

CALL OFF SCHEDULE 4: IMPLEMENTATION PLAN, CONTRACTING AUTHORITY RESPONSIBILITIES AND KEY PERSONNEL

1. INTRODUCTION

1.1 This Call Off Schedule specifies:

1.1.1 In Part A, the Implementation Plan in accordance with which the Supplier shall provide the Services;

1.1.2 In Part B, the Contracting Authority Responsibilities in respect of facilitating the Supplier's achievement of the Implementation Plan; and

1.1.3 In Part C, The Key Personnel and their Key Roles assigned by the Supplier to this Call Off Contract in accordance with Clause 26.1 of this Call Off Contract (Key Personnel).

1.1.4

IMPLEMENTATION PLAN



Sanctuary Draft
Implementation Plan

PART A: IMPLEMENTATION PLAN

2. GENERAL

Contracting Authority obligations are as follows and as set out in the specification:

Deliver one Induction Training Day to Temporary Workers and Supplier representatives on 26 October 2017 or earlier if possible and agreed by both parties.

- Provide material from Induction Training Day to the Supplier to enable the Supplier to deliver future training to new Temporary Workers.***

Block book the required Temporary Worker hours for the Contract Term during the Implementation period.

PART B: CONTRACTING AUTHORITY RESPONSIBILITIES

3. GENERAL

- 3.1 The Contracting Authority Responsibilities associated with the Milestones identified in the Implementation Plan are set out in the column entitled Contracting Authority Responsibilities in the Implementation Plan.

CALL OFF SCHEDULE 5: TESTING

4. INTRODUCTION

- 4.1 This Call Off Schedule (Testing) sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Test Plans.

5. TESTING OVERVIEW

- 5.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy and the Test Plans.
- 5.2 Any disputes between the Supplier and the Contracting Authority regarding this Testing shall be referred to the Dispute Resolution Procedure.

6. TEST STRATEGY

- 6.1 The Supplier shall develop the final Test Strategy as soon as practicable but in any case no later than sixty (60) Working Days (or such other period as the Parties may agree) after the Call Off Commencement Date.
- 6.2 The final Test Strategy shall include:
- 6.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
 - 6.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 6.2.3 the procedure to be followed should a Deliverable fail a Test or where a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
 - 6.2.4 the procedure to be followed to sign off each Test; and
 - 6.2.5 the process for the production and maintenance of reports relating to Tests.

7. TEST PLANS

- 7.1 The Supplier shall develop Test Plans for the approval of the Contracting Authority as soon as practicable but in any case no later than sixty (60) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.
- 7.2 Each Test Plan shall include as a minimum:

- 7.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested;
- 7.2.2 a detailed procedure for the Tests to be carried out, including:
- (a) the timetable for the Tests including start and end dates;
 - (b) the Testing mechanism;
 - (c) dates and methods by which the Contracting Authority can inspect Test results;
 - (d) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (e) the process with which the Contracting Authority will review Test Issues and progress on a timely basis; and
 - (f) the re-Test procedure, the timetable and the resources which would be required for re-Testing.
- 7.3 The Contracting Authority shall not unreasonably withhold or delay its approval of the Test Plans and the Supplier shall implement any reasonable requirements of the Contracting Authority in the Test Plans.

8. TESTING

- 8.1 When the Supplier has completed the Services in respect of a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 8.2 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Contracting Authority shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 8.3 If the Supplier successfully completes the requisite Tests, the Contracting Authority shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Services are implemented in accordance with this Call Off Contract.

9. TEST ISSUES

- 9.1 Where a Test Issue is identified by the Supplier, the Parties shall agree how such Test Issue shall be dealt with and any failure to agree by the Parties shall be resolved in accordance with the Dispute Resolution Procedure.

10. TEST QUALITY AUDIT

- 10.1 Without prejudice to its rights pursuant to Clause 21 (Records and Audit Access), the Contracting Authority or an agent or contractor appointed by the Contracting Authority may perform on-going quality audits in respect of any part of the Testing.
- 10.2 If the Contracting Authority has any concerns following an audit in accordance with paragraph 10.1 above the Contracting Authority will discuss such concerns with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.

- 10.3 In the event of an inadequate response to the written report from the Supplier, the Contracting Authority (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Contracting Authority.

11. OUTCOME OF TESTING

- 11.1 The Contracting Authority will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.
- 11.2 If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:
- 11.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or
- 11.2.2 the Parties shall treat the failure as a Supplier Default.

CALL OFF SCHEDULE 6: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING

12. SCOPE

- 12.1 This Call Off Schedule (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 and Critical 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.
- 12.2 This Call Off Schedule comprises:
- 12.2.1 Part A: Service Levels and Service Credits;
- 12.2.2 Annex 1 to Part A - Service Levels and Service Credits Table;
- 12.2.3 Annex 2 to Part A – Critical Service Level Failure;
- 12.2.4 Part B: Performance Monitoring; and
- 12.2.5 Annex 1 to Part B: Additional Performance Monitoring Requirements.

PART A: SERVICE LEVELS AND SERVICE CREDITS

13. GENERAL PROVISIONS

- 13.1 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, respectively, the Call Off Contract Period and the Framework Period.
- 13.2 The Supplier shall provide a managed service through the provision of a dedicated Call Off Contract manager where required on matters relating to:
- 13.2.1 Supply performance;
 - 13.2.2 Quality of Services;
 - 13.2.3 Contracting Authority support;
 - 13.2.4 Complaints handling; and
 - 13.2.5 Accurate and timely invoices.
- 13.3 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 Contracting Authority(s).

14. PRINCIPAL POINTS

- 14.1 The objectives of the Service Levels and Service Credits are to:
- 14.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Contracting Authority;
 - 14.1.2 provide a mechanism whereby the Contracting Authority 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
 - 14.1.3 incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.

15. SERVICE LEVELS

- 15.1 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.
- 15.2 The Supplier shall monitor its performance of this Call Off Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Call Off Schedule (the "**Service Level Performance Criteria**") and shall send the Contracting Authority 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.
- 15.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.
- 15.4 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:

- 15.4.1 is likely to or fails to meet any Service Level Performance Measure or
- 15.4.2 is likely to cause or causes a Critical Service Failure to occur,
- 15.4.3 the Supplier shall immediately notify the Contracting Authority in writing and the Contracting Authority, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause 13 of this Call Off Contract (Service Levels and Service Credits), may:
- (a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Contracting Authority and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and
 - (b) if the action taken under paragraph (a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Contracting Authority shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or
 - (c) if a Service Level Failure has occurred, deduct from the Call Off Contract Charges the applicable Service Level Credits payable by the Supplier to the Contracting Authority in accordance with the calculation formula set out in Annex 1 of this Part A of this Call Off Schedule; or
 - (d) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause 14 of this Call Off Contract (Critical Service Level Failure) (including subject, for the avoidance of doubt, the proviso in Clause 14.1.2 of this Call Off Contract in relation to Material Breach).

15.5 Approval and implementation by the Contracting Authority of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Contracting Authority.

16. SERVICE CREDITS

- 16.1 Annex 1 to this Part A of this Call Off Schedule sets out the formula used to calculate a Service Credit payable to the Contracting Authority Contracting Authority 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 Month** during the Call Off Contract Period (the "**Service Period**").
- 16.2 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
- 16.3 The Contracting Authority 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.
- 16.4 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.

17. NATURE OF SERVICE CREDITS

17.1 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.

18. SERVICE CREDIT CAP

18.1 For the purposes of this Call Off Contract the **Service Credit Cap** means:

- (a) In the period from the Call Off Commencement Date to the end of the first Call Off term of the Estimated call Off Contract Charges; and
- (b) during the remainder of the Call Off Contract Period, is capped at 10% of the Call Off Contract Charges payable.

ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE CREDITS TABLE

Performance Criteria	Service Level Key Indicator	Specified Performance measure	Service Credit for each Service Period
Category	Service Level	Measure	Service Credit
Service Helpdesk	Booking service availability (in and out of hours)	98 percent	50% of the total month Agency Fee Contract Charge paid for each percentage under the specified performance measure in the month in which the breach occurred.
Complaints	Acknowledgement of complaints	100 percent of complaints acknowledged within 24 hours of receipt of the complaint on the first working day	50% of the total month Agency Fee Contract Charge paid for each percentage under the specified performance measure in the month in which the breach occurred.
	Make good/resolve the complaint, oversight or omission	100 percent within 15 Working days of receipt of the complaint on the first working day, unless the nature of the complaint, oversight or omission requires additional investigation	50% of the Agency Fee Contract Charge paid for each percentage under the specified performance measure in the month in which the breach occurred.
Ordering of Temporary Workers	Assignment fulfilment timescales	Agreed timescales with the Contracting Authority or timescales as stated in Clause 6.7 of Annex A to Part A Framework Schedule 2	50% of the total Agency Fee Contract Charge paid for the Temporary Worker not assigned within the timescales.
Provision of Temporary Workers	Temporary Worker fulfils the Assignment	The fill rate agreed with the Contracting Authority	50% of the Agency Fee Contract Charge paid for each percentage under the specified performance

			measure in the month in which the breach occurred
	Compliance with relevant Policy and Legislation	100 percent compliance	100% of the Agency Fee Contract Charge paid for the Temporary Worker who is not compliant
	Relevant Safeguarding and Employment Checks conducted on Candidates <u>prior to</u> Introduction to the Customer	100 percent compliance	100% of the Agency Fee Contract Charge paid for the Temporary Worker who is not compliant
	Provision of Temporary Worker Assignment Checklist	100 percent compliance	100% of the Agency Fee Contract Charge paid for the Temporary Worker who is not compliant
Invoicing	Charging, Invoicing and management information	100 percent compliance.	100% of the Agency Fee Contract Charge paid for the Temporary Worker Contract Charges that were not compliant
Contract Charges	Submission of a valid invoice within 30 days of the provision of the Temporary Worker (or as agreed with the Contracting Authority)	100 percent compliance	50% of the Agency Fee Contract Charge paid for the Temporary Worker Contract Charges
	Reimbursement of overcharged amounts within seven (7) days of notification receipt.	100 percent compliance	50% of the Agency Fee Contract Charge paid for the Temporary Worker Contract Charges
Freedom of Information (FOI)	Transfer to the Contracting Authority all FOI Requests within 2 Working Days of receipt.	100 percent compliance	50% of the Agency Fee Contract Charge paid for each percentage under the specified performance

			measure in the month in which the breach occurred.
	Provide a copy of all Information the Contracting Authority requires to respond to an FOI within 5 Working Days; or as agreed with the Contracting Authority	100 percent compliance	50% of the Agency Fee Contract Charge paid for each percentage under the specified performance measure in the month in which the breach occurred.
Supplier Contractual Breach	Remedy of the contractual breach within 30 calendar days or timescales as agreed with the Contracting Authority	100 percent compliance	100% of the Agency Fee Contract Charge paid for each percentage under the specified performance measure in the month in which the breach occurred. The Service Credit can be pro-rated e.g if the breach is resolved in 2 days only 2 days Contract Charges will be paid.
Contract Management	To provide information within 14 days of receipt of a written request from the Contracting Authority.	100 percent compliance	50% of the Agency Fee Contract Charge paid for each percentage under the specified performance measure in the month in which the breach occurred. The Service Credit can be pro-rated e.g if the breach is resolved in 16 days instead of 14 days only 2 days Contract Charges will be paid.
	Grant the Contracting Bodies internal auditors access to information for the purpose of	100 percent compliance.	100% of the Agency Fee Contract Charge paid for each percentage under the specified

	carrying out an audit on the supply of the Services under the Call Off Contract within 30 days of a request In Writing.		performance measure in the month in which the breach occurred. The Service Credit can be pro-rated e.g if the breach is resolved in 32 days instead of 30 days only 2 days Contract Charges will be paid.
	Attendance at the Contracting Authority review meetings (the frequency to be communicated by the Contracting Authority).	100 percent compliance	50% of the Agency Fee Contract Charge paid for each percentage under the specified performance measure in the month in which the breach occurred.
Performance Criteria	Service Level Key Indicator	Specified Performance measure	Service Credit for each Service Period
Category	Service Level	Measure	Service Credit
HCP Journey	HCP arrives at the Contracting Authority's premises at the stipulated time	100 percent compliance	100% of the Agency Fee Contract Charge paid for the Temporary Worker who is not compliant
	Claimant notes to be written up within 15 minutes following the conclusion of the meeting with the claimant	100 percent compliance	100% of the Agency Fee Contract Charge paid for the Temporary Worker who is not compliant
	HCP notes to include all elements defined within the specification	100 percent compliance	100% of the Agency Fee Contract Charge paid for the Temporary Worker who is not compliant

ADDITIONAL SLA FROM ITT ORDER FORM



SA SLA Additional
Items.docx

SERVICE LEVELS AND PRIORITY LEVELS

	Service Level	Priority Level
1.	Booking service availability (in and out of hours)	1
2.	Acknowledgement of complaints	2
3.	Make good/resolve the complaint, oversight or omission	2
4.	Assignment fulfilment timescales	2
5.	Temporary Worker fulfils the Assignment	1
6.	Compliance with relevant Policy and Legislation	1
7.	Relevant Safeguarding and Employment Checks conducted on Candidates <u>prior to</u> Introduction to the Customer	1
8.	Provision of Temporary Worker Assignment Checklist	2
9.	Charging, Invoicing and management information	2
11.	Submission of a valid invoice within 30 days of the provision of the Temporary Worker (or as agreed with the Contracting Authority)	2
12.	Reimbursement of overcharged amounts within seven (7) days of notification receipt.	2
13.	Transfer to the Contracting Authority all FOI Requests within 2 Working Days of receipt.	3
14.	Provide a copy of all Information the Contracting Authority requires to respond to an FOI within 5 Working Days; or as agreed with the Contracting Authority	3
15.	Remedy of the contractual breach within 30 calendar days or timescales as agreed with the Contracting	1

	Authority	
16.	To provide information within 14 days of receipt of a written request from the Contracting Authority.	2
17.	Grant the Contracting Bodies internal auditors access to information for the purpose of carrying out an audit on the supply of the Services under the Call Off Contract within 30 days of a request in Writing.	3
18.	Attendance at the Contracting Authority review meetings (the frequency to be communicated by the Contracting Authority).	3

Service Level		Service Level achieved			
		60-70%	71-90%	91-95%	96-100%
1.	Booking service availability (in and out of hours)				
2.	Acknowledgement of complaints				
3.	Make good/resolve the complaint, oversight or omission				
4.	Assignment fulfilment timescales				
5.	Temporary Worker fulfils the Assignment				
6.	Compliance with relevant Policy and Legislation				
7.	Relevant Safeguarding and Employment Checks conducted on Candidates <u>prior to</u> Introduction to the Customer				
8.	Provision of Temporary Worker Assignment Checklist				
9.	Charging, Invoicing and management information				
11.	Submission of a valid invoice within 30 days of the provision of the Temporary Worker (or as agreed with the Contracting Authority)				

Service Level		Service Level achieved			
		60-70%	71-90%	91-95%	96-100%
12.	Reimbursement of overcharged amounts within seven (7) days of notification receipt.				
13.	Transfer to the Contracting Authority Contracting Authority all FOI Requests within 2 Working Days of receipt.				
14.	Provide a copy of all Information the Contracting Authority requires to respond to an FOI within 5 Working Days; or as agreed with the Contracting Authority				
15.	Remedy of the contractual breach within 30 calendar days or timescales as agreed with the Contracting Authority				
16.	To provide information within 14 days of receipt of a written request from the Contracting Authority.				
17.	Grant the Contracting Bodies internal auditors access to information for the purpose of carrying our an audit on the supply of the Services under the Call Off Contract within 30 days of a request In Writing.				
18.	Attendance at the Contracting Authority review meetings (the frequency to be communicated by the Contracting Authority).				

1. If the level of performance of the Supplier of any element of the Services during Contract Period fails to achieve a Service Level in respect of any element of the Service, then the Supplier shall either:

1.1. deduct from the Supplier's Agency fee charged as per the Charging Structure for the period during which the Service Failure occurred, the total Service Credit value from the next invoice payable by the Contracting Authority; or

1.2. refund to the Contracting Authority the total Service Credit value calculated for the period during which the Service Failure occurred.

2. The Service Credit value shall be calculated in accordance with the following formula and worked example:

Formula

(100 % minus - % of Service Level achieved during the period) * 25 % Service Credit = X% of the value of the Agency Fee invoiced for the period during which the Service Failure occurred to be either (a) deducted from the next invoice payable by the Contracting Authority or (b) refunded to the Contracting Authority.

