

FRAMEWORK SCHEDULE 4

CALL OFF AGREEMENT

PREPAID ACCOUNTS AND ASSOCIATED SERVICES

SURREY COUNTY COUNCIL

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PART 1 – TEMPLATE ORDER FORM

SECTION A

This Order Form is issued in accordance with the provisions of the Prepaid Accounts and Associated Services Framework Agreement. The Supplier agrees to supply the Services specified below on and subject to the terms of this Call Off Contract and for the avoidance of doubt this Call Off Contract consists of the terms set out in this Order Form and the Call-Off Terms, together with the Call Off Schedules thereto.

DATE **2nd November 2017**

ORDER NUMBER **[REDACTED]**

FROM **Suffolk County Council “Customer”**
Endeavour House
8 Russell Road
Ipswich
Suffolk
IP1 2BX

Contract Reference Number: CD1201

ACS Contact: **Matt Hales-Khan**
Email: matt.hales-khan@suffolk.gov.uk
Telephone: **01473 260402**
07720 072612

DCYP Contact: **Liam Carr**
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07590 805717

Invoice Address: **E-Proc C&I**
Constantine House
5 Constantine Road
Ipswich
Suffolk
IP1 2DH

TO **allpay Limited “Supplier”**
Fortis et Fides
Whitestone Business Park
Whitestone
Hereford
HR1 3SE

Representative: [.....]
Email Address: [.....]
Telephone: [.....]

Account Manager: [.....]
Email Address: [.....]
Telephone: [.....]

Additional Info: [.....]

SECTION B

1. TERM

1.1 Call Off Commencement Date: 29/08/2017

1.2 Call Off Expiry Date: 28/08/2020

2. CUSTOMER CORE CONTRACTUAL REQUIREMENTS

2.1 Services required: Pre Payment Cards

2.2 Currencies

Sterling ‘£’

2.3 Location/Premises of Delivery

N/A

2.4 Dates for completion of the Services

Time of the essence

2.5 Implementation Plan



Acrobat Document

2.6 BCDR Plan

Refer to Schedule 5 BCDR plan inserted in schedule 5

3. SUPPLIER'S INFORMATION

3.1 Supplier's inspection of the Premises and Property

N/A

3.2 Supplier Software



Microsoft Word
Document

3.3 Commercially Sensitive Information

All method statements and pricing contained within the tender response is considered commercially sensitive

4. CUSTOMER RESPONSIBILITIES

4.1 Customer's Responsibilities

Please see Call Off Terms and Conditions

NOT USED

4.1.1 Additional Payment Information

Refer to Clause 22.2 Payment and VAT

SECTION C

5. CUSTOMER OTHER CONTRACTUAL REQUIREMENTS

5.1 Relevant Convictions

None

5.2 Staff Vetting Procedures

None

5.3 TUPE and Pensions

N/A

5.4 Security Requirements (including details of Security Policy and Outline Security Management Plan)

Security Requirements: Reference to Schedule 6, Statement of Requirement

NF6.1

All data (including back up data) must be processed and stored in accordance with the Data Protection Act (1998).

NF6.2

Data security and integrity must be maintained in accordance with the ISO27001 standard or equivalent

Section 3, Requirements, PCI-DSS Compliance

Be compliant with the Payment Application Data Security Standard (PA-DSS), Payment Card Industry Data Security Standard (PCI-DSS) and have certification from the Payment Card Industry Security Standards Council (PCI-SSC)

5.5 Protection of Customer Data

Reference to Schedule 6, Statement of Requirement

NF6.2

Data security and integrity must be maintained in accordance with the ISO27001 standard or equivalent

5.6 Testing

N/A

5.7 Standards

N/A

5.8 Training

Training plan to be developed between the customer and provider and detailed within the implementation

5.9 Service Levels

Refer to Clause 14 and Appendix A of Part A

5.10 Not Used

5.11 Not Used

5.12 Performance Monitoring

Refer to Clause 10 and Schedule 3, Statement of Requirement document, Section 3.2.8 in conjunction with Schedule 6, Annex 1 to Part B

5.13 Liability

Refer to Clause 29.4

5.14 Insurance

Refer to Clause 30

5.15 Termination without cause

Refer to Clause 31.5

5.16 Form of User Agreement

The form of User Agreement is attached as Annex A to this Order Form. This is not applicable as allpay Ltd does not require the End User to enter into a User Agreement

6. ADDITIONAL AND/OR ALTERNATIVE CLAUSES

6.1 Supplemental requirements in addition to the Call-Off Terms

Alternative Clauses or Additional Clauses set out in Call Off Schedule 10 of the Template Call-Off Terms

6.2 Amendments to/refinements of the Call-Off Terms

Schedule 6, Annex 1 to Part A Service Levels Table – Refinement and additions to service levels as detailed within the call off

6.3 Alternative and/or Additional Clauses

(select from Call Off Schedule 10)

4.4 Discrimination

7. FORMATION OF CALL OFF CONTRACT

- 7.1 BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES** to enter a Call Off Contract with the Customer to provide the Services.
- 7.2** The Parties hereby acknowledge and agree that they have read the Order Form and the Call-Off Terms and by signing below agree to be bound by this Call Off Contract.
- 7.3** In accordance with paragraph 7 of Framework Schedule 5 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Contract shall be formed when the Customer acknowledges the receipt of the signed copy of the Order Form from the Supplier within two (2) Working Days from receipt (the “Call Off Execution Date”) and shall take effect on the Call Off Commencement Date.

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

ANNEX A- FORM OF USER AGREEMENT

NOT USED

PART 2 – TEMPLATE CALL-OFF TERMS

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TERMS AND CONDITIONS

A. GENERAL PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

The definitions set out in the Glossary to the Call Off Form and the Call-Off Terms shall apply in relation to this Call Off Contract unless the context otherwise requires.

1.2. Interpretation

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

- 1.2.1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2. words importing the masculine include the feminine and the neuter;
 - 1.2.3. the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
 - 1.2.4. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.5. the Call Off Schedules form part of this Call Off Contract and shall have effect as if set out in full in the body of this Call Off Contract. Any reference to this Call Off Contract includes the Glossary to the Call Off Form and the Call-Off Terms and the Call Off Schedules;
 - 1.2.6. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 1.2.7. headings are included in this Call Off Contract for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract;
 - 1.2.8. references to "Clauses" and "Schedules" are, unless otherwise provided, references to the Clauses of and Schedules (the "Call Off Schedules") to the Call-Off Terms of this Call Off Contract. References to "paragraphs" are, unless otherwise provided,
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- references to paragraphs of the Call Off Schedule in which the references are made. References to “Contract” are, unless otherwise provided, references to this Call Off Contract;
- 1.2.9. terms or expressions contained in this Call Off Contract which are capitalised but which do not have an interpretation in the Glossary to the Call Off Form and Call-Off Terms or, if not that Glossary, in the Glossary to the Framework Agreement shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning; and
- 1.2.10. reference to a Clause is a reference to the whole of that Clause unless stated otherwise.
- 1.3. Subject to Clause 1.4 and 1.5, in the event of and only to the extent of any conflict between the Order Form, the Call-Off Terms, any User Agreements and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.3.1. the Framework Agreement, except Framework Schedule 17 (Tender);
- 1.3.2. the Order Form;
- 1.3.3. the Call-Off Terms, except Call Off Schedule 3 (Supplier’s Call Off Solution);
- 1.3.4. Call Off Schedule 3 (Supplier’s Call Off Solution);
- 1.3.5. Framework Schedule 17 (Tender);
- 1.3.6. any User Agreements.
- 1.4. Any permitted changes by the Customer to the Template Call-Off Terms and the Template Call Off Form under Clause 4 of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to the Parties entering this Call Off Contract shall prevail over the Framework Agreement.
- 1.5. Where the Tender or, following a Further Competition Procedure, the Call Off Solution contains provisions which are more favourable to the Customer in relation to the Call Off Contract, such provisions of the Tender or the Call off Solution (as applicable) shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Tender or the Call Off Solution is more favourable to it in relation to the Call Off Contract.
- 1.6. In consideration of the Supplier agreeing to enter into this Call Off Contract and to perform its obligations under it the Customer agrees to pay, and the Supplier agrees to accept on the signing of this Call Off Contract the sum of one-pound (£1.00) pounds sterling (receipt of which is hereby acknowledged by the Supplier).

2.DUE DILIGENCE

- 2.1. The Supplier acknowledges that it:
 - 2.1.1. has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
 - 2.1.2. has raised all relevant due diligence questions with the Customer before the Call Off Commencement Date; and
 - 2.1.3. has entered into this Call Off Contract in reliance on its own due diligence alone.

3.NOT USED

4.CALL OFF CONTRACT PERIOD

- 4.1. This Call Off Contract shall take effect on the Call Off Contract Commencement Date and shall either expire:
 - 4.1.1. at:
 - 4.1.1.1. the end of the Initial Call Off Period; or
 - 4.1.1.2. where the Customer elects to extend the Initial Call Off Period in accordance with Clause 4.2 below, at the end of the Extension Period; or
 - 4.1.2. on the second anniversary of the termination or expiry of the Framework Agreement,

whichever is the earlier, unless otherwise terminated (or partially terminated in respect of the terminated part only) earlier pursuant to Clause 31 (Termination Events).
- 4.2. The Customer may extend the duration of this Call Off Contract for any period or periods from the expiry of the Initial Call Off Period up to the second anniversary of the termination or expiry of the Framework Agreement by giving the Supplier no less than three (3) Months' written notice.

5.WARRANTIES AND REPRESENTATIONS

- 5.1. The Supplier warrants, represents and undertakes to the Customer that:
 - 5.1.1. it has full capacity and authority and all necessary consents, licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under this Call Off Contract;
 - 5.1.2. this Call Off Contract is executed by a duly authorised representative of the Supplier;
 - 5.1.3. in entering this Call Off Contract it has not committed any Fraud;
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- 5.1.4. in entering this Call Off Contract it has not committed or agreed to commit a Prohibited Act including any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
 - 5.1.5. in entering this Call Off Contract it has no knowledge, that:
 - 5.1.5.1. in connection with it, any money or other inducement has been, or will be, paid to any person working for or engaged by the Customer or other Contracting Body or any other public body or any person engaged or employed by or on behalf of the Customer in connection with this Call Off Contract; and
 - 5.1.5.2. an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Authority before execution of this Call Off Contract;
 - 5.1.6. this Call Off Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
 - 5.1.7. as at the Call Off Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Call Off Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the Tender shall be deemed repeated in this Call Off Contract;
 - 5.1.8. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under this Call Off Contract;
 - 5.1.9. it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under this Call Off Contract;
 - 5.1.10. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
 - 5.1.11. it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Call Off Contract and shall maintain the same in full force and effect.
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- 5.2. The Supplier also warrants, represents and undertakes to the Customer that:
 - 5.2.1. in the three (3) years prior to the Call Off Commencement Date (or from when the Supplier was formed if in existence for less than three (3) years prior to the Call Off Commencement Date):
 - 5.2.1.1. it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - 5.2.1.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - 5.2.1.3. it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Call Off Contract;
 - 5.2.1.4. for the Call Off Contract Period that all Staff will be vetted in accordance with the Staff Vetting Procedures and Best Industry Practice; and
 - 5.2.1.1. as at the Call Off Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance.
 - 5.2.2. it shall at all times during this Call Off Contract comply with its obligations in Clause 12 (Standards and Quality).
- 5.3. For the avoidance of doubt, the fact that any provision within this Call Off Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a Material Breach.
- 5.4. The Supplier acknowledges and agrees that:
 - 5.4.1. the warranties, representations and undertakings contained in this Call Off Contract are material and are designed to induce the Customer into entering into it; and
 - 5.4.2. the Customer has been induced into entering into this Call Off Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

6.SUPPLY OF SERVICES

6.1. Provision of the Services

- 6.1.1. The Supplier shall provide the Services in accordance with the Order, Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in the Order Form and obligations of the Supplier in this Call Off Contract.
- 6.1.2. The Supplier shall ensure that the Services are fully compatible with any Customer's equipment described in the Order Form.
- 6.1.3. The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Call Off Contract.

6.2. Time of Delivery of the Services

- 6.2.1. The Supplier shall provide the Services on the date(s) specified in the Order Form and the Milestone Dates (if any).
- 6.2.2. If so specified by the Customer in the Order Form, time of delivery in relation to the Services shall be of the essence and if the Supplier fails to Deliver the Services at the time or within the time period specified (and without prior Approval), the Customer may release itself from any obligation to accept the Services and/or terminate this Call Off Contract for Material Breach and the Customer shall require the Supplier to terminate any User Agreement entered into in connection with this Call Off Contract in either case without prejudice to any other rights and remedies of the Customer under this Call Off Contract and at Law.

7.USER AGREEMENT

- 7.1. The Supplier may require the End Users to enter into a User Agreement in the form attached to the Order Form in Annex A prior to the relevant Services being supplied to that End User.
- 7.2. The Supplier may not vary the terms of the form of the User Agreement attached to this Call Off Contract without the Approval of the Customer.

