****

**CALL OFF TERMS FOR SERVICES**

**WIDER PUBLIC SECTOR TRAVEL MANAGEMENT SERVICES FRAMEWORK AGREEMENT**

**REFERENCE NUMBER**

**RM 1034**

**FRAMEWORK SCHEDULE 4**

**ORDER FORM AND CALL-OFF TERMS**

**[PRE-CALL OFF CONTRACT AWARD GUIDANCE NOTE:**

1. **The parties' attention is drawn to the various customer guidance notes highlighted in GREEN and information/schedules to complete and square brackets highlighted in YELLOW in this document.**
2. **Before any Call Off Contract is entered, the parties should ensure that they have read the customer guidance notes, taken any actions necessary and then delete the guidance notes from this document and the square brackets or both the square brackets and the text included in them.**
3. **The guidance is not exhaustive and has been included to assist the parties in completing the required information with sufficient detail. It is each party's responsibility to ensure that the Call Off Contract contains all required information and obtain any necessary professional advice prior to entering into it.**
4. **If the customer requires the assistance of the supplier to fill in certain sections of the Template Order Form this will be agreed between the parties]**

Part 1 – Order Form

SECTION A

This Order Form is issued in accordance with the provisions of the Wider Public Sector Travel Management Services Framework Agreement (RM1034). 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 [dd/mm/yyyy]

ORDER NUMBER [                    ]

**FROM [                    ] "Customer"[[1]](#footnote-1)**

**TO [                    ] "Supplier"[[2]](#footnote-2)**

**SECTION B**

1. TERM
   1. Call Off Commencement Date:

[dd/mm/yyyy]**[[3]](#footnote-3)**

* 1. Call Off Expiry Date:

[dd/mm/yyyy]**[[4]](#footnote-4)**

1. **CUSTOMER CORE CONTRACTUAL REQUIREMENTS** 
   1. Services required[[5]](#footnote-5)

[Services: ]**[[6]](#footnote-6)**

* 1. Location/Premises of Delivery

[ ]**[[7]](#footnote-7)**

* 1. Dates for completion of the Services

[ ]**[[8]](#footnote-8)**

* 1. Implementation Plan

The Implementation Plan as at the Call Off Commencement Date is set out below**[[9]](#footnote-9)**:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Milestone | Deliverables | Duration | Milestone Date | Customer Responsibilities | Other (e.g. Delay Payments)**[[10]](#footnote-10)** |
| [] | [**][[11]](#footnote-11)** | [] | [] | [] | [] |
|  |  |  |  |  |  |

1. SUPPLIER’S INFORMATION
   1. Supplier's inspection of the Premises and Property

[ ]**[[12]](#footnote-12)**

* 1. Supplier Software

[ ]**[[13]](#footnote-13)**

* 1. Commercially Sensitive Information

[ ]**[[14]](#footnote-14)**

1. CUSTOMER RESPONSIBILITIES
   1. Customer's Responsibilities

[ ]**[[15]](#footnote-15)**

1. CALL OFF CONTRACT CHARGES AND PAYMENT
   1. Call Off Contract Charges payable by the Customer (including any applicable discount(s) but excluding VAT) and method of payment (e.g. Government Procurement Card (GPC) or BACS)

Set out in Framework Schedule 3 (Charging Structure)

SECTION C

1. CUSTOMER OTHER CONTRACTUAL REQUIREMENTS[[16]](#footnote-16)
   1. Call Off Guarantor

[ ]**[[17]](#footnote-17)**

* 1. Relevant Convictions

[ ]**[[18]](#footnote-18)**

* 1. Staff Vetting Procedures

[ ]**[[19]](#footnote-19)**

* 1. TUPE and Pensions

[ ]**[[20]](#footnote-20)**

* 1. Exit Planning

[ ]**[[21]](#footnote-21)**

* 1. Security Requirements (including details of Security Policy and outline Security Management Plan)

[ ]**[[22]](#footnote-22)**

* 1. Protection of Customer Data

[ ]**[[23]](#footnote-23)**

* 1. Testing

[ ]**[[24]](#footnote-24)**

* 1. Standards

[ ]**[[25]](#footnote-25)**

* 1. Training

[ ]**[[26]](#footnote-26)**

* 1. Service Levels

[ ]**[[27]](#footnote-27)**

* 1. Critical Service Failure

[ ]**[[28]](#footnote-28)**

* 1. Business Continuity and Disaster Recovery

[ ]**[[29]](#footnote-29)**

* 1. Performance Monitoring

[ ]**[[30]](#footnote-30)**

* 1. Liability

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* 1. Insurance

[ ]**[[32]](#footnote-32)**

* 1. Termination without cause

[ ]**[[33]](#footnote-33)**

1. ADDITIONAL AND/OR ALTERNATIVE CLAUSES[[34]](#footnote-34)
   1. Supplemental requirements in addition to the Call-Off Terms

[ ]

* 1. Amendments to/refinements of the Call-Off Terms

[ ]

* 1. Alternative and/or Additional Clauses (select from Call Off Schedule 10)

[ ]

1. FORMATION OF CALL OFF CONTRACT
   1. BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a Call Off Contract with the Customer to provide the Services.
   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.
   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 |  |

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TERMS AND CONDITIONS

1. GENERAL PROVISIONS

## DEFINITIONS AND INTERPRETATION

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.

Interpretation

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

##### words importing the singular meaning include where the context so admits the plural meaning and vice versa;

##### words importing the masculine include the feminine and the neuter;

##### 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;

##### 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;

##### 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;

##### 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;

##### 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;

##### 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, 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;

##### 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;

##### reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and

#### Subject to Clause 1.4, in the event of and only to the extent of any conflict between the Order Form, the Call Off Terms and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

##### the Framework Agreement, except Framework Schedule 17 (Tender);

##### the Order Form;

##### the Call Off Terms, except Call Off Schedule 3 (Supplier’s Call Off Solution);

##### Call Off Schedule 3 (Supplier’s Call Off Solution);

##### Framework Schedule 17 (Tender).

#### 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.

#### 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.

## DUE DILIGENCE

#### The Supplier acknowledges that it:

##### 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;

##### has raised all relevant due diligence questions with the Customer before the Call Off Commencement Date; and

##### has entered into this Call Off Contract in reliance on its own due diligence alone.

## [CALL OFF GUARANTEE

#### Where the Customer has specified in a Further Competition Procedure that the award of this Call Off Contract shall be conditional upon receipt of a Call Off Guarantee, then, on or prior to the Call Off Commencement Date, the Supplier shall deliver to the Customer:

##### an executed Call Off Guarantee from a Call Off Guarantor; and

##### a certified copy extract of the board minutes and/or resolution of the Call Off Guarantor approving the execution of the Call Off Guarantee.]