Worked example

(100 % (e.g. Compliance with relevant Policy and Legislation) – 98 % (e.g. Compliance with relevant Policy and Legislation)) * 100 % Service Credit = 2% of the value of the Agency Fee invoiced for the period during which the Service Failure occurred to be either (a) deducted from the next invoice payable by the Contracting Authority or (b) refunded to the Contracting Authority.

ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE

[In relation to **Specialist advice** a Critical Service Level Failure shall include a delay in producing Temporary Workers ordered by the Contracting Authority in excess of twenty four (24) hours more than once in any [three (3) Month] period or more than three (3) times in any rolling six (6) Month period.

PART B: PERFORMANCE MONITORING

19. PRINCIPAL POINTS

- 19.1 Part B to this Call Off Schedule provides the methodology for monitoring the provision of the Services:
- 19.1.1 to ensure that the Supplier is complying with the Service Levels; and
 - 19.1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services ("**Performance Monitoring System**").
- 19.2 Within twenty (20) Working Days of the Call Off Commencement Date the Supplier shall provide the Contracting Authority 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.

20. REPORTING OF SERVICE FAILURES

- 20.1 The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Contracting Authority in accordance with the processes agreed in paragraph 19.2 of Part B of this Call Off Schedule above.

21. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 21.1 The Supplier shall provide the Contracting Authority performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 19.2 of Part B of this Call Off Schedule above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
- 21.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 21.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 21.1.3 any Critical Service Level Failures and details in relation thereto;
 - 21.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 21.1.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 21.1.6 such other details as the Contracting Authority may reasonably require from time to time.

- 21.2 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 Contracting Authority of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
- 21.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
 - 21.2.2 take place at such location and time (within normal business hours) as the Contracting Authority shall reasonably require unless otherwise agreed in advance;
 - 21.2.3 be attended by the Supplier's Representative and the Contracting Authority(s) Representative; and
 - 21.2.4 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 Contracting Authority(s) 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's Representative and the Contracting Authority(s) Representative at each meeting.
- 21.3 The Contracting Authority shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 21.4 The Supplier shall provide to the Contracting Authority such supporting documentation as the Contracting Authority 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.

22. SATISFACTION SURVEYS

- 22.1 In order to assess the level of performance of the Supplier, the Contracting Authority may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 22.2 The Contracting Authority 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.
- 22.3 All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 18 of this Call Off Contract (Continuous Improvement).

CALL OFF SCHEDULE 8: SECURITY

0.1 In this Call Off Schedule 8, 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 Contracting Authority Data) used by the Contracting Authority and/or the Supplier in connection with this Call Off Contract; and/or
 - b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Contracting Authority Data), including any copies of such information or data, used by the Contracting Authority 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"** the information security management system and process developed by the Supplier in accordance with paragraph 2 (ISMS) as updated from time to time in accordance with this Schedule 8; and
- "Security Tests"** tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

1. INTRODUCTION

- 1.1 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.
- 1.2 The Parties shall each appoint a security representative to be responsible for Security. The initial security representatives of the Parties are:
 - 1.2.1 S Millar / K Harrison
 - 1.2.2 D Hill
- 1.3 If the persons named in paragraphs **Error! Reference source not found.** and **Error! Reference source not found.** are included as Key Personnel, Clause 26 (Key Personnel) shall apply in relation to such persons.
- 1.4 The Contracting Authority 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.
- 1.5 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.
- 1.6 The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Contracting Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Contracting Authority Data remains under the effective control of the Supplier at all times.

- 1.7 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.
- 1.8 The Contracting Authority and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Contracting Authority security provisions represents an unacceptable risk to the Contracting Authority requiring immediate communication and co-operation between the Parties.

2. ISMS

- 2.1 The Supplier shall develop and submit to the Contracting Authority for the Contracting Authority Approval, within twenty (20) working days after the Call Off Commencement Date or such other date as agreed between the Parties, an information security management system for the purposes of this Call Off Contract, which shall comply with the requirements of paragraphs 2.3 to 2.5 of this Call Off Schedule 8 (Security).
- 2.2 The Supplier acknowledges that the Contracting Authority 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.
- 2.3 The ISMS shall:
 - 2.3.1 unless otherwise specified by the Contracting Authority in writing, be developed to protect all aspects of the Services and all processes associated with the provision of the Services, including the Contracting Authority Premises, the Sites, any ICT, information and data (including the Contracting Authority Confidential Information and the Contracting Authority Data) to the extent used by the Contracting Authority or the Supplier in connection with this Call Off Contract;
 - 2.3.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC27002 in accordance with Paragraph 6;and
 - 2.3.3 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) 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 ;
 - (e) takes account of guidance issued by the Centre for Protection of National Infrastructure on Risk Management
http://www.cpni.gov.uk/Documents/Publications/2005/2005003-Risk_management.pdf
 - (f) complies with HMG Information Assurance Maturity Model and Assurance Framework

<http://www.cesg.gov.uk/publications/Documents/iamm-assessment-framework.pdf>

- (g) meets any specific security threats of immediate relevance to the Services and/or Contracting Authority Data; and
 - (h) complies with the Contracting Authority ICT policies:
- 2.3.4 document the security incident management processes and incident response plans;
 - 2.3.5 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
 - 2.3.6 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 Contracting Authority in advance of issue of the relevant Security Management Plan).
- 2.4 Subject to Clause 34 of this Call Off Contract (Security and Protection of Information) the references to Standards, guidance and policies contained or set out in paragraph 2.3 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.
 - 2.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 2.3 of this Call Off Schedule, the Supplier shall immediately notify the Contracting Authority Representative of such inconsistency and the Contracting Authority Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
 - 2.6 If the ISMS submitted to the Contracting Authority pursuant to paragraph 2.1 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 non-approval from the Contracting Authority and re-submit it to the Contracting Authority 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 Contracting Authority 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 Contracting Authority pursuant to this paragraph 2 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 2.3 to 2.5 of this Call Off Schedule shall be deemed to be reasonable.
 - 2.7 Approval by the Contracting Authority of the ISMS pursuant to paragraph 2.6 of this Call Off Schedule or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

3. SECURITY MANAGEMENT PLAN

- 3.1 Within twenty (20) Working Days after the Call Off Commencement Date, the Supplier shall prepare and submit to the Contracting Authority for Approval in accordance with paragraph 3 of this Call Off Schedule a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 3.2 of this Call Off Schedule.
- 3.2 The Security Management Plan shall:
- 3.2.1 be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);
 - 3.2.2 comply with the Security Policy;
 - 3.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Call Off Schedule is complied with by the Supplier;
 - 3.2.4 detail the process for managing any security risks from Sub-Contractors and third parties authorised by the Contracting Authority with access to the Services, processes associated with the delivery of the Services, the Contracting Authority Premises, the Sites and any ICT, Information and data (including the Contracting Authority Confidential Information and the Contracting Authority Data) and any system that could directly or indirectly have an impact on that information, data and/or the Services;
 - 3.2.5 unless otherwise specified by the Contracting Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Contracting Authority Premises, the Sites and any ICT, Information and data (including the Contracting Authority Confidential Information and the Contracting Authority Data) to the extent used by the Contracting Authority 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;
 - 3.2.6 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 8 (including the requirements set out in paragraph 2.3 of this Call Off Schedule);
 - 3.2.7 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 .
 - 3.2.8 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
 - 3.2.9 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Contracting Authority 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 8 Security.

- 3.3 If the Security Management Plan submitted to the Contracting Authority 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 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 Contracting Authority and re-submit it to the Contracting Authority 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 Contracting Authority of the Security Management Plan. If the Contracting Authority 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 Contracting Authority 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 3.2 of this Call Off Schedule shall be deemed to be reasonable.
- 3.4 Approval by the Contracting Authority of the Security Management Plan pursuant to paragraph 3.3 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.

4. AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN

- 4.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:
- 4.1.1 emerging changes in Good Industry Practice;
 - 4.1.2 any change or proposed change to Services and/or associated processes;
 - 4.1.3 any changes to the Security Policy;
 - 4.1.4 any new perceived or changed security threats; and
 - 4.1.5 any reasonable change in requirement requested by the Customer.
- 4.2 The Supplier shall provide the Contracting Authority 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:
- 4.2.1 suggested improvements to the effectiveness of the ISMS;
 - 4.2.2 updates to the risk assessments;
 - 4.2.3 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
 - 4.2.4 suggested improvements in measuring the effectiveness of controls.
- 4.3 Subject to paragraph 4.4 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 4.1 of this Call Off Schedule, a Contracting Authority 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 Contracting Authority.