8.INSTALLATION WORKS

- 8.1. Where the Customer has specified Installation Works in the Order Form and the Supplier reasonably believes it has completed the Installation Works it shall notify the Customer in writing. Following receipt of such notice, the Customer shall inspect the Installation Works and shall, by giving written notice to the Contractor:
 - 8.1.1. accept the Installation Works, or
 - 8.1.2. reject the Installation Works and provide reasons to the Supplier if, in the Customer's reasonable opinion, the Installation Works do not meet the requirements set out in the Order Form.
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- 8.2. If the Customer rejects the Installation Works in accordance with Clause 8.1, the Supplier shall immediately rectify or remedy any defects and if, in the Customer's reasonable opinion, the Installation Works do not, within five (5) Working Days of such rectification or remedy, meet the requirements set out in the Order Form, the Customer may terminate this Call Off Contract for Material Breach.
- 8.3. The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Customer in accordance with Clause 8.1. Notwithstanding the acceptance of any Installation Works in accordance with Clause 8.1, the Supplier shall remain solely responsible for ensuring that the Installation Works conform to the Order Form. No rights of estoppel or waiver shall arise as a result of the acceptance by the Customer of the Installation Works.
- 8.4. Throughout the Call Off Contract Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Staff to carry out the Installation Works.

B. CALL OFF CONTRACT PERFORMANCE

9. PROVISION AND REMOVAL OF EQUIPMENT

- 9.1. Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Services.
- 9.2. The Supplier and the Staff shall not deliver any Equipment nor begin any work on the Customer's Premises without obtaining Approval.

10. NOT USED

11. NOT USED

12. STANDARDS AND QUALITY

- 12.1. The Supplier shall at all times during the Call Off Contract Period comply with the Standards and where applicable shall maintain accreditation with the relevant Standards' authorisation body.
- 12.2. To the extent that the standard to which the Services must be provided has not been specified in this Call Off Contract, the Supplier shall agree the relevant standard for the provision of the Services with the Customer prior to the commencement of the supply of the Services and, in any event, the Supplier shall perform its obligations under this Call Off Contract in accordance with the Law and Best Industry Practice.
- 12.3. The Supplier shall ensure that the Staff shall at all times during the Call Off Contract Period:
- 12.3.1. faithfully and diligently perform those duties and exercise such

- powers as necessary in connection with the provision of the Services;
- 12.3.2. obey all lawful instructions and reasonable directions of the Customer and provide the Services to the reasonable satisfaction of the Customer; and
 - 12.3.3. apply all due skill, care, diligence and are appropriately experienced, qualified and trained to supply the Services in accordance with this Call Off Contract.
- 12.4. The Supplier shall ensure at all times during the Call Off Contract Period that:
- 12.4.1. it performs its obligations under this Call Off Contract in a timely manner and in accordance with the date(s) and the Milestone Dates (if any) specified in the Implementation Plan and/or Order Form;
 - 12.4.2. it supplies the Services in conformity with the specification in Framework Schedule 1 (Services and Key Performance Indicators), the Order Form and in accordance with all applicable Laws including but not limited to, as applicable, any obligation under sections 12, 13 and 14 of the Sale of Goods Act 1979 (in respect of any Goods) and section 2 of the Supply of Goods and Services Act 1982 (in respect of any Services);
 - 12.4.3. it supplies the Services in accordance with the Tender or, where the Customer has entered into this Call Off Contract following a Further Competition Procedure, in accordance with the Supplier Call Off Solution.

13. TESTING

- 13.1. This Clause 13 shall apply if so specified by the Customer in the Order Form.
- 13.2. The Parties shall carry out their obligations set out in Call Off Schedule 4 (Testing).
- 13.3. In the case of any additional and/or alternative testing requirements of the Customer, the provisions relating to Testing shall apply as stipulated by the Customer in the Order Form.

14. SERVICE LEVELS

- 14.1. The Parties shall comply with the provisions of Part A (Service Levels) of Call Off Schedule 6 (Service Levels and Performance Monitoring).
- 14.2. The Supplier shall at all times during the Call Off Contract Period provide the Services to meet or exceed any Service Levels set out in Call Off Schedule 6 (Service Levels and Performance Monitoring).
- 14.3. The Supplier acknowledges that any failure to meet a Service Level may have a material adverse impact on the business and operations of the

Customer and that any such failure shall entitle the Customer to exercise the rights set out in Call Off Schedule 6 (Service Levels and Performance Monitoring).

- 14.4. The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels. The Supplier shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.
- 14.5. The Customer shall be entitled to review the Service Levels annually (or otherwise as required) and make such adjustments to them as the Customer deems appropriate, including adjustments and improvements resulting from improved performance capabilities, and the Parties acknowledge and agree that:
 - 14.5.1. the Service Levels and the measurement and monitoring tools and procedures referred to in Clause 14.4 will be improved over time (including improvements and adjustments to reflect improved performance capabilities) at no extra cost to the Customer; and
 - 14.5.2. such adjustments or improvements shall not be deemed to be subject to the Variation Procedure.

15. MONITORING OF CALL OFF CONTRACT PERFORMANCE

- 15.1. Where the Parties agreed in the Order Form that an Implementation Plan (or parts thereof) shall be provided in draft by the Supplier prior to the commencement of the provision of the Services, the Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively.
 - 15.2. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to the Supplier.
 - 15.3. The Supplier shall submit the draft Implementation Plan to the Customer for Approval (such decision of the Customer to Approve or not shall not be unreasonably delayed or withheld) within such period as specified by the Customer in the Order Form.
 - 15.4. The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in this Call Off Contract, report to the Customer on such performance and keep the Implementation Plan under review in accordance with the Customer's instructions.
 - 15.5. The Supplier shall perform its obligations so as to Achieve each Milestone by the Milestone Date.
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- 15.6. Any date, Milestone Date or period mentioned in the Implementation Plan or elsewhere in this Call Off Contract may be extended by written agreement between the Parties.
- 15.7. Without prejudice to Clause 15.6, changes to the Milestones shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a default by the Customer which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 15.8. Where so specified by the Customer, time in relation to compliance with a date, Milestone Date or period so extended shall be of the essence (and failure of the Supplier to comply with such date or Milestone Date shall be a Material Breach) unless the Parties expressly agree otherwise.
- 15.9. Unless otherwise Approved or notified by the Customer, the Supplier shall comply with the monitoring requirements set out in Part B of Call Off Schedule 6 (Service Levels and Performance Monitoring).
- 15.10. In the case of any additional or alternative monitoring requirements of the Customer, the provisions relating to performance monitoring of this Call Off Contract shall apply as stipulated by the Customer in the Order Form.

16. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE IN THE SUPPLY OF THE SERVICES

- 16.1. Without prejudice to any other right or remedy which the Customer may have under this Call Off Contract or at Law, if any Services are not supplied in accordance with this Call Off Contract then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:
 - 16.1.1. at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the supply of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;
 - 16.1.2. reject the Services (in whole or in part);
 - 16.1.3. refuse to accept any further Services to be Delivered without any liability to the Customer as a result of any Loss to the Supplier arising from such refusal;
 - 16.1.4. carry out, at the Supplier's expense, any work necessary to make the supply of the Services comply with this Call Off Contract;
 - 16.1.5. without terminating this Call Off Contract, itself supply or procure

the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with this Call Off Contract;

- 16.1.6. without terminating the whole of this Call off Contract, terminate this Call Off Contract in respect of part of the Services only and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- 16.1.7. charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

17. CONTINUOUS IMPROVEMENT

- 17.1. The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the Services and their provision to the Customer.
- 17.2. Pursuant to its obligation under Clause 17.1, the Supplier shall regularly review with the Customer the Services, including the manner in which it is providing the Services and performing against the Customer's requirements (including the Implementation Plan and the Service Levels), with a view to improving the quality and efficiency of the Services and their supply to the Customer. Any amendments to the Services and/or their supply to the Customer, required by the Customer to implement or effect such improvements identified as a result of the Supplier's compliance with Clause 17.1, shall be implemented by the Supplier (subject to compliance with the Law and the Framework Agreement) and the Supplier shall implement such variation, amendment or improvement at no additional cost to the Customer.
- 17.3. The Supplier shall ensure that the information that it provides to the Customer in accordance with Clause 17.1 shall be sufficient for the Customer to decide whether any improvement to the Services and/or their provision to the Customer should be implemented. The Supplier shall provide any further information that the Customer requests in connection with any improvements to the Services and/or their provision to the Customer identified by the Supplier.
- 17.4. The benefit of any work carried out by the Supplier at any time during the Call Off Contract Period to update, improve or provide the Services, facilitate their delivery to any other Contracting Body and/or any alterations or variations to the provision of the Services, which are identified in the Continuous Improvement Plan produced by the Supplier shall be implemented by the Supplier at no additional cost to the Customer.

18. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 18.1. If there is a Disaster, the Parties shall co-operate in good faith and use all reasonable endeavours to as soon as possible re-establish their capacity to fully perform their obligations under this Call Off Contract. A Disaster will only relieve a Party of its obligations to the extent it constitutes a Force Majeure Event in accordance with Clause 42 (Force Majeure).
- 18.2. The Supplier shall develop and at all times maintain a BCDR Plan that shall be implemented if a Disaster occurs so as to enable the Supplier to meet its obligations under Clauses 18.1.
- 18.3. The Supplier shall submit a draft BCDR Plan to the Customer for Approval (the decision to approve or not will not be unreasonably withheld or delayed) within four (4) weeks from the Call Off Execution Date.
- 18.4. Once the draft BCDR Plan has been Approved, the Supplier shall keep the BCDR Plan under review and, if necessary, shall amend it to ensure that the Supplier can meet its obligations under Clauses 18.1.
- 18.5. Unless otherwise Approved or notified by the Customer, the Supplier shall comply with the provisions of Call Off Schedule 5 (Business Continuity and Disaster Recovery).

In the case of any additional and/or alternative business continuity and disaster recovery requirements of the Customer, the provisions relating to business continuity and disaster recovery shall apply as stipulated by the Customer in the Order Form.]

19. DISRUPTION

- 19.1. The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 19.2. The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Staff or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.
- 19.3. In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Call Off Contract.
- 19.4. If the Supplier's proposals referred to in Clause 19.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for Material Breach.

- 19.5. If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely caused by the Customer, an appropriate allowance by way of an extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

20. NOT USED

21. ASSISTANCE ON EXPIRY OR TERMINATION

- 21.1. In the event that this Call Off Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Services to a Replacement Supplier.

22. CALL OFF CONTRACT PAYMENTS

22.1. Call Off Contract Charges

- 22.1.1. In consideration of the Supplier's performance of its obligations under this Call Off Contract, the Customer shall pay the Call Off Contract Charges in accordance with Clause 22.2 (Payment and VAT).
- 22.1.2. If at any time during this Call Off Contract Period the Supplier reduces its Call Off Contract Charges in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Call Off Contract Charges and/or increase the Rebate due under this Call Off Contract by the same amount.

22.2. Payment and VAT

- 22.2.1. On each Monthly Billing Date, the Supplier shall deliver an electronic Monthly Invoice to the Customer.
- 22.2.2. The Monthly Invoice shall show all Call Off Contract Charges which are due and payable.
- 22.2.3. All amounts shown on the relevant Monthly Invoice as being due to the Supplier from the Customer shall be paid in full within 30 Days of the date of the Monthly Invoice or such other date as is specified in the Order Form.
- 22.2.4. All amounts shall be invoiced and paid in Sterling (unless otherwise specified in the Order Form).

22.2.5. The Customer shall make all payments to the Supplier under this Clause 22.2 by way of:

22.2.5.1. BACS settlement; or

22.2.5.2. such other method as may be agreed between the Parties from time to time.

22.4. **Recovery of Sums Due**

22.4.1. Any overpayment by either Party, whether of the Call Off Contract Charges, the Rebate or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

22.4.2. The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

22.4.3. All payments due shall be made within the time period set out in Clause 22.2.3 or 22.3.1 (as applicable) unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

22.5. **Euro**

22.5.1. Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.

22.5.2. The Customer shall provide all reasonable assistance to facilitate compliance with Clause 22.5.1 by the Supplier.

23. NOT USED

24. STAFF AND STAFFING SECURITY

24.1. **Staff**

24.1.1. The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:

24.1.1.1. any member of the Staff; or

24.1.1.2. any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

- 24.1.2. Staff engaged within the boundaries of the Customer's Premises shall comply with such rules, regulations and requirements (including all those relating to security arrangements and the Security Policy) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Customer's Premises.

24.2. **Relevant Convictions**

- 24.2.1. This Clause shall apply if the Customer has so specified in the Order Form.
- 24.2.2. The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Services without Approval.
- 24.2.3. For each member of Staff who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):
 - 24.2.3.1. carry out a check with the records held by the Department for Education (DfE);
 - 24.2.3.2. conduct thorough questioning regarding any Relevant Convictions; and
 - 24.2.3.3. ensure a police check is completed and such other checks as may be carried out through the DBS, and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.]