## CALL OFF CONTRACT PERIOD

#### This Call Off Contract shall take effect on the Call Off Commencement Date and shall either expire on the Call Off Expiry Date unless terminated (or partially terminated in respect of the terminated part only) earlier pursuant to Clause 31 (Termination Events).

## WARRANTIES AND REPRESENTATIONS

#### The Supplier warrants, represents and undertakes to the Customer that:

##### 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;

##### this Call Off Contract is executed by a duly authorised representative of the Supplier;

##### in entering this Call Off Contract it has not committed any Fraud;

##### 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;

##### in entering this Call Off Contract it has no knowledge, that:

###### 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

###### 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;

##### this Call Off Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;

##### 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;

##### 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;

##### 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;

##### 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;

##### 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.

#### The Supplier also warrants, represents and undertakes to the Customer that:

##### 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):

###### 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

###### it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

###### 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; and

###### for the Call Off Contract Period that all Staff will be vetted in accordance with the Staff Vetting Procedures and Good Industry Practice;

##### it shall at all times during this Call Off Contract comply with its obligations in Clause 12 (Standards and Quality).

#### 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.

#### The Supplier acknowledges and agrees that:

##### 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

##### 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.

## SUPPLY OF SERVICES

Provision of the Services

##### 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.

##### The Supplier shall ensure that the Services are fully compatible with any Customer’s equipment described in the Order Form.

##### Except where otherwise provided in this Call Off Contract, the Services will be provided by the Staff at the Premises.

##### The Customer may inspect and examine the manner in which the Supplier provides the Services at the Premises and, if the Premises are not the Customer’s Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

##### 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.

Time of Delivery of the Services

##### The Supplier shall provide the Services on the date(s) specified in the Order Form and the Milestone Dates (if any).

##### 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 Approval), the Customer may release itself from any obligation to accept and pay for the Services and/or terminate this Call Off Contract for Material Breach in either case without prejudice to any other rights and remedies of the Customer under this Call Off Contract and at Law.

Undelivered Services

##### In the event that not all of the Services are Delivered in accordance with Clause 6.1 ("Undelivered Services") then the Customer shall be entitled to withhold payment (in accordance with Clause 13) of the applicable Call Off Contract Charges for any Services that were not so Delivered (and in accordance with the corresponding Milestone Date, if any) until such time as the Undelivered Services are Delivered. This right shall be without prejudice to any other rights and remedies the Customer has under this Call Off Contract and at Law.

## [NOT USED]

## [NOT USED]

1. CALL OFF CONTRACT PERFORMANCE

## PROVISION AND REMOVAL OF EQUIPMENT

#### Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Services.

#### The Supplier and the Staff shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.

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

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

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

##### remove from the Premises any Equipment or any component part of Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and

##### replace such Equipment or component part of Equipment with a suitable substitute item of Equipment.

#### Where a failure of Equipment or any component part of Equipment causes two (2) or more Service Failures in any twelve (12) Month period, the Supplier shall notify the Customer in writing and shall, at the Customer’s request (acting reasonably), replace such Equipment or component part thereof at its own cost with a new item of Equipment or component part thereof (of the same specification or having the same capability as the Equipment being replaced).

#### Upon termination or expiry of this Call Off Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and any Staff.

## PREMISES

Inspection of Premises

##### Unless the Parties agree in the Order Form that inspection of the Premises is not required, where the Supplier acknowledges and agrees that it has inspected the Premises before the Call Off Commencement Date (or within such period from the Call Off Commencement Date as specified in the Order Form) and has advised the Customer of any aspect of the Premises that is not suitable for the provision of the Services and that the specified actions to remedy the unsuitable aspects of the Premises, together with a timetable for and the costs of those actions, have been specified in the Order Form.

##### If the Supplier has either failed to inspect the Premises or failed to notify the Customer of any required remedial actions in accordance with Clause 10.1.1 then the Supplier shall not be entitled to recover any additional costs or charges from the Customer relating to any unsuitable aspects of the Premises except in respect of any latent structural defect in the Premises. The onus shall be on the Supplier to prove to the Customer that any work to the Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Supplier shall not incur such additional costs or charges without obtaining Approval.

##### Any disputes relating to due diligence as set out in Clause 2 (Due Diligence) or this Clause 10 shall be resolved in accordance with the Dispute Resolution Procedure.

Licence to occupy Premises

##### Any Customer’s Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Call Off Contract. The Supplier shall have the use of such Customer’s Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call Off Contract and in accordance with Clause 33.3.4.

##### The Supplier shall limit access to the Customer’s Premises to such Staff as is necessary to enable it to perform its obligations under this Call Off Contract and the Supplier shall co-operate (and ensure that the Staff co-operate) with such other persons working concurrently on such Customer’s Premises as the Customer may reasonably request.

##### Save in relation to such actions identified by the Supplier in accordance with Clause 10.1.1 and set out in the Order Form, should the Supplier require modifications to the Customer’s Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this Clause 10.2.3 without undue delay. Ownership of such modifications shall rest with the Customer.

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

##### The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or the Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Call Off Contract, the Customer retains the right at any time to use any Customer’s Premises in any manner it sees fit.

Security of Premises

##### The Customer shall be responsible for maintaining the security of the Customer’s Premises in accordance with the Security Policy. The Supplier shall comply and shall ensure that all Staff comply with the Security Policy and any other reasonable security requirements of the Customer while on the Customer’s Premises.

##### The Customer shall provide the Supplier upon written request with a copy of its Security Policy and any other written security requirements and shall afford the Supplier upon request for Approval ( the decision to Approve or not will not be unreasonably withheld or delayed)an opportunity to inspect its physical security arrangements.

## PROPERTY

#### Where the Customer issues Property free of charge to the Supplier such Property shall be and remain the Property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and at all times the Supplier shall possess the Property as fiduciary agent and bailee of the Customer. The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.

#### The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.

#### The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with this Call Off Contract and for no other purpose without Approval.

#### The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's Security Policy and the Customer’s reasonable security requirements from time to time.

#### The Supplier shall be liable for all loss of, or damage to the Property, (excluding fair wear and tear), unless such loss or damage was solely caused by the Customer Cause. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Property.

## STANDARDS AND QUALITY

#### 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.

#### 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 Good Industry Practice.

#### The Supplier shall ensure that the Staff shall at all times during the Call Off Contract Period:

##### faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Services;

##### obey all lawful instructions and reasonable directions of the Customer and provide the Services to the reasonable satisfaction of the Customer; and

##### apply all due skill, care, diligence and are appropriately experienced, qualified and trained to supply the Services in accordance with this Call Off Contract.