- 4.4 The Contracting Authority 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.

5. SECURITY TESTING

- 5.1 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.
- 5.2 The Contracting Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Contracting Authority with the results of such Security Tests (in a form approved by the Contracting Authority in advance) as soon as practicable after completion of each Security Test.
- 5.3 Without prejudice to any other right of audit or access granted to the Contracting Authority pursuant to this Call Off Contract, the Contracting Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration 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 Contracting Authority may notify the Supplier of the results of such tests after completion of each such test. If any such Contracting Authority test adversely affects the Supplier's ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Contracting Authority test.
- 5.4 Where any Security Test carried out pursuant to paragraphs 5.2 or 5.3 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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) or the requirements of this Call Off Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Customer.

- 5.5 If any repeat Security Test carried out pursuant to paragraph 5.4 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.

6. ISMS COMPLIANCE

- 6.1 The Contracting Authority 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.
- 6.2 If, on the basis of evidence provided by such security audits, it is the Contracting Authority 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 Contracting Authority 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 does not become compliant within the required time then the Contracting Authority shall have the right to obtain an independent audit against these standards in whole or in part.
- 6.3 If, as a result of any such independent audit as described in paragraph 6.2 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 Contracting Authority in obtaining such audit.

7. BREACH OF SECURITY

- 7.1 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.
- 7.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 7.1 of this Call Off Schedule, the Supplier shall:
- 7.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Customer) necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security to the extent necessary protect the integrity of the Contracting Authority Property and/or Contracting Authority Assets to the extent within its control against any such Breach of Security or any potential or attempted Breach of Security;
 - (c) 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 under-performance for such period as the Customer, acting reasonably, may specify by written notice to the Supplier;

- (d) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
- (e) supply any requested data to the Contracting Authority (or the Computer Emergency Response Team for UK Government ("GovCertUK")) on the Contracting Authority request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
- (f) as soon as reasonably practicable provide to the Contracting Authority 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.

7.3 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



Additional Security
Requirements.docx

CALL OFF SCHEDULE 9: BUSINESS CONTINUITY AND DISASTER RECOVERY

OPTION 2

1. DEFINITIONS

1.1 In this Call Off Schedule 9, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given to it in paragraph 2.2.1(b) of this Call Off Schedule;
"Disaster Recovery Plan"	has the meaning given to it in 2.2.1(c) of this Call Off Schedule;
"Disaster Recovery System"	means the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a disaster;
"Review Report"	has the meaning given to it in paragraph 6.2 of this Call Off Schedule;
"Supplier's Proposals"	has the meaning given to it in paragraph 6.2.3 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 Contracting Authority for the Contracting Authority's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

2.1.2 the recovery of the Services in the event of a Disaster.

2.2 The BCDR Plan shall:

2.2.1 be divided into three parts:

(a) Part A which shall set out general principles applicable to the BCDR Plan;

(b) Part B which shall relate to business continuity (the "**Business Continuity Plan**"); and

(c) Part C which shall relate to disaster recovery (the "**Disaster Recovery Plan**"); and

2.2.2 unless otherwise required by the Contracting Authority in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.

2.3 Following receipt of the draft BCDR Plan from the Supplier, the Contracting Authority shall:

2.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and

- 2.3.2 notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Customer.
- 2.4 If the Contracting Authority rejects the draft BCDR Plan:
 - 2.4.1 the Contracting Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - 2.4.2 the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Contracting Authority comments) and shall re-submit a revised draft BCDR Plan to the Contracting Authority for the Contracting Authority's approval within twenty (20) Working Days of the date of the Contracting Authority's notice of rejection. The provisions of paragraphs 2.3 and 2.4 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. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1 Part A of the BCDR Plan shall:
 - 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Services and any Services provided to the Contracting Authority by a Related Supplier;
 - 3.1.3 contain an obligation upon the Supplier to liaise with the Contracting Authority and (at the Contracting Authority request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;
 - 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Contracting Authority and any of its other Related Supplier in each case as notified to the Supplier by the Contracting Authority from time to time;
 - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;
 - 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the provision of Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the provision of Services and with the Services provided by a Related Supplier; and

- (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - 3.1.7 provide for documentation of processes, including business processes, and procedures;
 - 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Customer;
 - 3.1.9 identify the procedures for reverting to "normal service";
 - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - 3.1.11 identify the responsibilities (if any) that the Contracting Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Contracting Authority as notified by the Contracting Authority from time to time to inform decisions in support of the Contracting Authority's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Services are provided in accordance with this Call Off Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Contracting Authority is minimal as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of [ISO/IEC 27002] and all other industry standards from time to time in force; and
 - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the provision of Services.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Call Off Contract.

4. BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Contracting Authority expressly states otherwise in writing:
 - 4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Services; and

- 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
 - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Services;
 - 4.2.2 set out the Services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such goods, services and steps, the "**Business Continuity Services**");
 - 4.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and
 - 4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Contracting Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
 - 5.3.1 the technical design and build specification of the Disaster Recovery System;
 - 5.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (a) [data centre and disaster recovery site audits;
 - (b) backup methodology and details of the Supplier's approach to data back-up and data verification;
 - (c) identification of all potential disaster scenarios;
 - (d) risk analysis;
 - (e) documentation of processes and procedures;
 - (f) hardware configuration details;
 - (g) network planning including details of all relevant data networks and communication links;
 - (h) invocation rules;
 - (i) Service recovery procedures; and

- (j) steps to be taken upon resumption of the provision of Services to address any prevailing effect of the failure or disruption of the provision of Services;]
- 5.3.3 any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;
- 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.3.6 testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
 - 6.1.1 on a regular basis and as a minimum once every six (6) months;
 - 6.1.2 within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
 - 6.1.3 where the Contracting Authority requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Call Off Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Contracting Authority written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Contracting Authority for the Contracting Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Contracting Authority except that the Supplier shall not be entitled to charge the Contracting Authority for any costs that it may incur above any estimate without the Contracting Authority prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Call off Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Contracting Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Contracting Authority a report (a "Review Report") setting out:
 - 6.2.1 the findings of the review;
 - 6.2.2 any changes in the risk profile associated with the provision of Services; and

- 6.2.3 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.
- 6.3 Following receipt of the Review Report and the Supplier's Proposals, the Contracting Authority shall:
 - 6.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
 - 6.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Customer.
- 6.4 If the Contracting Authority rejects the Review Report and/or the Supplier's Proposals:
 - 6.4.1 the Contracting Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - 6.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Contracting Authority'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 Contracting Authority for the Contracting Authority's approval within twenty (20) Working Days of the date of the Contracting Authority's notice of rejection. The provisions of paragraphs 6.3 and 6.4 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.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the Contracting Authority 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.

7. TESTING OF THE BCDR PLAN

- 7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2 of this Call Off Schedule, the Contracting Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Contracting Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Contracting Authority requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Contracting Authority requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Contracting Authority unless the BCDR Plan fails the additional test

in which case the Supplier's costs of that failed test shall be borne by the Supplier.

- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Contracting Authority and shall liaise with the Contracting Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Contracting Authority in this regard. Each test shall be carried out under the supervision of the Contracting Authority or its nominee.
- 7.4 The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Contracting Authority on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Contracting Authority a report setting out:
 - 7.5.1 the outcome of the test;
 - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 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 Contracting Authority and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Call Off Contract.
- 7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Customer.

8. INVOCATION OF THE BCDR PLAN

- 8.1 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 Contracting Authority 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.

CALL OFF SCHEDULE 10: 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 3.1.1 and 3.1.2 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 Contracting Authority 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 Contracting Authority or any Replacement Supplier to perform the Services or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;

"Transferring Assets"

has the meaning given to it in paragraph 9.2.1 of this Call Off Schedule;

"Transferring Contracts"

has the meaning given to it in paragraph 9.2.3 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 Contracting Authority leading up to and covering the Call Off Expiry Date and the transfer of service provision to the Contracting Authority 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 Contracting Authority 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:

3.1.1 create and maintain a Register of all:

(a) Supplier Assets, detailing their:

- (i) make, model and asset number;
- (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
- (iii) Net Book Value;
- (iv) condition and physical location; and
- (v) use (including technical specifications); and

(b) 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;

3.1.2 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 Contracting Authority 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;

3.1.3 agree the format of the Registers with the Contracting Authority as part of the process of agreeing the Exit Plan; and

- 3.1.4 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:
- 3.2.1 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
- 3.2.2 (unless otherwise agreed by the Contracting Authority 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 Contracting Authority to the Contracting Authority (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 3.2.2 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 Contracting Authority (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Contracting Authority of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Contracting Authority 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 Contracting Authority 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 Contracting Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 4.1.1 details of the Service(s);
- 4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
- 4.1.3 an inventory of the Contracting Authority's Data in the Supplier's possession or control;

- 4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- 4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
- 4.1.6 all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Call Off Contract; and
- 4.1.7 such other material and information as the Contracting Authority shall reasonably require,

(together, the "Exit Information").