24.3. **Additional Staffing Security**

- 24.3.1. This Clause 24.3 shall apply if the Customer has so stipulated in the Order Form.
 - 24.3.2. The Supplier shall comply with the Staff Vetting Procedures in respect of all or part of the Staff (as specified by the Customer) and/or any other relevant instruction, guidance or procedure issued by the Customer that will be used to specify the level of staffing security required and to vet the Staff (or part of the Staff).
 - 24.3.3. The Supplier confirms that, at the Call Off Commencement Date, the Staff were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures and/or any
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other relevant instruction, guidance or procedure as specified by the Customer.

- 24.3.4. The Supplier shall provide training on a continuing basis for all Staff in compliance with the Security Policy and Security Management Plan (if any).

25. TRAINING

- 25.1. This Clause 25 shall apply if the Customer has so stipulated in the Order Form.
- 25.2. The Supplier shall provide training to the Customer's personnel in respect of the use and maintenance of the Services as the Customer has specified in the Order Form at no cost to the Customer.

26. NOT USED

C. PROTECTION OF INFORMATION

27. INTELLECTUAL PROPERTY RIGHTS

- 27.1. Save as expressly granted elsewhere under this Call Off Contract:
 - 27.1.1. the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
 - 27.1.1.1. the Supplier Background IPRs;
 - 27.1.1.2. the Project Specific IPRs; and
 - 27.1.1.3. in the Supplier Software.
 - 27.1.2. the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:
 - 27.1.2.1. the Customer Background IPRs;
 - 27.1.2.2. the Customer Data; and
 - 27.1.2.3. in the Customer Software.
- 27.2. Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 27.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 27.3. The Supplier shall not, and shall procure that the Staff shall not, (except when necessary for the performance of this Call Off Contract) without Approval (which the Customer shall have the sole and absolute right to grant or deny) use or disclose any of the Customer Background IPR,

Customer Data or Customer Software to or for the benefit of any third party.

- 27.4. The Supplier hereby grants, or shall procure the direct grant, to the Customer (and to any Replacement Supplier) of a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use the Supplier Background IPRs, the Project Specific IPRs and the Supplier Software for any purpose connected with the receipt of the Services that is incidental to the exercise of the rights granted to the Customer under this Call Off Contract and to enable the Customer:
- 27.4.1. to receive the Services; and
- 27.4.2. to make use of the services provided by the Replacement Supplier.
- 27.5. The Customer hereby grants to the Supplier a non-exclusive, non-assignable royalty-free licence to use the Customer Background IPRs, Customer Data and the Customer Software during the Call Off Contract Period for the sole purpose of enabling the Supplier to perform its obligations under this Call Off Contract and provide the Services. The Customer gives no warranty as to the suitability for the Supplier's purpose of any IPRs licensed to the Supplier hereunder. Such licence:
- 27.5.1. includes the right to grant sub-licences to Sub-Contractors engaged in providing or delivering any of the Services (or part thereof) provided that any such Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 28.5 (Confidentiality) and that any such Sub-contracts shall be non-transferable and personal to the relevant Sub-contractor; and
- 27.5.2. is granted solely to the extent necessary for the provision of the Services in accordance with this Call Off Contract. The Supplier shall not, and shall procure that the Sub-Contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 27.6. In the event of the termination or expiry of this Call Off Contract, the licence referred to in Clause 27.5 and any sub-licence granted in accordance with Clause 27.5.1 shall terminate automatically, and the Supplier shall immediately deliver to the Customer (or destroy and confirm receipt of such destruction to the Customer) all material licensed to the Supplier pursuant to Clause 27.5 in the Supplier's possession or control in accordance with Clause 33 (Consequences of expiry or termination of the Call Off Contract for any reason).
- 27.7. Prior to using any third party IPRs in connection with the supply of the Services, the Supplier shall submit all details of such third party IPRs as the Customer may request to the Customer for Approval ("Request for Approval"). The Supplier shall provide the Customer with details of any third party licence required by the Supplier and/or the Customer in order for the Supplier to carry out its obligations under this Call Off Contract using the

third party IPRs in the Request for Approval. The Customer reserves the right to withhold or deny Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.

- 27.8. Where the Supplier is granted Approval to use the third party IPRs set out in a Request for Approval, the Supplier shall procure that the owner of such third party IPRs grants to the Customer a licence upon the terms informed to the Customer in the Request for Approval.
- 27.9. The Supplier shall on demand, during and after the Call Off Contract Period, fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all Losses which the Customer or the Crown may suffer or incur at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) as a result of any claim (whether actual alleged asserted and/or substantiated and including third party claims) that the rights granted to the Customer pursuant to this Call Off Contract and/or the performance by the Supplier of the provision of the Services and/or the possession or use by the Customer of the Services (as appropriate) infringes or allegedly infringes a third party's Intellectual Property Rights ("Claim") except where the Claim arises from:
- 27.9.1. designs supplied by the Customer; or
 - 27.9.2. the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of this Call Off Contract.
- 27.10. The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 27.10.1. shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 27.10.2. shall take due and proper account of the interests of the Customer;
 - 27.10.3. shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
 - 27.10.4. shall not settle or compromise the Claim without Approval (such decision to Approve or not shall not be unreasonably withheld or delayed).

27.11. If a Claim is made in connection with this Call Off Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to Approval (such decision to Approve or not to be unreasonably withheld or delayed), use its best endeavours to:

27.11.1. modify the relevant part of the Services and/or the Deliverables without reducing the functionality or performance of the same, or substitute alternative services and/or deliverables of equivalent functionality or performance, so as to avoid the infringement or the alleged infringement, provided that:

27.11.1.1. the provisions herein shall apply with any necessary changes to such modified services and/or deliverables or to the substitute services and/or deliverables; and

27.11.1.2. such substitution shall not increase the burden on the Customer; and

27.11.1.3. the replaced or modified service and/or deliverable does not have an adverse effect on any other Services and/or Deliverables; and

27.11.1.4. there is no additional cost to the Customer; and

27.11.1.5. such modified or substituted services and/or deliverables shall be acceptable to the Customer (such decision to accept or not shall not be unreasonably withheld); or

27.11.2. procure a licence to use and supply the Services and/or Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer; and

27.11.3. in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations

and in the event that the Supplier is unable to comply with Clauses 27.11.1 or 27.11.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate this Call Off Contract for Material Breach and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Service and/or Deliverable that is subject to the Claim.

27.12. The Supplier's compliance with Clause 27.11 shall be at its own expense and the Supplier shall be liable for all costs and expenses that the Customer may incur resulting from the Customer's compliance with Clause

- 27.13. In the event that a modification or substitution in accordance with Clause 27.11.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 27.11.2, the Customer, without prejudice to any other rights of remedies under this Call Off Contract or at Law, shall be entitled to delete the relevant Service and/or Deliverable from this Call Off Contract.
- 27.14. If the Supplier elects to modify or replace the Service and/or Deliverable pursuant to Clause 27.11.1 or to procure a licence in accordance with Clause 27.11.2, but this has not avoided or resolved the Claim, then the Customer may terminate this Call Off Contract for Material Breach and, without prejudice to the indemnity set out in Clause 27.9, the Supplier shall, be liable for all reasonable and unavoidable costs of the substitute services and/or deliverables including the additional costs of procuring and implementing the substitute services.
- 27.15. The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without prior Approval.

28. SECURITY AND PROTECTION OF INFORMATION

28.1. Security Requirements

- 28.1.1. The Supplier shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Management Plan (if any) and the Supplier shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 28.1.2. The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 28.1.3. Until and/or unless a change to the Call Off Contract is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.

28.2. Malicious Software

- 28.2.1. The Supplier shall, as an enduring obligation throughout the Call Off Contract Period where any Software is used in the provision of the Services or the performance of this Call Off Contract, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).
- 28.2.2. Notwithstanding Clause 28.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the

provision of the Services to its desired operating efficiency.

28.2.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 28.2.1 shall be borne by the Parties as follows:

28.2.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and

28.2.3.2. by the Customer if the Malicious Software originates from the Customer Software or the Customer Data (whilst the Customer Data was under the control of the Customer).

28.3. **Customer Data**

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

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

28.3.3. To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Call Off Contract and in any event as specified by the Customer from time to time in writing.

28.3.4. To the extent that Customer Data is held and/or Processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

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

28.3.6. The Supplier shall ensure that any system on which the Supplier holds any Customer Data which is protectively marked shall be accredited using such accreditation policy or system as specified by the Customer (such as the HMG Security Policy Framework and Information Assurance Policy, taking into account guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems, and/or relevant HMG Information Assurance Standard(s), as in force from time to time) and, where the Call Off Contract Period exceeds one year, the Supplier shall review such accreditation status at least once in each year to assess whether material

changes have occurred which could alter the original accreditation decision. If any such changes have occurred, then the Supplier shall resubmit such system for accreditation.

- 28.3.7. If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Supplier's Default so as to be unusable, the Customer may:
- 28.3.7.1. require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Customer Data as required by the Customer and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
 - 28.3.7.2. itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified by the Customer.
- 28.3.8. If at any time the Supplier suspects or has reason to believe that the Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 28.3.9. The Supplier shall, at all times during and after the Call Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under this Clause 28.3 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

28.4. **Protection of Personal Data**

- 28.4.1. Where any Personal Data are Processed with respect to the Parties' rights and obligations under this Call Off Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor.
- 28.4.2. The Supplier shall:
- 28.4.2.1. Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Call Off Contract or as otherwise notified by the Customer to the Supplier during the Call Off Contract Period);
 - 28.4.2.2. Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law;

- 28.4.2.3. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 28.4.2.4. take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
 - 28.4.2.5. obtain Approval in order to transfer the Personal Data to any Sub-Contractors or Affiliates for the provision of the Services;
 - 28.4.2.6. ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 28;
 - 28.4.2.7. ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;
 - 28.4.2.8. notify the Customer (within five (5) Working Days) if it receives:
 - 28.4.2.8.a. a request from a Data Subject to have access to that person's Personal Data; or
 - 28.4.2.8.b. a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
 - 28.4.2.9. provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
 - 28.4.2.9.a. providing the Customer with full details of the complaint or request;
 - 28.4.2.9.b. complying with a data subject access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
 - 28.4.2.9.c. providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales
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required by the Customer); and

28.4.2.9.d. providing the Customer with any information requested by the Customer;

28.4.2.10. permit the Customer or the Customer Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Call Off Contract;

28.4.2.11. provide a written description of the technical and organisational methods employed by the Supplier for Processing Personal Data (within the timescales required by the Customer); and

28.4.3. The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Call Off Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.

28.4.4. The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

28.4.5. The Supplier shall, at all times during and after the Call Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under this Clause 28.4 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

28.5. Confidentiality

28.5.1. Except to the extent set out in this Clause 28.5 or where disclosure is expressly permitted elsewhere in this Call Off Contract, each Party shall:

28.5.1.1. treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

28.5.1.2. not disclose the other Party's Confidential Information

- to any other person without the owner's prior written consent.
- 28.5.2. Clause 28.5.1 shall not apply to the extent that:
- 28.5.2.1. such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 28.7 (Freedom of Information);
 - 28.5.2.2. such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 28.5.2.3. such information was obtained from a third party without obligation of confidentiality;
 - 28.5.2.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call Off Contract; or
 - 28.5.2.5. such information is independently developed without access to the other Party's Confidential Information.
- 28.5.3. The Supplier may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality in Clause 28.5.
- 28.5.4. The Supplier shall not, and shall procure that the Staff shall not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Call Off Contract.
- 28.5.5. At the written request of the Customer, the Supplier shall procure that those members of Staff identified in a Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Call Off Contract.
- 28.5.6. In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Call Off Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Supplier is taking appropriate steps to comply with this Clause 28.5, including copies of any written communications to and/or from Staff, and any minutes of meetings and any other records which provide an audit
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trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.

- 28.5.7. Nothing in this Call Off Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under Clause 12 of the Framework Agreement):
- 28.5.7.1. to any Crown body or any other Contracting Body. All Crown bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Body;
 - 28.5.7.2. to any consultant, contractor or other person engaged by the Customer or any person conducting a Cabinet Office gateway review (formerly known as Office of Government Commerce gateway review);
 - 28.5.7.3. for the purpose of the examination and certification of the Customer's accounts; or
 - 28.5.7.4. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 28.5.8. The Customer shall use all reasonable endeavours to ensure that any Crown body, Contracting Body, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 28.5.7 is made aware of the Customer's obligations of confidentiality.
- 28.5.9. Nothing in this Clause 28.5 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 28.5.10. The Supplier shall, at all times during and after the Call Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under Clauses 28.5.1 to 28.5.6 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

28.5.11. In the event that the Supplier fails to comply with Clauses 28.5.1 to 28.5.6, the Customer reserves the right to terminate this Call Off Contract for Material Breach.

28.5.12. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Call Off Contract, the Supplier shall comply with the Call Off Contract (including the Security Policy) and, in any event, undertakes to maintain adequate security arrangements that meet the requirements of Best Industry Practice.

28.6. Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989

28.6.1. The Supplier shall comply with and shall ensure that the Staff comply with, the provisions of:

28.6.1.1. the Official Secrets Acts 1911 to 1989; and

28.6.1.2. Section 182 of the Finance Act 1989.

28.6.2. In the event that the Supplier or the Staff fail to comply with this Clause 28.6, the Customer reserves the right to terminate this Call Off Contract for Material Breach.