#### The Supplier shall ensure at all times during the Call Off Contract Period that:

##### 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 Order Form;

##### 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;

##### 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.

## [TESTING

#### This Clause 13 shall apply if so specified by the Customer in the Order Form.

#### The Parties shall carry out their obligations set out in Call Off Schedule 4 (Testing).

#### 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 a Further Competition Procedure.**]**

## SERVICE LEVELS AND SERVICE CREDITS

#### 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, Service Credits and Performance Monitoring).

#### 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 Service Credits calculated in accordance with the provisions of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

#### The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Customer as a result of the Supplier’s failure to meet any Service Level, and is without prejudice to any remedies the Customer may have under this Call Off Contract or at Law resulting from, or otherwise arising in respect of, any breach by the Supplier of this Call off Contract in relation to Service Levels.

#### 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.

#### 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:

##### the Service Levels and the measurement and monitoring tools and procedures referred to in Clause 14.3 will be improved over time (including improvements and adjustments to reflect improved performance capabilities) at no extra cost to the Customer; and

##### such adjustments or improvements shall not be deemed to be subject to the Variation Procedure.

## MONITORING OF CALL OFF CONTRACT PERFORMANCE

#### 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. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to the Supplier.

#### 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.

#### 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.

#### The Supplier shall perform its obligations so as to Achieve each Milestone by the Milestone Date.

#### 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.

#### Without prejudice to Clause 15.5, 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).

#### 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.

#### 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, Service Credits and Performance Monitoring).

#### 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 a Further Competition Procedure.

## REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE IN THE SUPPLY OF THE SERVICES

#### 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:

##### 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;

##### if, following a Further Competition Procedure, the Customer has stipulated the payment of Delay Payments then, if a Milestone has not been achieved by the relevant Milestone Date the Supplier, demand the Supplier to pay such amounts (calculated as set out by the Customer in the Implementation Plan). The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is Achieved. No payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver complies with Clause 43 (Waiver) and refers specifically to a waiver of the Customer’s rights to claim Delay Payments;

##### reject the Services (in whole or in part) and require the Supplier to remove them (in whole or in part) at the risk and cost of the Supplier and a full refund of the Call Off Contract Charges for the Services so rejected shall be paid to the Customer forthwith by the Supplier;

##### 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;

##### carry out, at the Supplier's expense, any work necessary to make the supply of the Services comply with this Call Off Contract;

##### 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;

##### without terminating the whole of this Call off Contract, terminate this Call Off Contract in respect of part of the Services only (whereupon a corresponding reduction in the Call Off Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

##### 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 to the extent that such costs exceed the Call Off Contract Charges which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

## CONTINUOUS IMPROVEMENT

#### 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.

#### 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 reducing the Customer’s costs (including the Call Off Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Customer. Any amendments to the Services and/or their supply to the Customer and/or the Call Off Contract Charges, 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.

#### 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.

#### Notwithstanding the Supplier’s obligations under Clauses 17.1 to 17.3 above, the Customer shall be entitled to regularly benchmark the Call Off Contract Charges and performance by the Supplier of the supply of the Services, against other suppliers providing services substantially the same as the Services during the Call Off Contract Period.

#### The Customer shall be entitled to the right set out in Clause 17.4 in order to compare the Call Off Contract Charges and level of performance by the Supplier of the supply of the Services with charges and level of performance in the provision of services offered by third parties so as to provide the Customer with information for comparison purposes.

#### The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 17.4 above.

#### The Customer shall be entitled to disclose the results of any benchmarking of the Call Off Contract Charges and provision of the Services carried out under Clause 17.4 to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).

#### The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking in accordance with Clause 17.4 and such information requirements shall be at the discretion of the Customer.

#### Where, as a consequence of any benchmarking carried out by the Customer under Clause 17.4, the Customer decides improvements to the Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Customer.

#### 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 Charges or the provision of the Services, which are identified in the Continuous Improvement Plan produced by the Supplier and/or as a consequence of any benchmarking carried out by the Authority pursuant to Framework Schedule 7 (Value for Money), shall be implemented by the Supplier at no additional cost to the Customer.

## BUSINESS CONTINUITY AND DISASTER RECOVERY

#### 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).

#### Without prejudice to Clause 18.1 if there is a Disaster that damages the Equipment or otherwise reduces its operability, the Parties shall agree reasonable timescales within which the Supplier shall use all reasonable endeavours to restore the Equipment.

#### [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 and 18.2.

#### 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 Commencement Date.

#### 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 and 18.2.

#### 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 a Further Competition Procedure.]

## DISRUPTION

#### 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.

#### 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.

#### 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.

#### 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.

#### 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.

## [EXIT PLANNING

#### This Clause 20 shall apply if so specified by the Customer in the Order Form.

#### The Supplier shall, within three (3) Months after the Call Off Commencement Date, deliver to the Customer for Approval a draft of a plan which sets out the Supplier's proposed methodology for achieving orderly transition of the provision of the Services from the Supplier to the Customer and/or the Replacement Supplier on the expiry or termination of this Call Off Contract (the "**Exit Plan**").

#### Within thirty (30) Working Days after submission of the draft Exit Plan (or any revised Exit Plan if the Customer does not Approve the draft Exit Plan) the Parties will use their reasonable endeavours to agree its content and if they are unable to reach agreement then the dispute shall be referred to the Dispute Resolution Procedure.

#### The Supplier will review and update the Exit Plan within one (1) Month of each anniversary of the Call Off Commencement Date or more often as agreed between the Parties.

#### The Supplier shall comply with the exit planning provisions as set out in Call Off Schedule 7 (Exit Planning).

#### In the case of any additional and/or alternative exit planning requirements of the Customer, the provisions relating to exit planning shall apply as stipulated by the Customer in a Further Competition Procedure.]

## ASSISTANCE ON EXPIRY OR TERMINATION

#### 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.

#### [Such assistance shall include as set out in the Exit Plan under Clause 20 (if applicable).]

## CALL OFF CONTRACT CHARGES AND PAYMENT

Call Off Contract Charges

##### In consideration of the Supplier's performance of its obligations under this Call Off Contract, the Customer shall pay the undisputed Call Off Contract Charges in accordance with Clause 22.2 (Payment and VAT).

##### The Customer shall, in addition to the Call Off Contract Charges and following delivery by the Supplier of a Valid Invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with this Call Off Contract.

##### If at any time during this Call Off Contract Period the Supplier reduces its Framework Prices for any Services which are provided under the Framework Agreement (whether or not such Services are offered in a catalogue (if any) which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Call Off Contract Charges for such Services under this Call Off Contract by the same amount.