- 4.2 The Supplier acknowledges that the Contracting Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Contracting Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Contracting Authority 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:
 - 4.3.1 notify the Contracting Authority 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 Contracting Authority regarding such proposed material changes; and
 - 4.3.2 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 Contracting Authority for its reasonable additional costs to the extent the Contracting Authority 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:
 - 4.5.1 prepare an informed offer for those Services; and
 - 4.5.2 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 Contracting Authority an Exit Plan which:
 - 5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Contracting Authority and/or its Replacement Supplier on the expiry or termination of this Call Off Contract;
 - 5.1.2 complies with the requirements set out in paragraph 5.3 of this Call Off Schedule;
 - 5.1.3 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 Contracting Authority or Approved, the Exit Plan shall set out, as a minimum:
- 5.3.1 how the Exit Information is obtained;
 - 5.3.2 the management structure to be employed during both transfer and cessation of the Services;
 - 5.3.3 the management structure to be employed during the Termination Assistance Period;
 - 5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 5.3.5 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 Contracting Authority's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 5.3.6 details of contracts (if any) which will be available for transfer to the Contracting Authority 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);
 - 5.3.7 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;
 - 5.3.8 proposals for providing the Contracting Authority or a Replacement Supplier copies of all documentation:
 - (a) 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
 - (b) relating to the use and operation of the Services;
 - 5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
 - 5.3.10 proposals for the identification and return of all the Contracting Authority's Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
 - 5.3.11 proposals for the disposal of any redundant Services and materials;
 - 5.3.12 procedures to deal with requests made by the Contracting Authority and/or a Replacement Supplier for Staffing Information pursuant to Call Off Schedule 11 (Staff Transfer);

- 5.3.13 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 Contracting Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
- 5.3.14 proposals for the supply of any other information or assistance reasonably required by the Contracting Authority or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

6. TERMINATION ASSISTANCE

- 6.1 The Contracting Authority 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:
 - 6.1.1 the date from which Termination Assistance is required;
 - 6.1.2 the nature of the Termination Assistance required; and
 - 6.1.3 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority may require, the Supplier shall:
 - 7.1.1 continue to provide the Services (as applicable) and, if required by the Contracting Authority pursuant to paragraph 6.1 of this Call Off Schedule, provide the Termination Assistance;
 - 7.1.2 in addition to providing the Services and the Termination Assistance, provide to the Contracting Authority any reasonable assistance requested by the Contracting Authority 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 Contracting Authority and/or its Replacement Supplier;
 - 7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Call Off Schedule without additional costs to the Customer;

- 7.1.4 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
- 7.1.5 at the Contracting Authority'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 7.1.3 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 7.1.2 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 Contracting Authority's reasonable satisfaction that transition of the Services and provision of the Termination Assist 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:
 - 8.2.1 cease to use the Contracting Authority's Data;
 - 8.2.2 provide the Contracting Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Contracting Authority's Data in electronic form (or such other format as reasonably required by the Customer);
 - 8.2.3 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 the Contracting Authority's Data and promptly certify to the Contracting Authority that it has completed such deletion;
 - 8.2.4 return to the Contracting Authority such of the following as is in the Supplier's possession or control:
 - (a) all materials created by the Supplier under this Call Off Contract in which the IPRs are owned by the Customer;
 - (b) any equipment which belongs to the Customer;
 - (c) any items that have been on-charged to the Customer, such as consumables; and
 - (d) all Contracting Authority's Property issued to the Supplier under Clause 31 of this Call Off Contract (Contracting Authority Property). Such Contracting Authority Property shall be handed back to the Contracting Authority in good working order (allowance shall be made only for reasonable wear and tear);

- (e) any sums prepaid by the Contracting Authority in respect of Services not Delivered by the Call Off Expiry Date;
- 8.2.5 vacate any Contracting Authority Premises;
- 8.2.6 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;
- 8.2.7 provide access during normal working hours to the Contracting Authority and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:
 - (a) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (b) 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority prior written consent:
 - 9.1.1 terminate, enter into or vary any Sub-Contract;
 - 9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
 - 9.1.3 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 7.1.5 of this Call Off Schedule, the Contracting Authority shall provide written notice to the Supplier setting out:

- 9.2.1 which, if any, of the Transferable Assets the Contracting Authority requires to be transferred to the Contracting Authority and/or the Replacement Supplier ("**Transferring Assets**");
- 9.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,
 the Contracting Authority and/or the Replacement Supplier requires the continued use of; and
- 9.2.3 which, if any, of Transferable Contracts the Contracting Authority requires to be assigned or novated to the Contracting Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Contracting Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Contracting Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Contracting Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Contracting Authority and/or its Replacement Supplier requires to provide the Services or the Replacement Goods and/or Replacement Services.

- 9.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Contracting Authority 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 Contracting Authority 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 Contracting Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Contracting Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 9.5 Where the Supplier is notified in accordance with paragraph 9.2.2 of this Call Off Schedule that the Contracting Authority 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:
 - 9.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Customer) for the Contracting Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - 9.5.2 procure a suitable alternative to such assets and the Contracting Authority 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 Contracting Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Contracting Authority reasonably requires to effect this novation or assignment.

9.7 The Contracting Authority shall:

9.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

9.7.2 once a Transferring Contract is novated or assigned to the Contracting Authority 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 Contracting Authority until such time as the transfer of the relevant Transferring Contract to the Contracting Authority and/or the Replacement Supplier has been effected.

9.9 The Supplier shall indemnify the Contracting Authority (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 Contracting Authority (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 Contracting Authority 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 11 (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 Contracting Authority and/or the Replacement Supplier.

10.3 During the Termination Assistance Period, the Supplier shall give the Contracting Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Contracting Authority and/or the Replacement Supplier.

10.4 The Supplier shall immediately notify the Contracting Authority 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 Contracting Authority and/or the Replacement Supplier, unless approval has been obtained from the Contracting Authority which shall not be unreasonably withheld.

11. CHARGES

11.1 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 Contracting Authority 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 Contracting Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 12.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
 - 12.1.2 the Contracting Authority 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
 - 12.1.3 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 Contracting Authority 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.

CALL OFF SCHEDULE 11: STAFF TRANSFER

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Admission Agreement”	The agreement to be entered into by which the Supplier agrees to participate in the Schemes as amended from time to time;
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
“Fair Deal Employees”	those Transferring Contracting Authority 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”	a supplier supplying services to the Contracting Authority 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”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;
“Notified Sub-contractor”	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Contracting Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-contractor”	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”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Schemes”	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”

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”

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, such information as the Contracting Authority 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 Contracting Authority Employees"

those employees of the Contracting Authority 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 CONTRACTING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

- 1.1 The Contracting Authority and the Supplier agree that:
- 1.1.1 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 Contracting Authority Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Contracting Authority and the Transferring Contracting Authority 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 Contracting Authority Employee.
- 1.2 The Contracting Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Contracting Authority 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. CONTRACTING AUTHORITY INDEMNITIES

- 2.1 Subject to Paragraph 2.2, the Contracting Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Contracting Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.1.1 any act or omission by the Contracting Authority occurring before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Contracting Authority before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Contracting Authority Employees; and/or
 - (b) any custom or practice in respect of any Transferring Contracting Authority Employees which the Contracting Authority is contractually bound to honour;
 - 2.1.3 any claim by any trade union or other Authority or person representing the Transferring Contracting Authority Employees arising from or connected with any failure by the Contracting Authority to comply with