28.7. Freedom of Information

28.7.1. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

28.7.2. The Supplier shall and shall procure that its Sub-Contractors shall:

28.7.2.1. transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

28.7.2.2. provide the Customer with a copy of all Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

28.7.2.3. provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 28.7.3. The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call Off Contract or any other Call Off Agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 28.7.4. In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 28.7.5. The Supplier acknowledges that (notwithstanding the provisions of Clause 28.5 (Confidentiality)) the Customer may, acting in accordance with the Ministry of Justice' (formerly Department of Constitutional Affairs') Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
- 28.7.5.1. in certain circumstances without consulting the Supplier; or
- 28.7.5.2. following consultation with the Supplier and having taken their views into account,
- provided always that where Clause 28.7.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 28.7.6. The Supplier shall ensure that all Information relating to this Call Off Contract is retained for disclosure in accordance with the provisions of this Call Off Contract and in any event in accordance with the requirements of Best Industry Practice and shall permit the Customer to inspect such records as requested from time to time.
- 28.7.7. The Supplier acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 28.7.5.

28.8. **Transparency**

- 28.8.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of this Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 28.8.2. Notwithstanding any other term of this Call Off Contract, the Supplier hereby gives his consent for the Customer to publish this

Call Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Call Off Contract, to the general public.

- 28.8.3. The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 28.8.4. The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Call Off Contract.

D. LIABILITY AND INSURANCE

29. LIABILITY

- 29.1. Neither Party excludes or limits its liability for:
- 29.1.1. death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable); or
 - 29.1.2. bribery or Fraud by it or its employees; or
 - 29.1.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 29.1.4. any other liability to the extent it cannot be excluded or limited by Law.
- 29.2. Where the Supplier is a company, no individual nor any service company of the Supplier employing that individual shall have any personal liability to the Customer for the Services supplied by that individual on behalf of the Supplier and the Customer shall not bring any claim under this Call Off Contract against that individual or such service company in respect of the Services save in the case of bribery, Fraud or any liability for death or personal injury.
- 29.3. Subject to Clause 29.1, the Supplier's total aggregate liability in respect of the indemnities in Clauses 27.9 (Third Party IPR Claim), 28.3.9 (Protection of Customer Data), 28.4.5 (Protection of Personal Data), 28.5.10 (Confidentiality), 37.4 (Prevention Bribery and Corruption), 40.3.2 (Prevention of Fraud) (and, in each case, whether before or after the making of a demand pursuant to the indemnities therein) shall be unlimited.
- 29.4. Subject to Clauses 29.1.1, 29.1.2 and 29.3, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Call Off Contract as a result of defaults by the other Party shall in no event exceed:
- 29.4.1.1. in relation to any defaults occurring up to the end of the first Call Off Contract Year, the sum of two million pounds (£2,000,000);

29.4.1.2. in relation to any defaults occurring in each Call Off Contract Year that commences during the remainder of the Call Off Contract Period, the sum of two million pounds (£2,000,000); and

29.4.1.3. in relation to any Losses defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, the sum of two million pounds (£2,000,000).

unless a different aggregate limit or percentage is stipulated by the Customer in the Order Form.

29.5. Subject to Clauses 29.1, in no event shall either Party be liable to the other for any:

29.5.1. loss of profits;

29.5.2. loss of business;

29.5.3. loss of revenue;

29.5.4. loss of or damage to goodwill;

29.5.5. loss of savings (whether anticipated or otherwise); and/or

29.5.6. any indirect, special or consequential loss or damage.

29.6. Subject to Clauses 29.2 and 29.3, and notwithstanding Clause 29.4, the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of Default by the Supplier:

29.6.1. the additional operational and/or administrative costs and expenses arising from any Material Breach;

29.6.2. any wasted expenditure or charges;

29.6.3. the cost of procuring, implementing and operating any alternative or replacement services to the Services for the remainder of the Call Off Contract Period following termination of this Call Off Contract as a result of a Default;

29.6.4. any compensation or interest paid to a third party by the Customer;

29.6.5. any regulatory losses, fines, expenses or other Losses arising from a breach by the Supplier of any Law.

29.7. No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by or on behalf of the Customer to any document or information provided by the Supplier in its provision of the Services, and no failure of the Customer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to carry out all the obligations of a professional supplier employed in a client/customer relationship.

- 29.8. Save as otherwise expressly provided, the obligations of the Customer under this Call Off Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in this Call Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under this Call Off Contract (howsoever arising) on the part of the Customer to the Supplier.
- 29.9. A Party shall not be responsible for any Loss under this Call Off Contract if and to the extent that it is caused by the default of the other (Default on the part of the Supplier and Customer Cause on the part of the Customer).
- 29.10. Nothing in this Clause 29 shall act to reduce or affect a Party's general duty to mitigate its loss.

30. INSURANCE

- 30.1. Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 40 of the Framework Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Call Off Contract as the Customer may stipulate in the Order Form.
- 30.2. The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause 30.1 above for six (6) years after the Call Off Expiry Date or termination (for whatever reason) of this Call Off Contract.
- 30.3. The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause 30.1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 30.4. If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause 30.1, the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 30.5. The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.
- 30.6. The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier

shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

E. TERMINATION

31. TERMINATION EVENTS

31.1. Termination on Insolvency

31.1.1. The Customer may terminate this Call Off Contract with immediate effect by giving notice in writing to the Supplier where an Insolvency Event affecting the Supplier occurs.

31.2. Termination on Change of Control

31.2.1. The Supplier shall notify the Customer immediately if the Supplier undergoes a Change of Control and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate this Call Off Contract by notice in writing with immediate effect within six (6) Months of:

31.2.1.1. being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

31.2.1.2. where no notification has been made, the date that the Customer becomes aware of the Change of Control,

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

31.3. Termination in relation to Financial Standing

31.3.1. The Customer may terminate this Call Off Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

31.3.1.1. adversely impacts on the Supplier's ability to supply the Services under this Call Off Contract; or

31.3.1.2. could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Call off Contract.

31.4. Termination on Default

31.4.1. The Customer may terminate this Call Off Contract for a Supplier's Default:

31.4.1.1. by giving written notice to the Supplier that the Supplier has not remedied the Default together with any damage resulting from such a Default to the satisfaction of the Customer, as specified by the Customer in a prior written notice to the Supplier stating the Default and requesting it to be remedied within ten (10) Working Days in accordance with the Customer's instructions; or

31.4.1.2. if the Default is a Material Breach of this Call Off Contract, by giving written notice of termination to the Supplier with immediate effect or with effect from such later date as the Customer may specify in the written notice.

31.5. Termination without cause

31.5.1. The Customer shall have the right to terminate this Call Off Contract at any time by giving at least thirty (30) Working Days written notice to the Supplier or such other notice as the Customer may stipulate in the Order Form.

31.6. Termination of Framework Agreement

31.6.1. The Customer may terminate this Call Off Contract with immediate effect by giving written notice to the Supplier if the Framework Agreement is terminated for any reason whatsoever.

31.7. Not Used

31.8. Termination for continuing Force Majeure Event

31.8.1. Either Party may, by written notice to the other, terminate this Call Off Contract if, in accordance with Clause 42 (Force Majeure), a Force Majeure Event endures for a continuous period of more than one hundred and twenty (120) days.

31.9. Termination in relation to Variation

31.9.1. The Customer may terminate this Call Off Contract for failure of the Parties to agree or the Supplier to implement a Variation under Clause 46.

32. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

32.1. Where the Customer has the right to terminate this Call Off Contract, the Customer is entitled to terminate or suspend all or part of this Call Off Contract pursuant to this Clause 32.1 provided always that the parts of this Call Off Contract not terminated or suspended can, in the Customer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Call Off Contract.

32.2. Any suspension under Clause 32.1 shall be for such suspension period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

33. CONSEQUENCES OF EXPIRY OR TERMINATION

33.1. Consequences of termination under Clauses 31.3 (Financial Standing) and 31.4 (Termination on Default)

33.1.1. Where the Customer terminates this Call Off Contract under Clauses 31.3 (Financial Standing) or 31.4 (Termination on Default) and then makes other arrangements for the supply of the Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where this Call Off Contract is terminated under Clauses 31.3 or 31.4, no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

33.2. Consequences of termination under Clause 31.5 (Termination without Cause)

33.2.1. Where the Customer terminates this Call Off Contract under Clause 31.5 (Termination without Cause) or elects to partially terminate or suspend or partially suspend this Call Off Contract without cause under Clauses 31.5 and 32, the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 31.5 (Termination without Cause).

33.2.2. The Customer shall not be liable under Clause 33.2.1 to pay any sum which:

33.2.2.1. was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

33.2.2.2. when added to any sums paid or due to the Supplier under this Call Off Contract, exceeds the total sum that would have been payable to the Supplier if this Call Off Contract had not been terminated prior to the expiry of the Call Off Contract Period.

33.3. Consequences of expiry or termination of the Call Off Contract for any reason

- 33.3.1. At the end of the Call Off Contract Period (howsoever arising), the Supplier shall:
- 33.3.1.1. immediately return to the Customer all Customer Data;
 - 33.3.1.2. cease to use the Customer Data and, at the direction of the Customer, provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Supplier;
 - 33.3.1.3. except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or twelve (12) Months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.
 - 33.3.1.4. assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and provide such assistance and co-operation as the Customer may require;
 - 33.3.1.5. return to the Customer any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising);
 - 33.3.1.6. promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence; and
 - 33.3.1.7. terminate all User Agreements entered into in connection with this Call Off Contract within six months of the termination of this Call Off Contract.
- 33.3.2. If the Supplier fails to comply with Clauses 33.3.1.1 to 33.3.1.3, the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its servants, consultants, agents or Sub-Contractors where any such items may be held.
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- 33.3.3. Where the end of the Call Off Contract Period arises due to termination of this Call Off Contract by reason of a Supplier's Default under Clause 31.4 (Termination on Default), the Supplier shall provide all assistance under Clause 33.3.1.7 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 33.3.4. Save as otherwise expressly provided in this Call Off Contract:
- 33.3.4.1. termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- 33.3.4.2. termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 22.2 (Payment), 27 (Intellectual Property Rights), 28.4 (Protection of Personal Data), 28.5 (Confidentiality), 28.6 (Official Secrets Acts 1911 to 1989), 28.7 (Freedom of Information), 29 (Liability), 33 (Consequences of Expiry or Termination), 37 (Prevention of Bribery and Corruption), 38 (Records and Audit Access), 40 (Prevention of Fraud), 44 (Cumulative Remedies), 50 (Conflicts of Interest), 52 (The Contracts (Rights of Third Parties) Act 1999) and 55 (Governing Law and Jurisdiction) and, without limitation to the foregoing, any other provision of this Call off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Call Off Contract.

F. CONTROL OF THE CALL OFF CONTRACT

34. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 34.1. The Supplier shall not make any press announcements or publicise this Call Off Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, suppliers, professional advisors and consultants comply with this Clause 34. Any such press announcements or publicity proposed under this Clause 34.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.
- 34.2. Subject to the rights in relation to Confidential Information and Commercially

Sensitive Information, the Customer shall be entitled to publicise this Call Off Contract in accordance with any legal obligation upon the Customer, including any examination of this Call Off Contract by the Auditor(s).

- 34.3. The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute. The Customer may terminate this Call Off Contract for Material Breach, in the event that, in the sole opinion of the Customer, the Supplier causes, permits, contributes or is in any way connected to material adverse publicity relating to or affecting the Customer and/or this Call Off Contract.

35. NOT USED

36. ENVIRONMENTAL REQUIREMENTS

- 36.1. The Supplier shall, when working on the Premises, perform its obligations under this Call Off Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 36.2. The Customer shall provide a copy of its written environmental policy (if any) to the Supplier upon the Supplier's written request.

37. PREVENTION OF BRIBERY AND CORRUPTION

- 37.1. The Supplier shall not commit and shall procure that all Staff or any person acting on the Supplier's behalf shall not commit, in connection with this Call Off Contract, any Prohibited Act.
- 37.2. The Supplier shall:
- 37.2.1. in relation to this Call Off Contract, act in accordance with the Ministry of Justice Guidance;
 - 37.2.2. immediately notify the Customer and the Authority if it suspects or becomes aware of any breach of this Clause 37;
 - 37.2.3. respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 37 and the Supplier shall co-operate with any investigation and allow the Customer to audit the Supplier's books, records and any other relevant documentation in connection with the breach;
 - 37.2.4. if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call Off Contract compliance with this Clause 37. The Supplier shall provide such
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supporting evidence of compliance as the Customer may reasonably request;

37.2.5. have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Staff or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.

37.3. If the Supplier, the Staff or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches this Clause 37 the Customer shall be entitled to terminate this Call Off Contract for Material Breach.

37.4. Without prejudice to its other rights and remedies under this Clause 37, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer (whether before or after the making of a demand pursuant to the indemnity hereunder) in full from and against:

37.4.1. the amount of value of any such gift, consideration or commission; and

37.4.2. any other Loss sustained by the Customer in consequence of any breach of this Clause 37.