Payment and VAT

##### The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted in accordance with the provisions of this Call Off Contract.

##### The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Customer may specify) contains all appropriate references and a detailed breakdown of the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice. The Supplier shall ensure that all invoices submitted to the Customer for the Services are exclusive of any Management Charge.

##### Where the Supplier enters into a Sub-Contract it shall comply with Clause 41.2.4.6.

##### The Supplier shall add VAT to the Call Off Contract Charges at the prevailing rate as applicable.

##### The Supplier shall fully indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 22.2.5 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

##### Without prejudice to Clause 31.5 (Termination on Default) the Supplier shall not suspend the supply of the Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part). Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

##### The Supplier shall accept the Government Procurement Card as a means of payment for the Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.

Recovery of Sums Due

##### Wherever under this Call Off Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Call Off Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under this Call Off Contract or under any other Call Off Agreement or other agreement between the Supplier and the Customer.

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

##### 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.

##### All payments due shall be made within the time period set out in Clause 22.2.1 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.

Euro

##### 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.

##### The Customer shall provide all reasonable assistance to facilitate compliance with Clause 22.4.1 by the Supplier.

## [KEY PERSONNEL

#### Where Key Personnel is included in the Order Form, the Parties have agreed to the appointment of the Key Personnel.

#### The Supplier shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval.

#### Unless otherwise agreed by the Customer in writing, the Supplier shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.

#### The Customer shall not unreasonably delay or withhold its decision to Approve the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-Contractor.

#### The Supplier acknowledges and agrees that the persons designated as Key Personnel from time to time are essential to the proper provision of the Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

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

## STAFF AND STAFFING SECURITY

Staff

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

###### any member of the Staff; or

###### 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.

##### At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Customer’s Premises in connection with this Call Off Contract, specifying the capacities in which they are concerned with this Call Off Contract and giving such other particulars as the Customer may reasonably request.

##### 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.

##### If the Supplier fails to comply with Clause 24.1.2 within three (3) weeks of the date of the request or such other reasonable period which the Customer may specify, the Customer may terminate this Call Off Contract for Material Breach, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

##### The decision of the Customer as to whether any person is to be refused access to the Customer’s Premises and as to whether the Supplier has failed to comply with Clause 24.1.2 shall be final and conclusive.

[Relevant Convictions

##### This Clause shall apply if the Customer has so specified in the Order Form.

##### 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 Criminal Records Bureau procedures or otherwise), is employed or engaged in any part of the provision of the Services without Approval.

##### 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):

###### carry out a check with the records held by the Department for Education (DfE);

###### conduct thorough questioning regarding any Relevant Convictions; and

###### ensure a police check is completed and such other checks as may be carried out through the Criminal Records Bureau,

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.]

#### [Additional Staffing Security

##### This Clause 24.3 shall apply if the Customer has so stipulated in a Further Competition Procedure.

##### 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).

##### 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 other relevant instruction, guidance or procedure as specified by the Customer.

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

## [TRAINING

#### This Clause 25 shall apply if the Customer has so stipulated in a Further Competition Procedure.

#### 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.

#### The Call Off Contract Charges shall include the cost of any training and instruction of the Customer's personnel in respect of the use and maintenance of the Services.]

## [TUPE AND PENSIONS

#### If the Customer has so specified in the Order Form, the provisions set out in Parts A and/or B or C (as specified by the Customer) of Call Off Schedule 9 (TUPE & Pensions) shall apply.

#### Parts D and E of Call Off Schedule 9 (TUPE & Pensions) shall apply unless specified otherwise by the Customer in the Order Form.]

1. PROTECTION OF INFORMATION

## INTELLECTUAL PROPERTY RIGHTS

#### Save as expressly granted elsewhere under this Call Off Contract:

##### the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including the Supplier Background IPRs, and

##### the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:

###### the Customer Background IPRs;

###### IPRs in the Customer Data; and

###### the Project Specific IPRs.

#### 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).

#### 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 the Project Specific IPRs to or for the benefit of any third party.

#### 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 and the Project Specific IPRs 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:

##### to receive the Services; and

##### to make use of the services provided by the Replacement Supplier.

#### [NOT USED]

#### [NOT USED].

#### 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 Project Specific IPRs 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:

##### 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

##### 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;

#### In the event of the termination or expiry of this Call Off Contract, the licence referred to in Clause 27.7 and any sub-licence granted in accordance with Clause 27.7.1 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 27.7 in the Supplier's possession or control in accordance with Clause 33.3 (Consequences of expiry or termination of the Call Off Contract for any reason).

#### Subject to Clause 27.10 and Clause 27.11 the Supplier shall ensure that no unlicensed software or open source software is interfaced with or embedded within any Customer Software.

#### 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.

#### 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.

#### 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:

##### designs supplied by the Customer; or

##### 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.

#### 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:

##### shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;

##### shall take due and proper account of the interests of the Customer;

##### 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

##### shall not settle or compromise the Claim without Approval (such decision to Approve or not shall not be unreasonably withheld or delayed).

#### 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:

##### 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:

###### 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

###### such substitution shall not increase the burden on the Customer; and

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

###### there is no additional cost to the Customer; and

###### 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

##### 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

##### 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 27.14.1 or 27.14.2 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 Good and/or Service and/or Deliverable that is subject to the Claim.

#### The Supplier's compliance with Clause 27.14 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 27.14.

#### In the event that a modification or substitution in accordance with Clause 27.14.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 27.14.2, 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 Good and/or Service and/or Deliverable from this Call Off Contract.

#### If the Supplier elects to modify or replace the Good and/or Service and/or Deliverable pursuant to Clause 27.14.1 or to procure a licence in accordance with Clause 27.14.2, 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 27.12, 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.