- any legal obligation to such trade union, Authority or person arising before the Relevant Transfer Date;
- 2.1.4 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:
- (a) in relation to any Transferring Contracting Authority 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
 - (b) in relation to any employee who is not a Transferring Contracting Authority 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 Contracting Authority 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.
- 2.1.5 a failure of the Contracting Authority 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 Contracting Authority Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Contracting Authority other than a Transferring Contracting Authority Employee for whom it is alleged the 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
- 2.1.7 any claim made by or in respect of a Transferring Contracting Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contracting Authority Employee relating to any act or omission of the Contracting Authority 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:
- 2.2.1 arising out of the resignation of any Transferring Contracting Authority 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
 - 2.2.2 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 Contracting Authority as a Transferring Contracting Authority Employee claims, or it is determined in relation to any person who is not identified by the Contracting Authority as a Transferring Contracting Authority Employee, that his/her contract of employment has been transferred from the Contracting Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 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
- 2.3.2 the Contracting Authority may offer (or may procure that a third party may offer) employment to such person within 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 Contracting Authority 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 2.3.2 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 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 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 Contracting Authority 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:
- 2.7.1 shall not apply to:
- (a) any claim for:
- (i) 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
- (ii) 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

- (b) 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

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Contracting Authority 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 Contracting Authority 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 Contracting Authority against any Employee Liabilities in respect of any Transferring Contracting Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Contracting Authority Employees; and/or

- (b) any custom or practice in respect of any Transferring Contracting Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other Authority or person representing any Transferring Contracting Authority 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, Authority or person arising on or after the Relevant Transfer Date;

3.1.4 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 Contracting Authority 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 Contracting Authority 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;

3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Contracting Authority Employee before the Relevant Transfer Date regarding the

Relevant Transfer which has not been agreed in advance with the Contracting Authority in writing;

- 3.1.6 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:
- (a) in relation to any Transferring Contracting Authority 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
 - (b) in relation to any employee who is not a Transferring Contracting Authority 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 Contracting Authority 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;
- 3.1.7 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 Contracting Authority Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 3.1.8 any claim made by or in respect of a Transferring Contracting Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contracting Authority 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 Contracting Authority 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 Contracting Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Contracting Authority 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 Contracting Authority 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 Contracting Authority and the Supplier.

4. INFORMATION

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Contracting Authority in writing such information as is necessary to enable the Contracting Authority to carry out its duties under regulation 13 of the Employment Regulations. The Contracting Authority 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 Contracting Authority relating to pensions in respect of any Transferring Contracting Authority Employee as set down in:
 - 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 5.2.4 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.

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:
 - 1.2.1 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;
 - 1.2.2 agree that the Contracting Authority is entitled to make arrangements with the Authority responsible for the Schemes for the Contracting Authority to be notified if the Supplier breaches the Admission Agreement;
 - 1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Contracting Authority in the event that it breaches the Admission Agreement; and
 - 1.2.4 agree that the Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority to indemnify and keep indemnified the Contracting Authority 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 Contracting Authority 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:
 - 7.3.1 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
 - 7.3.2 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 Contracting Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph 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 Contracting Authority and the Supplier agree that:
- 1.1.1 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
 - 1.1.2 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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:
- 2.1.1 any act or omission by the Former Supplier arising before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
 - 2.1.3 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:
 - (a) 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
 - (b) 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;
 - 2.1.4 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;
 - 2.1.5 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
 - 2.1.6 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:
- 2.2.1 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
 - 2.2.2 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 Contracting Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Contracting Authority 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:
- 2.3.1 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 Contracting Authority and, where required by the Customer, to the Former Supplier; and
- 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 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 2.3.2 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 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 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 Law, the Contracting Authority 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:
- 2.7.1 shall not apply to:
- (a) any claim for:
- (i) 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
- (ii) 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

- (b) 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

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Contracting Authority 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 Contracting Authority 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:

3.1.1 any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or

- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other Authority 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, Authority or person arising on or after the Relevant Transfer Date;

3.1.4 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;

3.1.5 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 Contracting Authority and/or the Former Supplier in writing;
- 3.1.6 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:
- (a) 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
 - (b) 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;
- 3.1.7 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
- 3.1.8 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 Contracting Authority and/or at the Contracting Authority direction, the Former Supplier, in writing such information as is necessary to enable the Contracting Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Contracting Authority 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 Contracting Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

5.1.4 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 Contracting Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Contracting Authority contract with the Former Supplier contains a contractual right in that regard which the Contracting Authority may enforce, or otherwise so that it requires only that the Contracting Authority 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:
 - 1.2.1 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;
 - 1.2.2 agree that the Contracting Authority is entitled to make arrangements with the Authority responsible for the Schemes for the Contracting Authority to be notified if the Supplier breaches the Admission Agreement;
 - 1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Contracting Authority in the event that it breaches the Admission Agreement; and
 - 1.2.4 agree that the Contracting Authority 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 Contracting Authority 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 rejoining 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority to indemnify and keep indemnified the Contracting Authority 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 Contracting Authority 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

- 7.3.1 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
- 7.3.2 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 Contracting Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Contracting Authority 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 Contracting Authority and/or any Former Supplier.
- 1.2 If any employee of the Contracting Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Contracting Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Contracting Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - 1.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Contracting Authority and, where required by the Customer, give notice to the Former Supplier; and
 - 1.2.2 the Contracting Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Contracting Authority 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 1.2.2 is accepted (or if the situation has otherwise been resolved by the Contracting Authority 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 15 Working Day period specified in Paragraph 1.2.2:
 - 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-contractor may within 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 Contracting Authority shall:
 - 2.1.1 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 Contracting Authority 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

2.1.2 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 Contracting Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 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 Contracting Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Contracting Authority 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:

2.4.1 shall not apply to:

(a) any claim for:

(i) 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

(ii) 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

(b) 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

2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Contracting Authority and, if applicable, Former Supplier within 6 months of the Call Off Commencement Date.

3. PROCUREMENT OBLIGATIONS

Where in this Part C the Contracting Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Contracting Authority contract with the Former Supplier contains a contractual right in that regard which the Contracting Authority may

enforce, or otherwise so that it requires only that the Contracting Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D

EMPLOYMENT EXIT PROVISIONS

4. PRE-SERVICE TRANSFER OBLIGATIONS

- 4.1 The Supplier agrees that within 20 Working Days of the earliest of:
- 4.1.1 receipt of a notification from the Contracting Authority of a Service Transfer or intended Service Transfer;
 - 4.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Call Off Contract;
 - 4.1.3 the date which is 12 months before the end of the Term; and
 - 4.1.4 receipt of a written request of the Contracting Authority at any time (provided that the Contracting Authority shall only be entitled to make one such request in any 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.

- 4.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Contracting Authority or at the direction of the Contracting Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
- 4.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 4.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 4.3 The Contracting Authority 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.
- 4.4 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.
- 4.5 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 Contracting Authority (not to be unreasonably withheld or delayed):
- 4.5.1 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;

- 4.5.2 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);
- 4.5.3 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;
- 4.5.4 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;
- 4.5.5 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
- 4.5.6 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 Contracting Authority 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.

- 4.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Contracting Authority any information the Contracting Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
 - 4.6.1 the numbers of employees engaged in providing the Services;
 - 4.6.2 the percentage of time spent by each employee engaged in providing the Services; and
 - 4.6.3 a description of the nature of the work undertaken by each employee by location.
- 4.7 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 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Contracting Authority 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:
 - 4.7.1 the most recent month's copy pay slip data;
 - 4.7.2 details of cumulative pay for tax and pension purposes;
 - 4.7.3 details of cumulative tax paid;
 - 4.7.4 tax code;

- 4.7.5 details of any voluntary deductions from pay; and
- 4.7.6 bank/building society account details for payroll purposes.

5. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 5.1 The Contracting Authority 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 Contracting Authority 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.
- 5.2 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.
- 5.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Contracting Authority 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:
 - 5.3.1 any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
 - 5.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) 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;

- 5.3.3 any claim by any trade union or other Authority 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, Authority or person arising on or before the Service Transfer Date;
- 5.3.4 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:
- (a) 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
 - (b) 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 Contracting Authority 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;
- 5.3.5 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);
- 5.3.6 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 Contracting Authority 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
- 5.3.7 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 Contracting Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 5.4 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:
- 5.4.1 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

- 5.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 5.5 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:
- 5.5.1 the Contracting Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- 5.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 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.
- 5.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Contracting Authority 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.
- 5.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:
- 5.7.1 no such offer of employment has been made;
- 5.7.2 such offer has been made but not accepted; or
- 5.7.3 the situation has not otherwise been resolved
- the Contracting Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 5.8 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.
- 5.9 The indemnity in Paragraph 2.8:
- 5.9.1 shall not apply to:
- (a) any claim for:
- (i) 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

- (ii) 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

- (b) 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

5.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .

5.10 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.

5.11 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:

5.11.1 the Supplier and/or any Sub-contractor; and

5.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.

5.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Contracting Authority 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 Contracting Authority 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.

5.13 Subject to Paragraph 2.14, the Contracting Authority 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:

- 5.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;
- 5.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) 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;
- 5.13.3 any claim by any trade union or other Authority 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, Authority or person arising on or after the Relevant Transfer Date;
- 5.13.4 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;
- 5.13.5 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;
- 5.13.6 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:
- (a) 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
 - (b) 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;
- 5.13.7 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

5.13.8 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.

5.14 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

CALL OFF SCHEDULE 12: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this Call Off Schedule 12, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Counter Notice"	has the meaning given to it in paragraph 6.2 of this Call Off Schedule;
"Exception"	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Services;
"Expert"	the person appointed by the Parties in accordance with paragraph 5.2 of this Call Off Schedule 12; and
"Mediation Notice"	has the meaning given to it in paragraph 3.2 of this Call Off Schedule;
"Mediator"	the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule 12.

2. INTRODUCTION

2.1 If a Dispute arises then:

2.1.1 the representative of the Contracting Authority and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

2.2.1 the material particulars of the Dispute;

2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Call Off Schedule, the reason why.

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

2.4 Subject to paragraph 3.2 of this Call Off Schedule, the Parties shall seek to resolve Disputes:

2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Call Off Schedule);

- 2.4.2 then by mediation (as prescribed in paragraph 4 of this Call Off Schedule); and
- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Call Off Schedule) or litigation (in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Call Off Schedule) where specified under the provisions of this Call Off Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Call Off Schedule.
- 2.6 In exceptional circumstances where the use of the times in this Call Off Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
 - 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
 - 2.7.2 in paragraph 4.2, ten (10) Working Days;
 - 2.7.3 in paragraph 5.2, five (5) Working Days; and
 - 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Contracting Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Contracting Authority and the Supplier.
- 3.2 If:
 - 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
 - 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Call Off Schedule; or
 - 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Call Off Schedule within thirty (30) Working Days of service of the Dispute Notice,

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

4. MEDIATION

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

5. EXPERT DETERMINATION

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional Authority.
- 5.3 The Expert shall act on the following basis:
 - 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
 - 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
 - 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
 - 5.3.5 the process shall be conducted in private and shall be confidential; and
 - 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6. ARBITRATION

- 6.1 The Contracting Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Call Off Schedule.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Contracting Authority of its intentions and the Contracting Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "Counter Notice") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Call Off Schedule shall apply;
 - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 61 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
 - 6.3.3 the Contracting Authority does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Call Off Schedule or commence court proceedings in the courts in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Call Off Schedule, the Parties hereby confirm that:
- 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA") (subject to paragraphs 6.4.5 to 6.4.7 of this Call Off Schedule);
 - 6.4.2 the arbitration shall be administered by the LCIA;
 - 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 6.4.5 the chair of the arbitral tribunal shall be British;

- 6.4.6 the arbitration proceedings shall take place in [London] and in the English language; and
- 6.4.7 the seat of the arbitration shall be London.

7. URGENT RELIEF

- 7.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
 - 7.1.1 for interim or interlocutory remedies in relation to this Call Off Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or
 - 7.1.2 where compliance with paragraph 2.1 of this Call Off Schedule and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

CALL OFF SCHEDULE 13: 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

CALL OFF SCHEDULE 14: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

- 1.1 This Call Off Schedule 14 specifies the range of Alternative Clauses and Additional Clauses that may be requested in the Order Form and, if requested in the Order Form, shall apply to this Call Off Contract.

2. CLAUSES SELECTED

- 2.1 The Contracting Authority may, in the Order Form, request the following Alternative Clauses:
- 2.1.1 Scots Law (see paragraph 4.1 of this Call Off Schedule);
 - 2.1.2 Northern Ireland Law (see paragraph 4.2 of this Call Off Schedule);
 - 2.1.3 Non-Crown Bodies (see paragraph 4.3 of this Call Off Schedule);
 - 2.1.4 Non-FOIA Public Bodies (see paragraph 4.4 of this Call Off Schedule);
 - 2.1.5 Financial Limits (see paragraph 4.5 of this Call Off Schedule).
- 2.2 The Contracting Authority may, in the Order Form, request the following Additional Clauses should apply:
- 2.2.1 Security Measures (see paragraph 5.1 of this Call Off Schedule);
 - 2.2.2 NHS Additional Clauses (see paragraph 6.1 of this Call Off Schedule)
 - 2.2.3 MOD ("Ministry of Defence") Additional or Alternative Clauses (see paragraph 7 of this Call Off Schedule)

3. IMPLEMENTATION

- 3.1 The appropriate changes have been made in this Call Off Contract to implement the Alternative and/or Additional Clauses specified in paragraph 2.1 of this Call Off Schedule and the Additional Clauses specified in paragraphs 2.2 and 2.2.1 of this Call Off Schedule shall be deemed to be incorporated into this Call Off Contract.

4. ALTERNATIVE CLAUSES

4.1 SCOTS LAW

- 4.1.1 Law and Jurisdiction (Clause 57)
- (a) References to "England and Wales" in the original Clause 57 of this Call Off Contract (Law and Jurisdiction) shall be replaced with "Scotland".
 - (b) Where legislation is expressly mentioned in this Call Off Contract the adoption of Clause 4.1.1 (a) shall have the effect of substituting the equivalent Scots legislation.

4.2 NORTHERN IRELAND LAW

- 4.2.1 Law and Jurisdiction (Clause 57)
- (a) References to "England and Wales" in the original Clause 57 of this Call Off Contract (Law and Jurisdiction) shall be replaced with "Northern Ireland".

- (b) Where legislation is expressly mentioned in this Call Off Contract the adoption of Clause 4.1.1(a) shall have the effect of substituting the equivalent Northern Ireland legislation.

4.2.2 Insolvency Event

In Call Off Schedule 1 (Definitions), reference to "section 123 of the Insolvency Act 1986" in limb f) of the definition of Insolvency Event shall be replaced with "Article 103 of the Insolvency (NI) Order 1989".

4.3 NON-CROWN BODIES

Clause 46.3.1(a) of this Call Off Contract (Official Secrets Act and Finance Act) shall be deleted.

4.4 NON-FOIA PUBLIC BODIES

Replace Clause 34.5 of this Call Off Contract (Freedom of Information) with "The Contracting Authority has notified the Supplier that the Contracting Authority is exempt from the provisions of FOIA and EIR."

4.5 FINANCIAL LIMITS

In Clause 36.2.1(b)(i) remove the monetary amount and the percentage stated therein and replace respectively with:

[Not Used]

In Clause 36.2.1(b)(ii) remove the monetary amount and the percentage stated therein and replace respectively with:

[Not Used]

In Clause 36.2.1(b)(iii) remove the monetary amount and the percentage stated therein and replace respectively with:

[Not Used]

5. ADDITIONAL CLAUSES: GENERAL

5.1 SECURITY MEASURES

- 5.1.1 The following definitions to be added to Call Off Schedule 1 (Definitions) to the Call Off Form and the Call Off Terms:

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

"Secret Matter" means any matter connected with or arising out of the performance of this Call Off Contract which has been, or may hereafter be, by a notice in writing given by the Contracting Authority to the Supplier be designated 'top secret', 'secret', or 'confidential';

"Servant" where the Supplier is a Authority corporate shall include a director of that Authority and any person occupying in relation to that Authority the position of director by whatever name called.

- 5.1.2 The following new Clause [58] shall apply:

58. [SECURITY MEASURES]

58.1. The Supplier shall not, either before or after the completion or termination of this Call Off Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a secret matter being:

58.1.1. without the prior consent in writing of the Customer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;

58.1.2. disclosed to or acquired by a person as respects whom the Contracting Authority has given to the Supplier a notice in writing which has not been cancelled stating that the Contracting Authority requires that secret matters shall not be disclosed to that person;

58.1.3. without the prior consent in writing of the Customer, disclosed to or acquired by any person who is not a servant of the Supplier; or

58.1.4. disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Call Off Contract that such person shall have the information.