38. RECORDS AND AUDIT ACCESS

38.1. The Supplier shall keep and maintain for six (6) years after the Call Off Expiry Date or date of termination of this Call Off Contract (whichever is the earlier) (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Customer.

38.2. The Supplier shall keep the records and accounts referred to in Clause 38.1 above in accordance with Best Industry Practice and generally accepted accounting principles.

38.3. The Supplier shall afford the Customer and/or the Customer's representatives and/or the National Audit Office and/or an auditor appointed by the Audit Commission (each of whom shall for the purposes of this Clause 38 be an "Auditor") access to the records and accounts referred to in Clause 38.1 at the Supplier's premises and/or provide copies of such records and accounts (including copies of the Supplier's published accounts), as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 38.1, in order that the Auditor(s) may carry out an inspection including for the following purposes:

38.3.1. to verify the accuracy of the Call Off Contract Charges, Spend and Rebate (and proposed or actual variations to them in accordance with this Call Off Contract), and/or the costs of all

- Supplier (including Sub-Contractors) of the Services;
- 38.3.2. to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
 - 38.3.3. to review the Supplier's compliance with the Data Protection Legislation in accordance with this Call Off Contract and any other Laws;
 - 38.3.4. to review the Supplier's compliance with its continuous improvement obligations set out in Framework Schedule 7 (Value for Money) and Clause 17 (Continuous Improvement) of this Call Off Contract;
 - 38.3.5. to review the Supplier's compliance with its security obligations set out in Clause 28 (Security and Protection of Information);
 - 38.3.6. to review any books of account kept by the Supplier in connection with the provision of the Services;
 - 38.3.7. to carry out an examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - 38.3.8. to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or
 - 38.3.9. to ensure that the Supplier is complying with its obligations under this Call Off Contract.
- 38.4. The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.
- 38.5. Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 38.5.1. all reasonable information requested by the Customer within the scope of the audit;
 - 38.5.2. reasonable access to sites controlled by the Supplier and to any Equipment used in the provision of the Services; and
 - 38.5.3. access to the Staff.
- 38.6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 38, unless the audit reveals a Material Breach by the Supplier in

which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

- 38.7. Where requested by the Customer, the Supplier shall supply the Management Information to the Customer in the form set out in the Management Information Framework Schedule 8 (Management Information) (as amended from time to time) and on such date or dates during the Call Off Contract Period as the Customer may specify.

39. DISCRIMINATION

The Supplier shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976, Fair Employment (NI) Acts 1976 and 1989, the Sex Discrimination (NI) Orders 1976 and 1988, the Equal Pay Act (NI) 1970, or any statutory modification or re-enactment thereof relating to discrimination in employment.

40. PREVENTION OF FRAUD

- 40.1. The Supplier shall take all reasonable steps, in accordance with Best Industry Practice, to prevent any Fraud by the Supplier (including its shareholders, members and directors) and any Staff in connection with the receipt of monies from the Customer.
- 40.2. The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or the Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 40.3. If the Supplier or the Staff commits any Fraud, the Customer may:
- 40.3.1. terminate this Call Off Contract for Material Breach; and/or
 - 40.3.2. recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full for any Loss sustained by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in consequence of any breach of this Clause 40 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period.

41. TRANSFER AND SUB-CONTRACTING

41.1. Transfer rights

- 41.1.1. Subject to Clause 41.1.2, the Supplier shall not assign, novate, Sub-Contract or in any other way dispose of this Call Off Contract or any part of it without Approval.
 - 41.1.2. Not Used
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- 41.1.3. Not Used
 - 41.1.4. Not Used
 - 41.1.5. Not Used
 - 41.1.6. Subject to Clause 41.1.8, the Customer may assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof to:
 - 41.1.6.1. any other Contracting Body; or
 - 41.1.6.2. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
 - 41.1.6.3. any private sector body which substantially performs the functions of the Customer,
provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Call Off Contract.
 - 41.1.7. Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 41.1.8, affect the validity of this Call Off Contract. In such circumstances, this Call Off Contract shall bind and continue to take effect to the benefit of any successor body to the Customer.
 - 41.1.8. If the rights and obligations under this Call Off Contract are assigned, novated or otherwise disposed of pursuant to Clause 41.1.6 to a body which is not a Contracting Body or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Body (in the remainder of this Clause both such bodies being referred to as "the Transferee"):
 - 41.1.8.1. the rights of termination of the Customer in Clauses 31.1 (Termination on Insolvency) 31.2 (Termination on Change of Control) and 31.4 (Termination on Default) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and
 - 41.1.8.2. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof with the previous consent in writing of the Supplier.
 - 41.1.9. The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Call Off Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information of the Supplier only for purposes relating to the performance of the Supplier's obligations under this Call Off Contract and for no other purposes and shall take all
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reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

- 41.1.10. For the purposes of Clause 41.1.8 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Call Off Contract.

41.2. **Subcontracting**

- 41.2.1. The Supplier shall not substitute or remove a Sub-Contractor or appoint an additional sub-contractor without the Approval of the Authority and the Customer. Notwithstanding any permitted Sub-Contract in accordance with this Clause 41.2, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Staff also do, or refrain from doing, such act or thing.
- 41.2.2. The performance of any part of this Call Off Contract by a Sub-Contractor shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Call Off Contract. The Supplier shall supply such information about proposed Sub-Contractors as the Customer may reasonably require in order to enable the Customer to consider whether to grant Approval.
- 41.2.3. Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 41.2.4. The Customer may, at its sole discretion, require the Supplier to ensure that each Sub-Contract shall include:
- 41.2.4.1. a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Sub-Contract as if it were the Supplier;
 - 41.2.4.2. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Customer;
 - 41.2.4.3. a provision requiring the Sub-Contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in Clause 28.5 (Confidentiality);
 - 41.2.4.4. a provision requiring the Sub-Contractor to comply

- with protection of data requirements pursuant to Clauses 28.3 (Customer Data) and 28.4 (Protection of Personal Data);
- 41.2.4.5. a provision requiring the Sub-Contractor to comply with the anti-corruption and anti-bribery requirements pursuant to Clause 37 (Prevention of Bribery and Corruption);
 - 41.2.4.6. a provision requiring the Supplier to pay any undisputed sum due to the relevant Sub-Contractor within a specified period that does not exceed thirty (30) days from the date the Supplier receives the Sub-Contractor's invoice; and
 - 41.2.4.7. a provision restricting the ability of the Sub- Contractor to further Sub-Contract elements of the service provided to the Supplier without first seeking the prior written consent of the Customer and the Authority.
- 41.2.5. If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier in the supply of the Services, then the Customer may require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item.

42. FORCE MAJEURE

- 42.1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Call Off Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure Event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Call Off Contract for the duration of such Force Majeure Event. However, if such Force Majeure Event prevents either Party from performing its material obligations under this Call Off Contract for a period in excess of one hundred and twenty (120) days, either Party may terminate this Call Off Contract with immediate effect by notice in writing to the other Party.
 - 42.2. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded, as in the case of an Affected Party, by a Force Majeure Event from complying with an obligation to the Supplier.
 - 42.3. If either Party becomes aware of a Force Majeure Event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 42.1 it shall immediately notify the other by the
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most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

- 42.4. If a Force Majeure Event affects the Services, the Customer may direct the Supplier to procure those Services from a third party in which case the Supplier will be liable for payment for the provision of those Services for as long as the delay in performance continues.
- 42.5. The Supplier shall not have the right to any payment from the Customer under this Call Off Contract where the Supplier is unable to provide the Services because of a Force Majeure Event. However if the Customer directs the Supplier to use a replacement supplier pursuant to Clause 42.4, then the Customer will pay the Supplier (a) the Call Off Contract Charges; and (b) the difference between the Call Off Contract Charges and the new supplier's costs if, in respect of the Services that are subject to a Force Majeure Event, the new provider's costs are greater than the Call Off Contract Charges.

43. WAIVER

- 43.1. The failure of either Party to insist upon strict performance of any provision of this Call Off Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Call Off Contract.
- 43.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 53 (Notices). Such waiver shall only be operative with regard to the specific circumstances referred to.
- 43.3. A waiver by either Party of any right or remedy arising from a breach of this Call Off Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Call Off Contract.

44. CUMULATIVE REMEDIES

- 44.1. Except as otherwise expressly provided by this Call Off Contract, all remedies available to either Party for breach of this Call Off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

45. FURTHER ASSURANCES

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

46. VARIATION

- 46.1. Subject to the provisions of this Clause 46, each party may request a variation to this Call Off Contract provided that such variation does not
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amount to a material change within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

- 46.2. A Party may request a Variation by completing and sending the variation form set out in Call Off Schedule 1 (the "**Variation Form**") to the other Party giving sufficient information for the receiving party to assess the extent of the Variation and any additional cost that may be incurred. The receiving party shall respond to the request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Order and the proposed Variation.
- 46.3. In the event that:
- 46.3.1. the Supplier is unable to agree to /or provide the Variation; and/or
 - 46.3.2. the Parties are unable to agree a change to the Call Off Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof, the Customer may:
 - 46.3.2.1 agree to continue to perform its obligations under this Call Off Contract without the Variation; or
 - 46.3.2.2 terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Order in accordance with this Call Off Contract or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 46.4. If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Call Off Contract.

47. SEVERABILITY

- 47.1. If any provision of this Call Off Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Call Off Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 47.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

48. MISTAKES IN INFORMATION

- 48.1. The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

49. SUPPLIER'S STATUS

- 49.1. At all times during the Call Off Contract Period the Supplier shall be an independent contractor and nothing in this Call Off Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Call Off Contract.

50. CONFLICTS OF INTEREST

- 50.1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of this Call Off Contract.
- 50.2. The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 50.1 above arises or is reasonably foreseeable.
- 50.3. The Customer reserves the right to terminate this Call Off Contract for Material Breach and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Call Off Contract. The actions of the Customer pursuant to this Clause 50.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

51. ENTIRE AGREEMENT

- 51.1. This Call Off Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) between the Parties in relation to such matters.
- 51.2. Each of the Parties acknowledges and agrees that in entering into this Call Off Contract it does not rely on, and shall have no remedy in respect of, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as expressly set out in this Call Off Contract.

- 51.3. The Supplier acknowledges and agrees that it has:
- 51.3.1. entered into this Call Off Contract in reliance on its own due diligence alone; and
 - 51.3.2. received sufficient information required by it in order to determine whether it is able to provide the Services in accordance with the terms of this Call Off Contract.
- 51.4. Nothing in Clauses 51.1 to 51.3 shall operate to exclude any liability for (or remedy in respect of) Fraud.

52. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

53. NOTICES

- 53.1. Except as otherwise expressly provided within this Call Off Contract, any notices sent under this Call Off Contract must be in writing. For the purpose of this Clause, an e-mail is accepted as being "in writing".
- 53.2. Subject to Clause 53.3, the following table sets out the method by which notices may be served under this Call Off Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clause 53.3)	9.00 am on the first Working Day after sending	Dispatched in an emailed pdf form to the correct e- mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Recorded delivery or other next Working Day delivery service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 53.3. Any notices from either Party relating to Termination (Clause 31), Partial Termination, Suspension or Partial Suspension (Clause 32), waiver (Clause 43) Default or Customer Cause and any dispute under the Dispute Resolution Procedure (Clause 56) may not be served by email.
- 53.4. For the purposes of Clause 53.2, the address and email address of each Party shall be the address and email address set out in the Order Form.
- 53.5. Either Party may change its address for service by serving a notice in accordance with this Clause 53.
- 53.6. This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

54. NOT USED

G. DISPUTES AND LAW

55. GOVERNING LAW AND JURISDICTION

- 55.1. This Call Off Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with this Call Off Contract including, without limitation, any dispute relating to any contractual or non-contractual obligation and the existence, validity or termination of this Call Off Contract.

56. DISPUTE RESOLUTION

- 56.1. Immediately upon either Party notifying the other of a dispute, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Call Off Contract and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in the Order Form.
- 56.2. Nothing in this Dispute Resolution Procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 56.3. If the dispute cannot be resolved by the Parties pursuant to Clause 56.1 within twenty (20) Working Days or such other period that the Customer may specify or Approve, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 56.5 unless:
- 56.3.1. the Customer considers that the dispute is not suitable for resolution by mediation; or
- 56.3.2. the Supplier does not agree to mediation.
- 56.4. Without prejudice to any other rights of the Customer under this Call Off Contract, the obligations of the Parties under this Call Off Contract shall not be suspended, cease or be delayed by the reference of a dispute submitted to mediation and the Supplier and the Staff shall comply fully with the requirements of this Call Off Contract at all times.
- 56.5. The procedure for mediation is as follows:
- 56.5.1. a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice of the Mediator to either Party that that person is unable or unwilling to act, apply to the mediation provider or to the Centre for Effective Dispute Resolution

- (“CEDR”) to appoint a Mediator;
- 56.5.2. the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediation provider specified in Clause 56.5.1 to provide guidance on a suitable procedure;
- 56.5.3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 56.5.4. if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 56.5.5. failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Call Off Contract without the prior written consent of both Parties; and
- 56.5.6. if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

57. PROMOTING TAX COMPLIANCE

- 57.1. If, at any point during the Call Off Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 57.1.1. notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
- 57.1.2. promptly provide to the Customer:
- 57.1.2.1. details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and
- 57.1.2.2. such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonable require.
- 57.2. The Supplier acknowledges and agrees that failure to comply with Clauses 5.2.1.1 and/or 57.1 shall be a Material Breach of this Call Off Contract.