#### The Supplier shall have no rights to use any of the Customer’s names, logos or trademarks without prior Approval.

## SECURITY AND PROTECTION OF INFORMATION

Security Requirements

##### 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.

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

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

##### Until and/or unless a change to the Call Off Contract Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.

Malicious Software

##### 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).

##### 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.

##### 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:

###### 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

###### 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).

Customer Data

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

##### 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.

##### 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.

##### 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.

##### 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).

##### 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.

##### 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:

###### require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Customer Data to the extent and in accordance with the BCDR Plan and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or

###### itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.

##### 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.

##### 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.

Protection of Personal Data

##### 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.

##### The Supplier shall:

###### 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);

###### 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;

###### 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;

###### take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;

###### obtain Approval in order to transfer the Personal Data to any Sub-Contractors or Affiliates for the provision of the Services;

###### 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 28.4;

###### 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;

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

a request from a Data Subject to have access to that person's Personal Data; or

a complaint or request relating to the Customer's obligations under the Data Protection Legislation;

###### provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:

providing the Customer with full details of the complaint or request;

complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;

providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and

providing the Customer with any information requested by the Customer;

###### 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;

###### 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

###### not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Call Off Commencement Date, the Supplier (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:

the Supplier shall submit a request for Variation to the Customer which shall be dealt with in accordance with the Variation Procedure and paragraphs 28.4.2.12.2 to 28.4.2.12.2.4 below;

the Supplier shall set out in its request for a Variation details of the following:

the Personal Data which will be Processed and/or transferred outside the European Economic Area;

the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;

any Sub-Contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and

how the Supplier will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Customer’s compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;

in providing and evaluating the request for Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Government and Information Commissioner Office’s policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally but, for the avoidance of doubt, the Customer may, in its absolute discretion, refuse to grant Approval of such process and/or transfer any Personal Data outside the European Economic Area; and

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

incorporating standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Call Off Contract or a separate data processing agreement between the parties; and

procuring that any Sub-Contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Customer on such terms as may be required by the Customer, which the Supplier acknowledges may include the incorporation of standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).

##### 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.

##### 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).

##### 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.

Confidentiality

##### 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:

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

###### not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

##### Clause 28.5.1 shall not apply to the extent that:

###### 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);

###### such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

###### such information was obtained from a third party without obligation of confidentiality;

###### such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call Off Contract; or

###### such information is independently developed without access to the other Party's Confidential Information.

##### 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.

##### 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.

##### 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.

##### 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 trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.

##### 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):

###### 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;

###### 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);

###### for the purpose of the examination and certification of the Customer's accounts; or

###### for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

##### 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.

##### 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.

##### 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.

##### 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.

##### 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 Good Industry Practice.

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

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

###### the Official Secrets Acts 1911 to 1989; and

###### Section 182 of the Finance Act 1989.

##### 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.

Freedom of Information

##### 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.

##### The Supplier shall and shall procure that its Sub-Contractors shall:

###### 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;

###### 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

###### 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.

##### 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.

##### In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.

##### 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:

###### in certain circumstances without consulting the Supplier; or

###### 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.

##### 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 Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.

##### 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.

Transparency

##### 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.

##### 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.

##### 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.

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

1. LIABILITY [AND INSURANCE]

## LIABILITY

#### Neither Party excludes or limits it liability for:

##### death or personal injury; or;

##### bribery or Fraud by it or its employees; or

##### 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

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

#### 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.

#### Subject to Clause 29.1, the Supplier’s total aggregate liability in respect of the indemnities in Clauses 22.2.5 (VAT), 27.12 (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 Fraud) [and any indemnity pursuant to Call Off Schedule 9 (TUPE & Pensions)] (and, in each case, whether before or after the making of a demand pursuant to the indemnities therein) shall be unlimited.

#### Subject to Clauses 29.1, 29.3, 29.5 and 29.7, each Party’s liability in respect of all Losses as a result of any defaults howsoever arising out of or in connection with this Call Off Contract shall be limited to:

##### In relation to Losses suffered as a result of all defaults occurring in each Call Off Contract Year and resulting in direct loss or damage to the property (including any technical infrastructure, assets or equipment but excluding any loss or damage to IPR, Customer Data or Customer Personal Data) of the other party a total aggregate liability of two million pounds (£2,000,000) in each Call Off Contract Year unless otherwise stipulated by the Customer in a Further Competition Procedure; and

##### in respect of all other Losses:

###### in relation to Losses suffered as a result of all defaults occurring in the first Call Off Contract Year, a total aggregate liability of the greater of two million pounds (£2,000,000) or a sum equal to one hundred and twenty-five per cent (125%) of the Estimated Year 1 Call Off Contract Charges;

###### in relation to Losses suffered as a result of all defaults occurring in each Call Off Contract Year that commences during the remainder of the Call Off Contract Period, a total aggregate liability of the greater of two million pounds (£2,000,000) in each such Call Off Contract Year or a sum equal to one hundred and twenty five percent (125%) of the Call Off Contract Charges payable under this Call Off Contract in the previous Call Off Contract Year; and

###### in relation to Losses suffered as a result of all defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, a total aggregate liability of the greater of two million pounds (£2,000,000) in each such Call Off Contract Year or a sum equal to one hundred and twenty five percent (125%) of the Call Off Contract Charges payable under the last Call Off Contract commencing during the Call Off Contract Period

unless a different aggregate limit or percentage is stipulated by the Customer in a Further Competition Procedure.

#### 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).

#### Subject to Clauses 29.1, 29.3 and 29.7 in no event shall either Party be liable to the other for any:

##### loss of profits;

##### loss of business;

##### loss of revenue;

##### loss of or damage to goodwill;

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

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

#### The Supplier shall be liable for the following types of Loss which shall be regarded as direct and shall (without in any way, limiting other categories of Loss which may be recoverable by the Customer) be recoverable by the Customer:

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

##### 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;

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

#### 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.

#### 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.

#### For the avoidance of doubt any liabilities which are unlimited shall not be taken into account for the purposes of establishing whether the limit in Clause 29.4 has been reached.

#### Nothing in this Clause 29 shall act to reduce or affect a Party's general duty to mitigate its loss.

## [INSURANCE

#### 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 a Further Competition Procedure.

#### 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.

#### 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.

#### 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.

#### 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.

#### 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.]

1. TERMINATION

## TERMINATION EVENTS

Termination on Insolvency

##### 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.

Termination on Change of Control

##### 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:

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

###### 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.

Termination in relation to Financial Standing

##### 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:

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

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

[Termination relating to Guarantee

##### Where the Supplier has procured a Call Off Guarantee pursuant to Clause 3.1, the Customer may terminate this Call Off Contract with immediate effect if:

###### the Call Off Guarantor withdraws the Call Off Guarantee for any reason whatsoever;

###### the Call Off Guarantor is in breach or anticipatory breach of the Call Off Guarantee;

###### an Insolvency Event occurs in respect of the Call Off Guarantor;

###### the Call Off Guarantee becomes invalid or unenforceable for any reason whatsoever

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

Termination on Default

##### The Customer may terminate this Call Off Contract for a Supplier’s Default:

###### 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

###### 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.

##### If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay including specifying the Customer Cause, detailing the overdue amount, explaining why the undisputed sums are due and requiring the failure to be remedied. If the Customer fails to pay such and so notified undisputed sums within ninety (90) days from the date of receipt by the Customer of such written notice (the **“Undisputed Sums Time Period”**), the Supplier may terminate this Call Off Contract in writing, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 22.3 (Recovery of Sums Due).

