term; and
 - (d) receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) Month period), it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Customer.
- 1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-Contractor:
- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Customer shall be permitted to use and disclose information provided by the Supplier under paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 1.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process, and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Customer or, at the direction of the Customer, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

2. Employment Regulations Exit Provisions

- 2.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this Call Off Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3 Subject to paragraph 2.4, the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
 - (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

- (b) the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the fifteen (15) Working Day period specified in paragraph 2.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Customer shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in paragraph 2.8:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or

- (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.

- 2.10 If any such person as is described in paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Supplier and/or any Sub-Contractor; and
 - (b) the Replacement Supplier and/or the Replacement Sub-Contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to paragraph 2.14, the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor;
 - (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - (d) any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring

Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

Annex: List of Notified Sub-Contractors

As per Schedule 2, these are the known subcontractors at the point of the inception period. Additional Subcontractors will be identified during delivery and confirmed by the Authority.

Subcontractor/consortium member
REDACTED - Neovela Transition Finance
Ricardo
REDACTED – Independent Consultant
Sara Lemniei - SLK Capital
Terranomics
REDACTED – independent Consultant
The Climate Group
REDACTED - Courageous Capital Advisors LLC
REDACTED - Carter Communications Consultancy

Schedule 10

Variation Form

No of Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Customer] (the "**Customer**") and

[insert name of Supplier] (the "**Supplier**")

1. This Call Off Contract is varied as follows and shall take effect on the date signed by both Parties:
[Insert details of the Variation]
2. Words and expressions in this Variation shall have the meanings given to them in this Call Off Contract.
3. This Call Off Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Customer

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

REDACTED

Schedule 11

Benchmarking

1. Frequency, Purpose and Scope of Benchmark Review

- 1.1 The Customer may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
- 1.2 The Customer shall not be entitled to carry out a Benchmark Review of any Services during the twelve (12) month period from the Commencement Date for those Services, nor at intervals of less than twelve (12) months after any previous Benchmark Review relating to the same Services.
- 1.3 The Services that are to be the Benchmarked Services shall be identified by the Customer in the notice given under paragraph 1.1.

2. Appointment of Benchmarker

- 2.1 The Customer shall appoint as the Benchmarker to carry out the Benchmark Review any such organisation as may be agreed in writing between the Parties.
- 2.2 The Customer shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 1.
- 2.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.
- 2.4 The Customer shall be entitled to pay the Benchmarker's costs and expenses in full and to recover the Supplier's share from the Supplier.

3. Benchmark Review

- 3.1 The Customer shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within ten (10) Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
 - (a) a proposed timetable for the Benchmark Review;
 - (b) a description of the information that the Benchmarker requires each Party to provide;
 - (c) a description of the benchmarking methodology to be used;
 - (d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under paragraph 1.1;
 - (e) an estimate of the resources required from each Party to underpin the delivery of the plan;
 - (f) a description of how the Benchmarker will scope and identify the Comparison Group;
 - (g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and

- (h) if in the Benchmarkers professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under paragraph 1.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 3.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarkers professional judgment.
- 3.3 Each Party shall give notice in writing to the Benchmarkers and to the other Party within ten (10) Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable Where a Party suggests amendments to the draft plan pursuant to this paragraph 3.3, the Benchmarkers shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 3.1 and this paragraph 3.3 shall apply to any amended draft plan.
- 3.4 Failure by a Party to give notice under paragraph 3.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within thirty (30) Working Days of its first being sent to them pursuant to paragraph 3.1 then the Benchmarkers shall prescribe the plan.
- 3.5 Once the plan is approved by both Parties or prescribed by the Benchmarkers, the Benchmarkers shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarkers is provided to the Benchmarkers without undue delay.
- 3.6 Each Party shall co-operate fully with the Benchmarkers, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarkers, provided that the Benchmarkers shall be instructed to minimise any disruption to the Services.
- 3.7 Either Party may provide additional material to the Benchmarkers to assist the Benchmarkers in conducting the Benchmark Review.
- 3.8 Once it has received the information it requires, the Benchmarkers shall:
- (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarkers professional judgment;
 - (b) derive the Equivalent Services Data by applying the adjustment factors listed in paragraph 3.9 and from an analysis of the Comparable Services;
 - (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
 - (d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
 - (e) compare the value for money of the Call Off Contract Charges attributable to the Benchmarked Services (having regard in particular to the applicable Service Levels) to the value for money of the Upper Quartile;

- (f) compare the Service Levels attributable to the Benchmarked Services (having regard to the Call Off Contract Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
- (g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

3.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:

- (a) the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
- (b) any front-end investment and development costs of the Supplier;
- (c) the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
- (d) the extent of the Supplier's management and contract governance responsibilities;
- (e) any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

4. Benchmark Report

4.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under paragraph 3 of this Call Off Contract Schedule 12, setting out its findings. The Benchmark Report shall:

- (a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
- (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
- (c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Call Off Contract Charges and/or Service Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
- (d) illustrate the method used for any normalisation of the Equivalent Services Data

4.2 The Benchmarker shall act as an expert and not as an arbitrator.

4.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to paragraphs 3.5 and 3.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Customer but in any event within no more than three (3) months. Any associated changes to the Call Off Contract Charges shall take effect only from the same date and shall not be retrospective.