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 Customer has given to the Supplier a notice in writing which has not been cancelled stating that the Customer 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 Goods and 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 Customer 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 Goods and 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
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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 Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer 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 Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 58.3. The decision of the Customer 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 Customer 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 57.2 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 Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Clause 58, but with such variations (if any) as the Customer 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 Customer 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 Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer 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 Customer 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 Customer 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 Customer may by notice in writing terminate this Call Off Contract forthwith.

58.12. A decision of the Customer 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 Customer's 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 Customer notice in writing requesting the Customer to state whether the event upon which the Customer's 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 Customer 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 Customer at the date of such termination either at the price which would have been payable under this Call Off Contract if the Call Off Contract had not been terminated, or at a reasonable price;
- 58.14.3. The Customer 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 Customer 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 58.14.3, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause 58.14.3; and
- 58.14.4. Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer 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 Customer 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 Customer shall state in the statement and particulars detailed in Clause 58.13.2. that the event upon which the Customer's 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 Customer shall be terminated in accordance with the following provisions:
- 58.15.3. the Customer 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
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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 Customer within an agreed period or in default of agreement within such period as the Customer 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 Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;
- 58.15.5. the Customer 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 Customer 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 Customer on any matter arising out of this Clause 58.15.6 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.

GLOSSARY TO TEMPLATE CALL OFF FORM AND TEMPLATE CALL-OFF TERMS

1. In accordance with Clause 1.1. of this Call Off Contract including its recitals the following expressions shall have the following meanings:

“Achieve”	means in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone in accordance with the Order Form and "Achieved" and "Achievement" shall be construed accordingly;
“Additional Clauses”	means the additional Clauses in Call Off Schedule 10 (Alternative and Additional Clauses) and any other additional Clauses stipulated by the Customer in the Order Form;
“Affected Party”	means the party seeking to claim relief in respect of a Force Majeure;
“Affiliates”	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
“Alternative Clauses”	means the alternative Clauses in Call Off Schedule 10 (Alternative and Additional Clauses) and any other alternative Clauses stipulated by the Customer in the Order Form;
“Approval”	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
“Auditor”	has the meaning in Clause 38;
“Authority”	means SURREY COUNTY COUNCIL of County Hall, Penrhyn Road, Kingston Upon Thames, Surrey, KT1 2DN;
“Best Industry Practice”	means the industry practice customarily adopted in the retail banking and financial industry from time to time including, without limitation, in accordance with the BACS' rules and procedures, the Banking Code and relevant UK Payments Administration Limited and Financial Conduct Authority Standards;
“Business Continuity and Disaster Recovery Plan” or “BCDR Plan”	means the Supplier's plan relating to business continuity and disaster recovery as referred to in Clause 18.4 and Call Off Schedule 5 (Business Continuity and Disaster Recovery);]

“Call Off Agreement”	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
“Call Off Commencement Date”	means the date of commencement of the Call Off Contract set out in the Order Form;
“Call Off Contract”	means this Call-Off Agreement between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form and the Call-Off Terms;
“Call Off Contract Charges”	means the Fees, payable to the Supplier by the Customer under this Call Off Contract
“Call Off Contract Period”	means the period from the Call Off Commencement Date until the Call Off Expiry Date or earlier completion or termination of this Call Off Contract in accordance with Clause 4;
“Call Off Contract Year”	means each consecutive twelve (12) Month period during the Call Off Contract Period commencing on the Call Off Effective Date;
“Call Off Effective Date”	means the date of formation of this Call Off Contract in accordance with the Order Form and Framework Schedule 5 (Call Off Procedure);
“Call Off Expiry Date”	means the date of expiry of the Call Off Contract set out in the Order Form;
“Call Off Schedules”	means the schedules to this Call Off Contract;
“Call-Off Terms”	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Services, together with the Call Off Schedules hereto;
“Change in Law”	means any change in Law which impacts on the supply of the Services and performance of the Call- Off Terms which comes into force after the Call Off Commencement Date;
“Change of Control”	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010
“Charging Structure”	means the structure to be used in the establishment of the charging model which is applicable to each Call-Off Agreement, which structure is set out in Framework Schedule 3 (Charging Structure);

“Commercially Sensitive Information”	means the Confidential information listed in the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
“Comparable Supply”	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
“Confidential Information”	means the Customer's Confidential Information and/or the Supplier's Confidential Information;
“Continuous Improvement Plan”	means a plan for improving the provision of the Services produced by the Supplier pursuant to Framework Schedule 7 (Value for Money);
“Contracting Body”	means the Authority and any other bodies listed in paragraph VI.3 of the OJEU Notice;
“Control”	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly
“Conviction”	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);
“Crown”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
“Customer”	means the customer(s) identified in the Order Form;
“Customer Background IPRs”	all mean: <ol style="list-style-type: none"> a. IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know- How, documentation, processes and procedures;

	<p>b. IPRs created by the Customer independently of this Call Off Contract; and/or</p> <p>c. Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract;</p> <p>but excluding IPRs owned by the Customer subsisting in the Customer Software</p>
“Customer Cause”	means any breach by the Customer of its obligations under this Call Off Contract (unless caused or contributed to by the Supplier or as the result of any act or omission by the Customer to which the Supplier has given its prior consent);
“Customer Data”	<p>means:</p> <p>a). the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:</p> <p style="padding-left: 40px;">i).are supplied to the Supplier by or on behalf of the Customer; and/or</p> <p style="padding-left: 40px;">ii). the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or</p> <p>b) any Personal Data for which the Customer is the Data Controller.</p>
“Customer Representative”	means the representative appointed by the Customer from time to time in relation to the Call Off Contract;
“Customer Responsibilities”	means the responsibilities of the Customer set out in the Order Form and any other responsibilities of the Customer agreed in writing between the Parties from time to time;
“Customer Software”	means software which is owned by or licensed to the Customer, including software which is or will be used by the Supplier for the purposes of providing the Services but excluding the Supplier Software;
“Customer's Confidential Information”	means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all IPRs (including all Customer Background IPRs and Project Specific IPRs), together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

“Customer’s Premises”	means the Premises identified in the Order Form and which are to be made available by the Customer for use by the Supplier for the provision of the Services on the terms set out in this Call Off Contract and any other Premises made available by the Customer from time to time for use by the Supplier in connection with this Call Off Contract;
“Data Controller”	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
“Data Processor”	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
“Data Protection Legislation” or “DPA”	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
“Data Subject”	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
“Default”	means any breach of the obligations of the Supplier (including but not limited to Material Breach) or any other default, act, omission, negligence or negligent statement of the Supplier or the Staff in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
“Deliverables”	means those deliverables listed in the Implementation Plan (if any);
“Delivery”	means the time at which the relevant Milestone set out in any Implementation Plan has been Achieved and "Deliver" and "Delivered" shall be construed accordingly;
“Disaster”	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable for a period of 24 hours or which is reasonably anticipated will mean that the Services or a material part thereof will be unavailable for that period
“Dispute Resolution Procedure”	means the Dispute Resolution Procedure set out in Clause 56;
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004

	and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
“End User”	means a person who is authorised by the Customer to use the Services;
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
“Equipment”	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Call Off Contract;
“Extension Period”	means such period or periods as may be specified by the Customer pursuant to Clause 4.2;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
“Force Majeure”	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> a). acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under the Call Off Contract; b). riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c). acts of the Crown, local government or regulatory bodies; d). fire, flood or any disaster; and e). an industrial dispute affecting a third party for which a substitute third party is not reasonably available,

	<p>but excluding</p> <p>i). any industrial dispute relating to the Supplier, the Staff (including any subsets of them) or any other failure in the Supplier or the Sub- Contractor's supply chain; and</p> <p>ii). any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</p> <p>iii). any failure of delay caused by a lack of funds.</p>
“Framework Agreement”	means the framework agreement between the Authority and the Supplier referred to in the Order Form;
“Fraud”	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
“Further Competition Procedure”	means the award procedure described in paragraph 2 of Framework Schedule 5 (Call Off Procedure);
“General Anti-Abuse Rule”	means the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“General Change in Law”	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
“Government”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C 255/02 Halifax and others;
“HMRC”	means Her Majesty's Revenue and Customs;
“Holding Company”	shall have the meaning given to it in section 1159 of the Companies Act 2006;

“Implementation Plan”	means the plan referred to in the Order Form;
“Information”	has the meaning given under section 84 of the Freedom of Information Act 2000;
“Initial Call Off Period”	means the period from the Call Off Commencement Date until the Call Off Expiry Date;
“Insolvency Event”	<p>means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):</p> <ul style="list-style-type: none"> a). a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or b). a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c). a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or d). a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or e). an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or f). it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or g). being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or h). where the Supplier or Framework Guarantor or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or

	<p>i). any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction.</p>
“Installation Works”	shall mean all works which the Supplier is to carry out at the beginning of the Call Off Contract Period to install the Supplier Software necessary for the provision of the Services required under this Call Off Contract in accordance with the Order Form;
“Intellectual Property Rights” or “IPRs”	<p>means</p> <p>a). copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b). applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c). all other rights having equivalent or similar effect in any country or jurisdiction;</p>
“Key Performance Indicators” or “KPIs”	means the performance measurements and targets set out in Part B of Framework Schedule 1 (Services and Key Performance Indicators);
“Know-How”	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier's or the Customer's possession before the Call Off Commencement Date;
“Law”	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
“Losses”	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties

	whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Management Information"	or "MI" means the management information specified in Framework Schedule 8 (Management Information);
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Material Breach"	means: <ul style="list-style-type: none"> a). a breach by the Supplier referred to by this definition in any of the following Clauses: Clause 5 (Warranties and Representations), Clause 6.2 (Time of Delivery of Services), Clause 8 (Installation Works), Clause 15 (Monitoring of Call Off Contract Performance), Clause 17 (Continuous Improvement), Clause 19 (Disruption), Clause 24 (Staff and Staff Security), Clause 27 (IPR), Clause 28.4 (Protection of Personal Data), Clause 28.5 (Confidentiality), Clause 34 (Publicity, Media and Official Enquiries), Clause 28.6 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), Clause 37 (Prevention of Bribery and Corruption), Clause 40 (Prevention of Fraud) and Clause 50 (Conflicts of Interest); or b). any material breach of this Call Off Contract under the Law; and/or c). a breach which prevents the Customer from discharging a statutory duty.
"Milestone"	means an event or task described in any Implementation Plan which must be completed by the corresponding date set out in such plan;
"Milestone Date"	means the date set against the relevant Milestone in any Implementation Plan;
"Ministry of Justice Guidance"	means Ministry of Justice Guidance in relation to Section 9 of the Bribery Act 2010 available at http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf ;
"Month"	means a calendar month and "Monthly" shall be interpreted

	accordingly;
“Monthly Billing Date”	means the 7th day of each Month, or if that day is not a Working Day, the next Working Day after the 7th day of that Month;
“Monthly Invoice”	means a statement in such form as is specified by the Customer in the Order Form;
“Occasion of Tax Non Compliance”	<p>means</p> <p>a). any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:</p> <p>i). a Relevant Tax Authority successfully challenging the Supplier under the General Anti- Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti- Abuse Rule or the Halifax Abuse Principle;</p> <p>ii). the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p> <p>b) the Supplier's tax affairs give rise on or after 1 April 2013 to a conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a penalty for civil fraud or evasion;</p>
“Operational Working Hours”	means from 8:30am to 5pm GMT Mondays to Fridays (excluding Bank Holidays);
“Order”	means the order for the provision of the Services placed by the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
“Order Form”	means the form, as completed and forming part of this Call Off Contract, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;
“Parent Company”	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar

	business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
“Party”	means the Customer or the Supplier and "Parties" shall mean both of them;
“Personal Data”	shall have the same meaning as set out in the Data Protection Act 1998;
“Premises”	means the location where the Services are to be supplied as set out in the Order Form;
“Processing”	has the meaning given to "processing" under the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
“Prohibited Act”	means: <ul style="list-style-type: none"> a). to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority a financial or other advantage to: <ul style="list-style-type: none"> i). induce that person to perform improperly a relevant function or activity; or ii. reward that person for improper performance of a relevant function or activity; or b). committing any offence: <ul style="list-style-type: none"> i). under the Bribery Act 2010; or ii). under legislation creating offences concerning Fraud; or iii). at common law concerning Fraud; or iv). committing or attempting or conspiring to commit Fraud;
“Project Specific IPRs”	Means <ul style="list-style-type: none"> a). Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or