Termination without cause

##### 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 a Further Competition Procedure.

Termination of Framework Agreement

##### 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.

Termination In relation to Benchmarking

##### 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 if the Supplier refuses or fails to comply with its obligations as set out in paragraphs 1 and 2 of Framework Schedule 7 (Value for Money).

Termination for continuing Force Majeure Event

##### 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.

Termination in relation to Variation

##### The Customer may terminate this Call Off Contract for failure of the Parties to agree or the Supplier to implement a Variation under Clause 46.3.2.

## PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

#### 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.

#### 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.

## CONSEQUENCES OF EXPIRY OR TERMINATION

Consequences of termination under Clauses 31.3 (Financial Standing), [31.4 (Guarantee),] 31.5 (Termination on Default) and 31.8 (Benchmarking)

##### Where the Customer terminates this Call Off Contract under Clauses 31.3 (Financial Standing), **[**31.4 (Guarantee),**]** 31.5 (Termination on Default), or 31.8 (Benchmarking), 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, [31.4,] 31.5 or 31.8, 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.

Consequences of termination under Clause 31.6 (Termination without Cause)

##### Where the Customer terminates this Call Off Contract under Clause 31.6 (Termination without Cause) or elects to partially terminate or suspend or partially suspend this Call Off Contract without cause under Clauses 31.6 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 31.6 (Termination without Cause).

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

###### 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

###### 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.

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

##### At the end of the Call Off Contract Period (howsoever arising), the Supplier shall:

###### immediately return to the Customer all Customer Data;

###### 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;

###### 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.

###### immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under Clause 11 (Property). Such Property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);

###### assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and[/or the completion of any work in progress in accordance with the Exit Plan, or if no Exit Plan has been agreed,] provide such assistance and co-operation as the Customer may require;

###### [transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the contracts listed in the Exit Plan (if any) as are notified to the Supplier and/or by the Customer in return for payment of the costs (if any) set out in the Exit Plan in respect of such contracts;]

###### return to the Customer any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising); and

###### 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

##### If the Supplier fails to comply with Clauses 33.3.1.1 to 33.3.1.4, 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.

##### 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 31.5 (Termination on Default), the Supplier shall provide all assistance under Clauses 33.3.1.5 to 33.3.1.8free 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.

##### At the end of the Call Off Contract Period (howsoever arising) the licence granted pursuant to Clause 10.2.1 (Licence to occupy Premises) shall automatically terminate without the need to serve notice.

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

###### 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

###### 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 and VAT), 22.3 (Recovery of Sums Due), 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.

1. CONTROL OF THE CALL OFF CONTRACT

## PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

#### 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.

#### 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).

#### 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.

## HEALTH AND SAFETY

#### Throughout the Call Off Contract Period the Supplier shall not, in the performance of its obligations under this Call Off Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

#### The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under this Call Off Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer’s Premises and which may affect the Supplier in the performance of its obligations under this Call Off Contract.

#### While on the Customer’s Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there and any instructions from the Customer on any necessary associated safety measures.

#### The Customer may refuse admission to the Premises and/or direct the Supplier to end the involvement in the performance of this Call Off Contract of any of the Staff whom the Customer believes represents a security risk or does not have the required levels of training and expertise or where the Customer has other grounds for doing so. The decision of the Customer shall be final and it shall not be obliged to provide any reasons.

#### The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under this Call Off Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

#### The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

## ENVIRONMENTAL REQUIREMENTS

#### 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.

#### The Customer shall provide a copy of its written environmental policy (if any) to the Supplier upon the Supplier’s written request.

## PREVENTION OF BRIBERY AND CORRUPTION

#### 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.

#### The Supplier shall:

##### in relation to this Call Off Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;

##### immediately notify the Customer and the Authority if it suspects or becomes aware of any breach of this Clause 37;

##### 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;

##### 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 supporting evidence of compliance as the Customer may reasonably request;

##### 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.

#### 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.

#### 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:

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

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

## RECORDS AND AUDIT ACCESS

#### The Supplier shall keep and maintain for seven (7) 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.

#### The Supplier shall keep the records and accounts referred to in Clause 38.1 above in accordance with Good Industry Practice and Law.

#### The Supplier shall afford any 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:

##### to verify the accuracy of the Call Off Contract Charges (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;

##### to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;

##### to review the Supplier’s compliance with the Data Protection Legislation in accordance with this Call Off Contract and any other Laws;

##### to review the Supplier's compliance with its continuous improvement and benchmarking obligations set out in Framework Schedule 7 (Value for Money) and Clause 17 (Continuous Improvement) of this Call Off Contract;

##### to review the Supplier's compliance with its security obligations set out in Clause 28 (Security and Protection of Information);

##### to review any books of account kept by the Supplier in connection with the provision of the Services;

##### 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;

##### 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

##### to ensure that the Supplier is complying with its obligations under this Call Off Contract.

#### 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.

#### 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:

##### all reasonable information requested by the Customer within the scope of the audit;

##### reasonable access to sites controlled by the Supplier and to any Equipment used in the provision of the Services ; and

##### access to the Staff.

#### 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.

#### 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.

[Guidance Note: See also Annex 2 of Part B to Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)]

## DISCRIMINATION

#### The Supplier shall not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

#### The Supplier shall take all reasonable steps to secure the observance of Clause 39.1 by all Staff engaged or employed in the execution of this Call Off Contract.

#### The Supplier shall notify the Customer immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by any Staff on the grounds of discrimination arising in connection with the provision of the Services under this Call Off Contract.

#### The Supplier shall comply with the requirements set out in Call Off Schedule 8 (Diversity and Equality).

## PREVENTION OF FRAUD

#### The Supplier shall take all reasonable steps, in accordance with Good 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.

#### 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.

#### If the Supplier or the Staff commits any Fraud, the Customer may:

##### terminate this Call Off Contract for Material Breach; and/or

##### 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.

## TRANSFER AND SUB-CONTRACTING

Transfer rights

##### 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. The Customer has consented to the engagement of the Sub-Contractors listed in Framework Schedule 2 (Sub-Contractors).

##### The Supplier may assign to a third party ("the Assignee") the right to receive payment of the Call Off Contract Charges or any part thereof due to the Supplier under this Call Off Contract (including any interest which the Customer incurs under Clause 22.2.6). Any assignment under this Clause shall be subject to:

###### reduction of any sums in respect of which the Customer exercises it right of recovery under Clause 22.3 (Recovery of Sums Due);

###### all related rights of the Customer under this Call Off Contact in relation to the recovery of sums due but unpaid; and

###### the Customer receiving notification under both Clauses 41.1.3 and 41.1.4.

##### In the event that the Supplier assigns the right to receive the Call Off Contract Charges under Clause 41.1.2, the Supplier or the Assignee shall notify the Customer in writing of the assignment and, including a reasonable notice period, of the date upon which the assignment becomes effective.