58.2. Without prejudice to the provisions of Clause 58.1, the Supplier shall, both before and after the completion or termination of this Call Off Contract, take all reasonable steps to ensure:

58.2.1. no such person as is mentioned in Clauses 58.1, 58.1.1 or 58.1.2 hereof shall have access to any item or document under the control of the Supplier containing information about a secret matter except with the prior consent in writing of the Customer;

58.2.2. that no visitor to any premises in which there is any item to be supplied under this Call Off Contract or where Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter unless the visitor is authorised in writing by the Contracting Authority so to do;

58.2.3. that no photograph of any item to be supplied under this Call Off Contract or any portions of the Services shall be taken except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;

58.2.4. that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly

safeguarded, and that, except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and

- 58.2.5. that if the Contracting Authority gives notice in writing to the Supplier at any time requiring the delivery to the Contracting Authority of any such document, model or item as is mentioned in Clause 58.2.3, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Contracting Authority who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 58.3. The decision of the Contracting Authority on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 58 shall be final and conclusive.
- 58.4. If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 58.5. If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Call Off Contract.
- 58.6. If, at any time either before or after the expiry or termination of this Call Off Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Call Off Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Contracting Authority and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.
- 58.7. The Supplier shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by Clauses

58.1 and 58.2 and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause 58 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.

58.8. The Supplier shall, if directed by the Customer, include in the Sub-Contract provisions in such terms as the Contracting Authority may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Clause 58, but with such variations (if any) as the Contracting Authority may consider necessary. Further the Supplier shall:

58.8.1. give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Clause 58 into operation in such cases and to such extent as the Contracting Authority may direct;

58.8.2. if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause 58, notify such breach forthwith to the Customer; and

58.8.3. if and when so required by the Customer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause 58.11.

58.9. The Supplier shall give the Contracting Authority such information and particulars as the Contracting Authority may from time to time require for the purposes of satisfying the Contracting Authority that the obligations imposed by or under the foregoing provisions of this Clause 58 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Contracting Authority duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Call Off Contract or in which there is or will be any item to be supplied under this Call Off Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Call Off Contract and that any such representative shall be given all such information as he

may require on the occasion of, or arising out of, any such inspection.

58.10. Nothing in this Clause 58 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

58.11. If the Contracting Authority shall consider that any of the following events has occurred:

58.11.1. that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 58; or

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

58.11.3. that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in 58.11.2, information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information;

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

58.12. A decision of the Contracting Authority to terminate this Call Off Contract in accordance with the provisions of Clause 58.11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Contracting Authority decision is based.

58.13. Supplier's notice

58.13.1. The Supplier may within five (5) Working Days of the termination of this Call Off Contract in accordance with the provisions of Clause 58.11, give the Contracting Authority notice in writing requesting the Contracting Authority to state whether the event upon which the Contracting Authority decision to terminate was based is an event mentioned in Clauses 58.11, 58.11.1 or 58.11.2 and to give particulars of that event; and

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

58.14. Matters pursuant to termination

58.14.1. The termination of this Call Off Contract pursuant to Clause 58.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;

58.14.2. The Supplier shall be entitled to be paid for any work or thing done under this Call Off Contract and accepted but not paid for by the Contracting Authority at the date of such termination either at the price which would have been payable under this Call Off Contract if this Call Off Contract had not been terminated, or at a reasonable price;

58.14.3. The Contracting Authority may take over any work or thing done or made under this Call Off Contract (whether completed or not) and not accepted at the date of such termination which the Contracting Authority may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of this Clause 58 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Customer, deliver any work or thing taken over under this Clause, and take all such other steps as may be reasonably necessary to enable the Contracting Authority to have the full benefit of any work or thing taken over under this Clause; and

58.14.4. Save as aforesaid, the Supplier shall not be entitled to any payment from the Contracting Authority after the termination of this Call Off Contract

58.15. If, after notice of termination of this Call Off Contract pursuant to the provisions of 58.11:

58.15.1. the Contracting Authority shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Clause 58.13.1; or

58.15.2. the Contracting Authority shall state in the statement and particulars detailed in Clause 58.13.2. that the event upon which the Contracting Authority decision to terminate this Call Off Contract was based is an event mentioned in Clause 58.11.3,

the respective rights and obligations of the Supplier and the Contracting Authority shall be terminated in accordance with the following provisions:

58.15.3. the Contracting Authority shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Call Off Contract under the provisions of Clause 58.11 and properly provided by or supplied to the Supplier for the performance of this Call Off Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;

58.15.4. the Supplier shall prepare and deliver to the Contracting Authority within an agreed period or in default of agreement within such period as the Contracting Authority may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Contracting Authority and shall deliver such materials and items in accordance with the directions of the Contracting Authority who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;

58.15.5. the Contracting Authority shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Call Off Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract;

58.15.6. if hardship to the Supplier should arise from the operation of this Clause 58.15 it shall be open to the Supplier to refer the circumstances to the Contracting Authority who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Contracting Authority on any matter arising out of this Clause shall be final and conclusive; and

subject to the operation of Clauses 58.15.3, 58.15.4, 58.15.5 and 58.15.6 termination of this Call Off Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

6. NHS ADDITIONAL CLAUSES

6.1 The following new Clause shall apply:

58.16. Unless otherwise confirmed and/or agreed by the Contracting Authority in writing and subject to Clause 58.17, the Supplier shall ensure comprehensive product information relating to each

category of the Goods shall be placed by the Supplier into a GS1 certified data pool within the following timescales:

58.16.1. Prior to or on the Commencement Date, in relation to all categories of Goods to be provided as part of the Call Off Contract as at the Commencement Date; or

58.16.2. Where further categories of Goods are to be supplied in accordance with any Variation, prior to or on the date of implementation of such Variation.

58.17. Where it is not practical for whatever reason for the Supplier to comply with its obligations under Clause 58.16 within the timescales stated, the Supplier shall provide an implementation plan and suggested timetable within which the Supplier shall achieve such compliance. The implementation plan and suggested timetable must be submitted by the Supplier for agreement by the Contracting Authority prior to the first delivery of relevant Goods under the Call Off Contract (such agreement not to be unreasonably withheld or delayed). Any failure by the Parties to agree such a timetable and implementation plan shall be referred to and resolved in accordance with Call Off Schedule 12: Dispute Resolution Procedure. Once a timetable and implementation plan have been agreed by the Customer, the Supplier shall comply with such timetable and plan as a condition of this Call Off Contract.

58.18. Once product information relating to the Goods is placed by the Supplier into a GS1 certified data pool, the Supplier shall, during the Call Off Contract Period, keep such information updated with any changes to the product data relating to the Goods.

7. MOD ADDITIONAL CLAUSES

7.1 The definition of Call Off Contract in Call Off Schedule 1 (Definitions) to the Call Off Terms shall be replaced with the following:

7.1.1 **"Call Off Contract"** means this written agreement between the Contracting Authority and the Supplier consisting of the Order Form and the Call Off Terms and the MoD Terms and Conditions.

7.2 The following definitions shall be inserted into in Call Off Schedule 1 (Definitions) to the Call Off Terms:

7.3 **"MoD Terms and Conditions"** means the contractual terms and conditions listed in Schedule [...] which form part of the Call Off **"Site"** shall include any of Her Majesty's Ships or Vessels and Service Stations.

7.3.1 **"Officer in charge"** shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.

7.4 The following clauses shall be inserted into Clause 2 of this Call Off Contract (Due Diligence):

7.5 The Supplier confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relation to those documents with the Contracting Authority prior to the Commencement Date.

7.5.1 Where required by the Customer, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier.

7.6 The following new Clause shall apply:

60.1. In this Clause 60:

60.1.1. The Contracting Authority shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Contracting Authority and shall be surrendered on demand or on completion of the supply of the Services.

60.1.2. The Supplier's representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.

60.1.3. The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Contracting Authority wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Call Off Contract where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Contracting Authority and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Contracting Authority with other evidence relating to the costs of this Call Off Contract.

60.1.4. Where the Supplier's representatives are required by this Call Off Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Supplier shall make

such arrangements through the Technical Branch named for this purpose in this Call Off Contract. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Contracting Authority shall reimburse the Supplier's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Call Off Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.

- 60.1.5. Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
- 60.1.6. Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 60.1.7. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 60.1.8. The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Contracting Authority shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Contracting Authority shall be recovered from the Supplier.

7.7 The following new Call Off Schedule shall apply:

CALL OFF SCHEDULE : MOD DEFCONS AND DEFFORMS

The following MOD DEFCONS and DEFFORMs form part of this Call Off Contract:

Not Used

DEFCONS

DEFCON No	Version	Description

DEFFORMs (Ministry of Defence Forms)