	<p>b). Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Call Off Contract;</p> <p>c). But shall not include the Supplier Background IPRs;</p>
“Rebate”	means an amount payable to the Customer by the Supplier pursuant to the Call Off Contract;
“Regulations”	means the Public Contracts Regulations 2006 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
“Related Supplier”	means any person who provides services to the Customer which are related to the Services from time to time;
“Relevant Conviction”	means a Conviction that is relevant to the nature of the Services to be provided or as specified by the Customer in the Order Form or elsewhere in the Call Off Contract;
“Relevant Tax Conviction”	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;
“Replacement Services”	means any goods and/or services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of this Call Off Contract, whether those services are provided by the Customer internally and/or by any third party;
“Replacement Supplier”	means any third party provider of Replacement Services appointed by the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
“Request for Information”	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the Environmental Information Regulations;
“Satisfaction Certificate”	means the certificate materially in the form of the document contained in the Annex to Call Off Schedule 4 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
“Security Management Plan”	means the Supplier's security management plan prepared pursuant to paragraph 3 of Call Off Schedule 2 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 3.2 of Call Off

	Schedule 2 (Security) and as updated from time to time;
“Security Policy”	means the Customer's security policy and procedures in force from time to time, including any specific security requirements set out in Annex 1 to Call Off Schedule 2 (Security);
“Service Failure”	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;
“Service Levels”	means any service levels applicable to the provision of the Services under this Call Off Contract specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels and Performance Monitoring);
“Service Period”	shall mean a recurrent period of one Month during the Call Off Contract Period ;
“Services”	means the services to be supplied as referred to in the Order Form;
“Software”	means the Supplier Software and Customer Software;
“Staff”	means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors) used in the performance of its obligations under this Call Off Contract;
“Staff Vetting Procedures”	means any Customer's procedures and departmental policies for the vetting of personnel as set out by the Customer in the Order Form or elsewhere in the Call Off Contract;
“Standards”	means: <ul style="list-style-type: none"> a). any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b). any standards detailed in the specification in

	<p>Framework Schedule 1 (Services and Key Performance Indicators);</p> <p>c). any standards detailed by the Customer in this Call Off Contract following any Further Competition Procedure or agreed between the Parties from time to time;</p> <p>d). any relevant Government codes of practice and guidance applicable from time to time.</p>
“Sub-Contract”	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the provision of the Services or any part thereof;
“Sub-Contractor”	means the third party from the list of sub-contractors in the Framework or any third party engaged by the Supplier from time to time under a Sub-Contract permitted pursuant to the Framework Agreement and this Call Off Contractor its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;
“Supplier”	means the person, firm or company with whom the Customer enters into the Call Off Contract as identified in the Order Form;
“Supplier Background IPRs”	<p>means:</p> <p>a). Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>b). Intellectual Property Rights created by the Supplier independently of this Call Off Contract,</p> <p>but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
“Supplier Software”	means any software identified as such in the Order Form together with all other software which is not listed in the Order Form but which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Customer to receive the benefit of and/or make use of the

	Services;
“Supplier’s Call Off Solution”	means, if attached, the Supplier’s solution in response to the Customer’s invitation to suppliers for formal offers to supply the Customer with the Services pursuant to any Further Competition Procedure, a copy of which is set out in Call Off Schedule 3 (Supplier’s Call Off Solution);
“Supplier’s Confidential Information”	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
“Template Call-Off Terms”	means the template terms and conditions in Part 2 of Framework Schedule 4 (Template Order Form and Template Call-Off Terms);
“Template Order Form”	means the template form in Part 1 of Framework Schedule 4 (Template Order Form and Template Call-Off Terms);
“Tender”	means the tender submitted by the Supplier to the Authority on 14 October 2014 and annexed to Framework Schedule 17;
“Tests” and “Testing”	means any tests required to be carried out pursuant to this Call Off Contract as set out in the Test Plan or elsewhere in the Call Off Contract;
“Test Issue”	means variance or non-conformity of the Services or Deliverables from their requirements as set out in the Call Off Contract;
“Test Plan”	means a plan for the Testing of the Deliverables and other agreed criteria related to the achievement of Milestones as described further in paragraph 4 of Call Off Schedule 4 (Testing);
“Test Strategy”	means a strategy for the conduct of Testing as described further in paragraph 3 of Call Off Schedule 4 (Testing);
“User Agreement”	means any agreement between the Supplier or relevant Sub-Contractor and the End User of the Services;
“Variation”	has the meaning given in Clause 46.1;
“Variation Procedure”	means the procedure set out in Clause 46;

“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“Working Day”	means any day other than a Saturday or Sunday or public holiday in England and Wales

CALL OFF SCHEDULE 1: 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. The Call Off Contract is varied as follows and shall take effect on the date signed by both Parties:

[Guidance Note: Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in the Call Off Contract.
3. The 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

Name (in Capitals)

Address

CALL OFF SCHEDULE 2: SECURITY

In this Call Off Schedule (Security) the following provisions shall have the meanings given to them below:

"Breach of Security"	in accordance with the security requirements in Annex 1 to this Call Off Schedule (Security) and the Security Policy, the occurrence of: <ul style="list-style-type: none">a). any unauthorised access to or use of the Services, the Premises, the Sites, the Supplier System and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Call Off Contract; and/orb). the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Call Off Contract;
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1. INTRODUCTION

- 1.1 This Call Off Schedule covers:
 - 1.1.1 principles of protective security to be applied in delivering the Services;
 - 1.1.2 the creation and maintenance of the Security Management Plan; and
 - 1.1.3 obligations in the event of actual, potential or attempted breaches of security.

2. PRINCIPLES OF SECURITY

- 2.1 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on security.
- 2.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
 - 2.2.1 is in accordance with Best Industry Practice, Law and this Call Off Contract;
 - 2.2.2 complies with the Security Policy;

2.2.3 complies with the security requirements as set out in Annex 1 to this Call Off Schedule; and

2.2.4 complies with the Customer's ICT standards.

2.3 Subject to Clause 12 (Standards and Quality), the references to standards, guidance and policies set out in paragraph 2.2 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, from time to time.

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

3. **SECURITY MANAGEMENT PLAN**

3.1 **Introduction**

3.1.1 If the Customer has so stipulated in the Order Form, The Supplier shall develop and maintain a Security Management Plan in accordance with this Call Off Schedule to apply during the Call Off Contract Period.

3.1.2 The Supplier shall comply with its obligations set out in the Security Management Plan and any other provision of the Framework Agreement relevant to security.

3.1.3 The Security Management Plan shall, unless otherwise specified by the Customer, aim to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Premises, the Sites, the Supplier System and any ICT, information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract.

3.1.4 The Supplier is responsible for monitoring and ensuring that it is aware of changes to the Security Policy. The Supplier shall keep the Security Management Plan up-to-date with the Security Policy as amended from time to time.

3.2 **Development of the Security Management Plan**

3.2.1 Within twenty (20) Working Days after the Call Off Commencement Date (or such other period specified in the Implementation Plan or as otherwise agreed by the Parties in writing) and in accordance with paragraph 3.4 (Amendment

and Revision), the Supplier will prepare and deliver to the Customer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan. If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 3.4 (Amendment and Revision), is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan.

- 3.2.2 If the Security Management Plan is not Approved the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Customer pursuant to this paragraph 3.2.2 may be unreasonably withheld or delayed. However a refusal by the Customer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.3 shall be deemed to be reasonable.

3.3 **Content of the Security Management Plan**

- 3.3.1 The Security Management Plan will 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 shall 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 Contract (including this Call Off Schedule, the principles set out in paragraph 2.2 and any other elements of this Call Off Contract relevant to security or any data protection guidance produced by the Customer).
- 3.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Call Off Contract and Annex 1 to this Call Off Schedule.
- 3.3.3 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the provision of the Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise

specified in this Call Off Schedule.

3.4 **Amendment and Revision of the Security Management Plan**

3.4.1 The Security Management Plan will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:

- 3.4.1.1 emerging changes in Best Industry Practice;
- 3.4.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;
- 3.4.1.3 any new perceived or changed security threats;
- 3.4.1.4 any reasonable request by the Customer.

3.4.2 The Supplier will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Customer. The results of the review should include, without limitation:

- 3.4.2.1 suggested improvements to the effectiveness of the Security Management Plan;
- 3.4.2.2 updates to the risk assessments; and
- 3.4.2.3 suggested improvements in measuring the effectiveness of controls.

3.4.3 On receipt of the results of such reviews, the Customer will consider any amendments or revisions to the Security Management Plan for Approval in accordance with the process set out at paragraph 3.2.2.

3.4.4 Any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a Customer request or change to the requirements set out in Annex 1 to this Call Off Schedule or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved by the Customer.

4. **BREACH OF SECURITY**

- 4.1 Either party shall notify the other in accordance with the agreed security incident management process as defined by the Security Management Plan upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 4.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in

paragraph 4.1, the Supplier shall:

4.2.1 immediately take all reasonable steps necessary to:

4.2.1.1 remedy such breach or protect the integrity of the Customer against any such potential or attempted breach or threat; and

4.2.1.2 prevent an equivalent breach in the future; and

4.2.2 ensure that:

4.2.2.1 such steps shall include any action or changes reasonably required by the Customer. In the event that such action is taken in response to a breach that is determined by the Customer acting reasonably not to be covered by the obligations of the Supplier under this Call Off Contract, then the Supplier shall be entitled to refer the matter to the Variation Procedure; and

4.2.2.2 as soon as reasonably practicable provide to the Customer **full** details of the Breach of Security or the potential or attempted Breach of Security.

ANNEX 1: SECURITY

A. Customer Security Requirements (including details of the Security Policy)

All data (including back up data) must be processed and stored in accordance with the Data Protection Act (1998).

Data security and integrity must be maintained in accordance with the ISO27001 standard or equivalent

Be compliant with the Payment Application Data Security Standard (PA-DSS), Payment Card Industry Data Security Standard (PCI-DSS) and have certification from the Payment Card Industry Security Standards Council (PCI-SSC)

Data security and integrity must be maintained in accordance with the ISO27001 standard or equivalent

B. Security Management Plan

Not Used

CALL OFF SCHEDULE 3: SUPPLIER’S CALL OFF SOLUTION

1. This Call Off Schedule (Supplier’s Call Off Solution) sets out a copy of the Supplier’s Call Off Solution including its Statement of Work in response to the Customer’s Statement of Requirements in its invitation to further competition in accordance with the Further Competition Procedure in Framework Schedule 5 (Call Off Procedure).
2. Subject to Clauses 1.3 and 1.4 and in addition to any other obligations on the Supplier under this Call Off Contract, the Supplier shall provide the Services to the Customer in accordance with the Supplier’s Call Off Solution.

Statement of Requirement



2017-03-29
Prepayment Cards S

Tender Response Documents



Minimum Standards Final.doc



Question 1a & 1b.docx



Question 2 Final.docx



Question 3 Reporting R.docx



Question 4 Final.docx



Question 5 Final.docx



Question 6 Social Valu.docx



Suffolk CC Pricing Model - Completed.



Suffolk CC Pricing Schedule - Complete

Additional Supporting Documentation



Suffolk CC Covering letter.doc



Reporting Samples-Q3.xlsx



Prepaid Promotion Video.pdf



Prepaid Card Administrators and I



**Prepaid Card Quick
Start guide for dir.p**



**Prepaid Client
Handbook V1.3 - PR**



Prepaid Direct
Payment Transitionir



Pre-Paid
Implementation and



Migration Plan
Final.pptx



Business Continuity
Plan.docx



**Carta - Platform
Disaster Recovery.pc**



Example KPI pack -
SCC.pptx



KYC Procedure -
Suffolk County Coui

Contract Award Letters



2016-06-20 allpay
Provisional Award.d



2016-06-20 Final
Award.docx

Clarifications



Clarifications.xlsx

CALL OFF SCHEDULE 4: TESTING

NOT USED

ANNEX 1: SATISFACTION CERTIFICATE

To: [insert name of Supplier]
FROM: [insert name of Customer]
[insert Date dd/mm/yyyy]

Dear Sirs,

SATISFACTION CERTIFICATE

Milestones:

[Guidance Note to Customer: Insert description of the relevant Deliverables/Milestones]

We refer to the agreement ("**Call Off Contract**") relating to the provision of the [Services] between the [insert Customer name] ("**Customer**") and [insert Supplier name] ("**Supplier**") dated [insert Call Off Commencement Date dd/mm/yyyy].

The definitions for terms capitalised in this certificate are set out in the Call Off Contract.