##### The Supplier shall ensure that the Assignee notifies the Customer of the Assignee’s contact information and bank account details to which the Customer shall make payment.

##### The provisions of Clause 22.2 shall continue to apply in all other respects after the assignment and shall not be amended.

##### 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:

###### any other Contracting Body; or

###### 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

###### 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.

##### 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.

##### 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"):

###### the rights of termination of the Customer in Clauses 31.1 (Termination on Insolvency) 31.2 (Termination on Change of Control) and 31.5 (Termination on Default) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

###### 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.

##### 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 reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

##### 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.

Subcontracting

##### 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.

##### 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.

##### 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.

##### The Customer may, at its sole discretion, require the Supplier to ensure that each Sub-Contract shall include 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;

###### provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Customer;

###### 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);

###### 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);

###### 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);

###### 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;

###### 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; and

###### provision restricting the ability of the Sub-Contractor to effect the removal or replacement of any Key Personnel during the Call Off Contract Period without Approval.

##### 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.

##### If the Customer exercises the option pursuant to Clause 41.2.5, then the Call Off Contract Charges shall be reduced by an amount that is agreed subject to the Variation Procedure.

## FORCE MAJEURE

#### 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.

#### 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.

#### 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 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.

#### 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.

#### 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.

## WAIVER

#### 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.

#### 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.

#### 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.

## CUMULATIVE REMEDIES

#### 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.

## FURTHER ASSURANCES

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

## VARIATION

#### Subject to the provisions of this Clause 46, the Customer may (which can also result from a suggestion of the Supplier to the Customer) request a variation to this Call Off Contract provided that such variation does not amount to a material change within the meaning of the Regulations and the Law. Such a change is hereinafter called a "**Variation**".

#### The Customer may request a Variation by completing and sending the Variation Form set out in Call Off Schedule 1 ("the Variation Form") to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.

#### In the event that the Supplier is unable to provide the Variation including where the Parties are unable to agree a change to the Call Off Contract Charges, the Customer may:

##### agree to continue to perform their obligations under this Call Off Contract without the Variation; or

##### terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Order in accordance with the Order Form 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.

#### If the Parties agree the Variation and any variation in the Call Off Contract Charges, 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.

## SEVERABILITY

#### 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.

#### 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.

## MISTAKES IN INFORMATION

#### 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.

## SUPPLIER'S STATUS

#### 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.

## CONFLICTS OF INTEREST

#### 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.

#### 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.

#### 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.

## ENTIRE AGREEMENT

#### 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.

#### 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.

#### The Supplier acknowledges and agrees that it has:

##### entered into this Call Off Contract in reliance on its own due diligence alone; and

##### 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.

#### Nothing in Clauses 51.1 to 51.3 shall operate to exclude any liability for (or remedy in respect of) Fraud.

## THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

#### 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.

#### [The Parties agree that the Contracts (Rights of Third Parties) Act 1999 (CRiTPA) shall apply to Clause 26 (TUPE & Pensions) to the extent necessary that any Former Supplier and Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Former Supplier and the Replacement Supplier by the Supplier under that Clause 26 (TUPE & Pensions) in its own right pursuant to section 1(1) of CRiTPA.]

#### 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.

## NOTICES

#### 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".

#### 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) | 9.00am 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 |

#### 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.

#### 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.

#### Either Party may change its address for service by serving a notice in accordance with this Clause 53.

#### 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.

## LEGISLATIVE CHANGE

#### The Supplier shall neither be relieved of its obligations under this Call Off Contract nor be entitled to an increase in the Call Off Contract Charges as the result of a:

##### General Change in Law;

##### Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Call Off Commencement Date.

#### If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than those referred to in Clause 54.1.2), the Supplier shall notify the Customer of the likely effects of that change.

#### As soon as practicable after any notification in accordance with Clause 54.2 the parties shall discuss and agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:

##### providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;

##### demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier before it occurred;

##### giving evidence as to how the Specific Change in Law has affected the cost of supplying the Services; and

##### demonstrating that any expenditure that has been avoided, has been taken into account in amending the Call Off Contract Charges

#### Any increase in the Call Off Contract Charges or relief from any of the Supplier's obligations under this Call Off Contract agreed by the Parties pursuant to Clauses 54.2 and 54.3 above shall be implemented in accordance with Clause 46 (Variation).