- 4.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Call Off Contract Charges or any reduction in the Target Performance Levels.
- 4.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Call Off Schedule in any material respect.
- 4.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss or to the extent the Supplier cannot technically implement the recommended changes.
- 4.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under paragraph 3.5 and/or any matter referred to in paragraph 3.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Customer shall continue to pay the Call Off Contract Charges to the Supplier in accordance with the terms of this Call Off Contract and the Service Levels shall remain unchanged pending the conclusion of the Expert Determination.
- 4.8 On conclusion of the Expert Determination:
- (a) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Call Off Contract Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Customer the difference between the Call Off Contract Charges paid by the Customer up to and including the date of the Expert's determination and the date upon which the recommended reduction in Call Off Contract Charges should have originally taken effect pursuant to paragraph 4.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
 - (b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Service Levels shall be implemented by the Supplier:
 - (i) the Supplier shall immediately implement the relevant changes;
 - (ii) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to paragraph 4.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
 - (iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Call Off Contract.
- 4.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with paragraph 4.3 (unless the provisions of paragraph 4.3 and/or paragraph 4.7 apply) or in accordance with paragraph 4.8 shall, without prejudice to any other rights or remedies of the Customer, Give rise to the right to terminate in accordance with Clause 42 (Supplier Termination Rights) of the Call off Contract.

Annex 1

Confidentiality Agreement

THIS AGREEMENT is made on [date]

BETWEEN:

- (1) [insert name] of [insert address] (the “**Supplier**”); and
- (2) [insert name] of [insert address] (the “**Benchmarker**” and together with the Supplier, the “**Parties**”).

WHEREAS:

- (A) [insert name of Customer] (the “**Customer**”) and the Supplier are party to a contract dated [insert date] (the “**Contract**”) for the provision by the Supplier of [insert brief description of services] to the Customer.
- (B) The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Customer of one or more of such services pursuant to the terms of the Contract (the “**Permitted Purpose**”).

IT IS AGREED as follows:

1 Interpretation

- 1.1 In this Agreement, unless the context otherwise requires:

	means:
“Confidential Information”	<ul style="list-style-type: none">(a) Information, including all personal data within the meaning of the Data Protection Legislation, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:<ul style="list-style-type: none">(i) the Supplier; or(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;(b) other Information provided by the Supplier pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker’s attention or into the Benchmarker’s possession in connection with the Permitted Purpose;(c) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmarker or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and(d) Information derived from any of the above, but not including any Information that:

- (i) was in the possession of the Benchmarkers without obligation of confidentiality prior to its disclosure by the Supplier;
- (ii) the Benchmarkers obtained on a non-confidential basis from a third party who is not, to the Benchmarkers' knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarkers;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
- (iv) was independently developed without access to the Confidential Information;

"Information" means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

"Permitted Purpose" has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- 1.2.1 a reference to any gender includes a reference to other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words "include" and cognate expressions shall be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- 1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.2.6 references to Clauses are to clauses of this Agreement.

2 Confidentiality Obligations

2.1 In consideration of the Supplier providing Confidential Information to the Benchmarkers, the Benchmarkers shall:

- 2.1.1 treat all Confidential Information as secret and confidential;
- 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this Agreement;
- 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;

- 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
- 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 2.1.7 once the Permitted Purpose has been fulfilled:
 - (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmark) from any computer, word processor, voicemail system or any other device; and
 - (c) make no further use of any Confidential Information.

3 Permitted Disclosures

- 3.1 The Benchmark may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
 - 3.1.1 reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
 - 3.1.2 have been informed by the Benchmark of the confidential nature of the Confidential Information; and
 - 3.1.3 have agreed to terms similar to those in this Agreement.
- 3.2 The Benchmark shall be entitled to disclose Confidential Information to the Customer for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in paragraph 4.7 of schedule 12 (*Benchmarking*) to the Contract.
- 3.3 The Benchmark shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmark.
- 3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmark shall, if the circumstances permit:
 - 3.4.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - 3.4.2 ask the court or other public body to treat the Confidential Information as confidential.

4 General

- 4.1 The Benchmark acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
 - 4.2.1 to grant the Benchmark any licence or rights other than as may be expressly stated in this Agreement;

- 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
- 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarkers acknowledge and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarkers of any of the provisions of this Agreement. Accordingly, the Benchmarkers acknowledge that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Benchmarkers to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
- 5.2 Any Notice:
- 5.2.1 if to be given to the Supplier shall be sent to:
- [Address]
- Attention: [Contact name and/or position, e.g. “The Finance Director”]
- 5.2.2 if to be given to the Benchmarkers shall be sent to:
- [Name of Organisation]
- [Address]
- Attention: []

6 Governing law

- 6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature: _____

Date:

Name:

Position:

For and on behalf of [name of Benchmark]

Signature: _____

Date:

Name:

Position:

Schedule 12

Call Off Guarantee

This Schedule is not required as the Supplier is its own Parent Company.

REDACTED

Schedule 13

Approved Sub-Contractors

As per Schedule 2, these are the known subcontractors at the point of the inception period. Additional Subcontractors will be identified during delivery and confirmed by the Authority.

Subcontractor/consortium member
REDACTED - Neovela Transition Finance
Ricardo
REDACTED – Independent Consultant
REDACTED - SLK Capital
Terranomics
REDACTED – independent Consultant
The Climate Group
REDACTED - Courageous Capital Advisors LLC
REDACTED - Carter Communications Consultancy