[We confirm that all of the Milestones have been successfully Achieved by the Supplier in accordance with the Test relevant to those Milestones.]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

CALL OFF SCHEDULE 5: BUSINESS CONTINUITY AND DISASTER RECOVERY

1. **NOT USED**

2. **SUPPLIER BCDR PLAN**



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CALL OFF SCHEDULE 6: SERVICE LEVELS AND PERFORMANCE MONITORING

1. SCOPE

- 1.1 This Call Off Schedule (Service Levels and Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Services, the mechanism by which failures to achieve Service Levels including Service Failures will be managed and the method by which the Supplier's performance in the provision of the Services will be monitored.
- 1.2 This Call Off Schedule comprises:
 - 1.2.1 Part A: Service Levels;
 - 1.2.2 Annex 1 to Part A - Service Levels Table;
 - 1.2.3 Part B: Performance Monitoring; and
 - 1.2.4 Annex 1 to Part B: Performance Monitoring

PART A: SERVICE LEVELS

1. GENERAL PROVISIONS

- 1.1 The Supplier shall provide a proactive Call Off Contract manager to ensure that all Service Levels and KPIs (Key Performance Indicators) are met to the highest standard throughout the term of the Framework Agreement and Call- Off Agreement.
- 1.2 The Supplier shall provide support and advice through the provision of a dedicated Call Off Contract manager, where required on matters relating to:
 - 1.2.1 [Supply performance;
 - 1.2.2 Quality of Services;
 - 1.2.3 Customer Support;
 - 1.2.4 Complaints handling; and
 - 1.2.5 Accurate and timely invoices.

2. PRINCIPAL POINTS

- 2.1 The objectives of the Service Levels are to:
 - 2.1.1 ensure that the Services are of a consistently high quality and
-

meet the requirements of the Customer;

2.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of service for which it has contracted to deliver; and

2.1.3 incentivise the Supplier to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

3. SERVICE LEVELS

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

3.2 The Supplier shall monitor its performance of the provision by it of the Services by reference to the relevant Performance Criteria for achieving the Service Level(s) shown in Annex 1 to Part A of this Call Off Schedule and shall send the Customer a report detailing the level of service which was achieved in accordance with the provisions of Part B of this Call Off Schedule.

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

3.4 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 fails to achieve a Service Level, the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights under the Call Off Contract or in Law, may:

3.4.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a Service Failure from taking place or recurring; and

3.4.2 if the action taken under paragraph 3.4.1 above has not already prevented or remedied the Service Failure, provide the Customer with a correction plan (the "Correction Plan") within five (5) Working Days (or such other period as the Parties agree in writing) from the day the Supplier notifies the Customer under paragraph 3.4 above. The Supplier will set out in the Correction Plan the action that it will take to prevent the Service Failure or rectify and prevent the Service Failure from recurring. The Supplier will obtain the Customer's Approval of such Correction Plan (such Approval not to be unreasonably withheld or delayed) and carry out the Approved Correction Plan in accordance with its terms.

3.5 Approval and implementation of any Correction Plan by the Customer shall not relieve the Supplier of any 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.

ANNEX 1 TO PART A: SERVICE LEVELS TABLE

Performance Criteria	Key Indicator	Performance Measure
Online Programme Management Tool Systems (Operational Working Hours)	Availability	99%
Online Programme Management Tool Systems (Operational Working Hours)	Availability	99%
Situations when website experiences down time fixed with 4 hours	Availability/ Quality/ Timeliness	100%
All planned website maintenance, informed to SCC and carried out between 12am and 5am	Availability/Quality	100%
Situations when telephone Banking, is down, fixed with four hours	Availability/ Quality	100%
All planned customer service/ telephone banking maintenance, informed to SCC and carried out between 12am and 5am	Availability/Quality/ Timeliness	100%
Customer service Help Desk Facilities available during Operational Working Hours	Availability	99%
The Facility for reporting lost or stolen Prepaid Cards shall be open 24 hours a day, every day of the year.	Availability	99%
Calls to the Help Desk / Customer Services answered by a customer service representative within 60 seconds, over a monthly period	Timeliness	80%
Account queries which cannot be answered immediately will be followed up with attempts to resolve the query within 48 hours. A resolution will be proposed within 2 working days and if not resolved with 10 working days, the Query will be escalated in accordance with the Suppliers standard procedure.	Timeliness/Quality	99%

Complaints which cannot be answered immediately will be followed up with attempts to resolve the query within 48 hours. A resolution will be proposed within 2 working days and if not resolved with 10 working days, the Query will be escalated in accordance with the Suppliers standard procedure. SCC informed of complaint and outcome	Timeliness/Quality	100%
Lost call rate – lost or abandoned calls made to the help Desk / Customer Services, over a monthly period	Timeliness/Quality	<5%
Calls reporting lost or stolen cards result in cards being stopped in real time	Quality/Timelines	100%
Cards that are required to be suspended/unsuspended, should be done within real time	Quality/Timelines	100%
Queries by letter or secure email (where available) answered within 3 working days of receipt	Timeliness/Quality	99%
All complaints responded to within 5 working days	Timeliness	99%
Applications made to open an account processed within 5 working days of receipt	Timeliness	99%
New or replacement cards dispatched within 5 working days of receipt	Timeliness	99%
Provision of management information to the contracting Body by the 5 th day after the Billing date.	Timeliness	99%
Local Authority support queries resolved to their satisfaction	Timeliness/Quality	99%
Invoices shall be dispatched on due date.	Timeliness	99%

PART B: PERFORMANCE MONITORING

1. PRINCIPAL POINTS

- 1.1 Part B to this Call Off Schedule provides the methodology for monitoring the provision of the Services:
- 1.1.1 to ensure that the Supplier is complying with the Service Levels; and
 - 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services ("**Performance Monitoring System**").
- 1.2 Within twenty (20) Working Days of the Call Off Commencement Date the Supplier shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

2. REPORTING OF SERVICE FAILURES

- 2.1 The Customer shall report all failures to achieve Service Levels and any Critical Service Failure to the Customer in accordance with the processes agreed in paragraph 1.2 above.

3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 3.1 The Supplier shall provide the Customer with reports in accordance with the process and timescales agreed pursuant to paragraph 1.2 above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
- 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 3.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 3.1.3 any Critical Service Failures and details in relation thereto;
 - 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence; and
 - 3.1.6 such other details as the Customer may reasonably require from time to time.
- 3.2 The Parties shall attend meetings to discuss Service Level reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless

otherwise agreed):

- 3.2.1 take place within one (1) week of the reports referred to in paragraph 3.1 above being issued by the Supplier;
- 3.2.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
- 3.2.3 be attended by the Supplier's Representative and the Customer's Representative; and
- 3.2.4 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 Customer'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 Customer's Representative at each meeting.

3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.

3.4 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier for any specified Service Period.

4. SATISFACTION SURVEYS

4.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.

4.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with the Call Off Contract.

4.3 All other suggestions for improvements to the Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 17.

ANNEX 1 TO PART B: PERFORMANCE MONITORING

Dates and frequency of MI reporting dates will be developed in conjunction with provider through the contract manual

CALL OFF SCHEDULE 7

NOT USED

CALL OFF SCHEDULE 8

NOT USED

CALL OFF SCHEDULE 9

NOT USED

CALL OFF SCHEDULE 10: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

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

2. CLAUSES SELECTED

- 2.1 The Customer may, in the Order Form, request the following Alternative Clauses:

- 2.1.1 Scots Law (see paragraph 4.1 below);
- 2.1.2 Northern Ireland Law (see paragraph 4.2 below)
- 2.1.3 Termination (see paragraph 4.3 below);
- 2.1.4 Non-discrimination (see paragraph 4.4 below); or
- 2.1.5 Non-Crown Bodies (see paragraph 4.5 below); or
- 2.1.6 Non-FOIA Public Bodies (see paragraph 4.6 below).

- 2.2 The Customer, in the Order Form, requested that the following Additional Clauses should apply:

- 2.2.1 Security Measures (see paragraph 5 below);

- 2.3 The Customer, in the Order Form, requested that the following MOD (“**Ministry of Defence**”) Additional or Alternative Clauses should apply:

- 2.3.1 [MOD Additional Clauses] (see paragraph 6 below);
[Guidance Note: The Ministry of Defence to select and refine during the Further Competition Procedure]

3. IMPLEMENTATION

- 3.1 The appropriate changes have been made in this Call Off Contract to implement the Alternative and Additional Clauses specified in paragraph 2.1 and the Additional Clauses specified in paragraph 2.2 and 2.3 shall be deemed to be incorporated into this Call Off Contract.

4. ALTERNATIVE CLAUSES

4.1 SCOTS LAW

Governing Law and Jurisdiction (Clause 55)

The original Clause 55.1 shall be replaced with:

This Call Off Contract shall be governed by and interpreted in accordance with the Laws of Scotland and the Parties agree to submit to the exclusive jurisdiction of the Scottish courts any dispute that arises in connection with this Call Off Contract including, without limitation, any dispute relating to any contractual or non-contractual obligation and the existence, validity or termination of this Call Off Contract.

4.2 **NORTHERN IRELAND LAW**

Governing Law and Jurisdiction (Clause 55)

The original Clause 55.1 shall be replaced with:

This Call Off Contract shall be governed by and interpreted in accordance with the Laws of Northern Ireland and the Parties agree to submit to the exclusive jurisdiction of the Northern Irish courts any dispute that arises in connection with this Call Off Contract including, without limitation, any dispute relating to any contractual or non-contractual obligation and the existence, validity or termination of this Call Off Contract.

4.3 **TERMINATION (Clause [31])**

In the definition of "Insolvency Event", Section 123 of the Insolvency Act 1986" shall be replaced with "Article 103 of the Insolvency (NI) Order 1989".

4.4 **DISCRIMINATION**

This Clause shall be inserted at Clause 39:

The Supplier shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976, Fair Employment (NI) Acts 1976 and 1989, the Sex Discrimination (NI) Orders 1976 and 1988, the Equal Pay Act (NI) 1970, or any statutory modification or re-enactment thereof relating to discrimination in employment.

4.5 **NON-CROWN BODIES**

[Guidance Note: only where the Customer is not a Crown Body]

In Clause [33.3.4.2], "[28.6] (Official Secrets Acts 1911 to 1989)" shall be deleted.

In Clause [28.6] (if applicable), "the Official Secrets Act, 1911 to 1989 and" shall be deleted.

In the Definition of "Material breach" "...Clause [28.6] (Official Secrets Acts 1911 to 1989)" shall be deleted.

Clause [28.6] shall be deleted and replaced with "Not used".

4.6 **NON-FOIA PUBLIC BODIES**

[Guidance Note: only where the Customer is not a public body for the purposes of FOIA]

FREEDOM OF INFORMATION

" [28.7.1] The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA."

5. **ADDITIONAL CLAUSES: GENERAL**

5.1 The following definitions to be added to the Glossary 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 Customer to the Supplier be designated 'top secret', 'secret', or 'confidential';

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

5.2 The following new Clause [58] shall apply:

[Guidance Note: the intention is for the clause to follow after the last clause in the T&Cs]

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 Customer has given to the Supplier a notice in writing which has not been cancelled stating that the Customer 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 Goods and 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 Customer 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 Goods and 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 Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer 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
-

Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.

- 58.3. The decision of the Customer 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 Customer 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 57.2 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 Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Clause 58, but with such variations (if any) as the Customer 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 Customer 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 Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer 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 Customer 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 Customer 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
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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 Customer may by notice in writing terminate this Call Off Contract forthwith.

58.12. A decision of the Customer 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 Customer's 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 Customer notice in writing requesting the Customer to state whether the event upon which the Customer's 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 Customer 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 Customer at the date of such

termination either at the price which would have been payable under this Call Off Contract if the Call Off Contract had not been terminated, or at a reasonable price;

58.14.3. The Customer 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 Customer 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 58.14.3, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause 58.14.3; and

58.14.4. Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer 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 Customer 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 Customer shall state in the statement and particulars detailed in Clause 58.13.2. that the event upon which the Customer's 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 Customer shall be terminated in accordance with the following provisions:

58.15.3. the Customer 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 Customer within an agreed period or in default of agreement within such period as the Customer 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 Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;

58.15.5. the Customer 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 Customer 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 Customer on any matter arising out of this Clause 58.15.6 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. MOD ADDITIONAL CLAUSES

6.1 The definition of Call Off Contract in the Glossary to the Call-Off Terms shall be replaced with the following:

"Call Off Contract" means this written agreement between the Customer and the Supplier consisting of the Order Form and the Call-off Terms and the MoD Terms and Conditions.

6.2 The following definitions shall be inserted into in the Glossary to the Call-Off Terms:

6.2.1 **"MoD Terms and Conditions"** means the contractual terms and conditions listed in Schedule [...] which form part of the Call-Off Terms [Guidance Note: read with the Guidance Note below]

6.2.2 **"Site"** shall include any of Her Majesty's Ships or Vessels

and Service Stations.

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

6.3 The following clauses shall be inserted into Clause [2] (Due Diligence):

[2.2] 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 Customer prior to the Commencement Date.

[2.3] 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.

6.4 The following new Clause [58] shall apply:

[Guidance Note: the intention is for the clause to follow after the last clause in the T&Cs and/or the Additional Clause "Security Measures"]

58. [ACCESS TO MOD SITES]

58.1. In this Clause 58:

58.1.1. The Customer 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 Customer and shall be surrendered on demand or on completion of the supply of the Services.

58.1.2. 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.

58.1.3. 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 Customer 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 Customer and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Customer with other evidence relating to the costs of this Call Off Contract.

58.1.4. 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 Customer 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.

58.1.5. 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.

58.1.6. 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.

- 58.1.7. 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.
- 58.1.8. 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 Customer 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 Customer shall be recovered from the Supplier.

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