1. DISPUTES AND LAW

## GOVERNING LAW AND JURISDICTION

#### 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.

## DISPUTE RESOLUTION

#### 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.

#### 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.

#### 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:

##### the Customer considers that the dispute is not suitable for resolution by mediation; or

##### the Supplier does not agree to mediation.

#### 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.

#### The procedure for mediation is as follows:

##### 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;

##### 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;

##### 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;

##### 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;

##### 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

##### 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.

GLOSSARY TO [TEMPLATE] CALL OFF FORM AND [TEMPLATE] CALL OFF TERMS

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 9 (Alternative and Additional Clauses) and any other additional Clauses stipulated by the Customer in a Further Competition Procedure; |
| "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 a Further Competition Procedure; |
| "Approval" | means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly; |
| "Auditor" | means the Customer, and/or the Customer’s representatives and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them; |
| "Authority" | means **THE MINISTER FOR THE CABINET OFFICE** ("Cabinet Office") as represented by Government Procurement Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP; |
| ["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 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 prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract , as set out in paragraph 5.1 of the Order Form, for the full and proper performance by the Supplier of its obligations under the Call Off Contract less any Service Credits; |
| "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 a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof; |
| “Call Off Execution Date” | means the date of execution 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 Guarantee" | means a deed of guarantee in favour of the Customer in the form set out in Framework Schedule 11 (Guarantee) granted pursuant to Clause 3 (Guarantee);] |
| ["Call Off Guarantor" | means the person acceptable to the Customer to give a Call Off Guarantee;] |
| “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; |
| “Charges” | means the charges raised under or in connection with a Call-Off Agreement from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure; |
| “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 and/or reducing the Charges 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;  [Guidance Note: GPS to confirm prior to publication of OJEU] |
| "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.); |
| "Critical Service Failure" | means any critical service failure(s) specified in Annex 2 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring); |
| "Crown" | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; | |
| "Customer" | means the customer(s) identified in the Order Form; | |
| "Customer Background IPRs" | shall mean all Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Supplier of its obligations under the Call Off Contract and including, for the avoidance of doubt, including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, software, models and designs, technical specifications, user manuals, operating manuals, process definitions and procedures and other documentation and any modifications, amendments, updates and new releases of the same; | |
| “Customer Cause” | means any breach by the Customer of its obligations under this Call Off Contract including Clause 10 (Customer Responsibilities) (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" | means:   1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer’s Confidential Information, and which: 2. are supplied to the Supplier by or on behalf of the Customer; or 3. the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or 4. any Personal Data for which the Customer is the Data Controller; | |
| "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); | |
| "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 [insert period] or which is reasonably anticipated will mean that the Services or a material part thereof will be unavailable for that period;  ***[Guidance Note: Customer to set out how long an acceptable period is for the Services to be unavailable for before the Business Continuity and Disaster Recovery Plan (if applicable) will be invoked.]*** | |
| "Dispute Resolution Procedure" | means the dispute resolution procedure set out in Clause 56; | |
| "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; | |
| “ERG” | means the Cabinet Office Efficiency and Reform Group; | |
| “Estimated Year 1 Call Off Contract Charges” | means the sum of £ [X] [X] pounds estimated by the Customer to be payable to it by the Supplier as the total aggregate Call Off Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year;  [Guidance Note: Customer to insert sum. Consider with Clause 29.4 of the Template Call Off Terms] | |
| ["Exit Plan" | has the meaning set out in Clause 20;] | |
| "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" | means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:   1. 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; 2. riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; 3. acts of the Crown, local government or Regulatory Bodies; 4. fire, flood or any disaster; and 5. an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: 6. 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 7. 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 8. any failure of delay caused by a lack of funds. | |
| "Framework Agreement" | means the framework agreement between the Authority and the Supplier referred to in the Order Form; | |
| “Framework Price(s)” | means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Charging Structure); | |
| "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 Change in Law” | means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply; | |
| "Good Industry Practice" | means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector; | |
| “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; | |
| “Group Tickets” | Up to 8 travellers requiring a return ticket OR up to 4 travellers requiring 2 split tickets each (totalling 8 tickets), with the same departure and return location | |
| “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; | |
| “Insolvency Event” | means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):   1. 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 2. 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 3. 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 4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or 5. 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 6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or 7. 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 8. 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 9. any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction. | |
| "Intellectual Property Rights" or "IPRs" | means   1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations whether registerable or not; 2. 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 3. all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off. | |
| “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); | |
| "Key Personnel" | means the individuals (if any) identified as such in the Order Form; | |
| "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; | |
| "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; | |
| "Management Information" | or “MI” means the management information specified in Framework Schedule 8 (Management Information); | |
| "Material Breach" | means:   1. a Critical Service Failure; 2. 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 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 3. any material breach of this Call Off Contract under the Law; and/or 4. a breach which prevents the Customer from discharging a statutory duty. | |
| "Milestone" | means an event or task described in the 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 the 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; | |
| “Multiple Travellers” | Up to 4 Rooms booked on the same booking, regardless of how many people are in each room, with the same arrival and departure date. | |
| "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:   1. 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: 2. induce that person to perform improperly a relevant function or activity; or 3. reward that person for improper performance of a relevant function or activity; or 4. committing any offence: 5. under the Bribery Act 2010; or 6. under legislation creating offences concerning Fraud; or 7. at common law concerning Fraud; or 8. committing or attempting or conspiring to commit Fraud; | |
| "Project Specific IPRs" | means:   1. IPRs in or arising out of the provision of the Services under to this Call Off Contract and all updates and amendments to the same created or arising during the Contract Period; and/or 2. any materials, data and other works of any kind whatsoever created or compiled in the course of the performance of this Call Off Contract in which IPRs may subsist; and/or 3. the IPRs in any modifications, updates and developments to the Customer Background IPRs and modifications, amendments, updates and new releases of the Supplier Background IPRs which arise specifically in the course of the provision of the Services and the performance of the Supplier’s obligations under this Call Off Contact; and/or 4. any personal data provided or available to the Supplier for the purposes of this Call Off Contract; and/or 5. any 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 or other media, and which are supplied to the Supplier by or on behalf of the Customer; or the Supplier is required to receive, commission, generate, process, store or transmit pursuant to this Call Off Contract; | |
| "Property" | means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with this 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; | |
| "Replacement Services" | means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the 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 Code of Practice on Access to Government Information, 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 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 Credits" | means any service credits specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels; | |
| “Service Failure” | means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future; | |
| "Service 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, Service Credits and Performance Monitoring); | |
| “Service Period” | shall have the meaning given to in paragraph 4.1 of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring); | |
| "Services" | means the services to be supplied as referred to in the Order Form; | |
| "Software" | means the Supplier Software and Customer Software; | |
| “Specific Change in Law” | means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply; | |
| "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:   1. 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; 2. any standards detailed in the specification in Framework Schedule 1 (Services and Key Performance Indicators); 3. any standards detailed by the Contracting Body in the Call Off Agreement following a Further Competition Procedure or agreed between the Parties from time to time; 4. any relevant Government codes of practice and guidance applicable from time to time. | |
| "Sub-Contract" | means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the provision of the Services or any part thereof; | |
| "Sub-Contractor" | means the third party from the list of sub-contractors in Framework Schedule 2 (Sub-Contractors) 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” | means any Intellectual Property Rights vested in or licensed to the Supplier prior to or independently of the performance by the Customer of its obligations under this Call Off Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, software, models and designs, technical specifications, user manuals, operating manuals, process definitions and procedures and other documentation including any general modifications, amendments, updates and new releases of the same but excluding modifications, amendments, updates and new releases of the same which arise specifically in the course of the provision of the Services and the performance of the Supplier’s obligations under this Call Off Contact; | |
| "Supplier Software" | means the 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 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 a Further Competition Procedure, a copy of which is set out in Call Off Schedule 3 (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 [insert date dd/mm/yyyy] and annexed to Framework Schedule 17;  [Guidance Note: Customer to complete] | |
| ["Test Issue" | means any 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 or Deliverables and other agreed criteria related to the achievement of Milestones as described further in paragraph 4 of Call Off Schedule 6 (Testing); | |
| "Test Strategy" | means a strategy for the conduct of Testing as described further in paragraph 3 of Call Off Schedule 4 (Testing);] | |
| "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;] | |
| ["TUPE" | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive;] | |
| “Undelivered Services” | shall have the meaning given in Clause 6.3; | |
| "Undisputed Sums Time Period" | has the meaning given in Clause 31.5.2; | |
| "Valid Invoice" | means an invoice issued by the Supplier to the Customer that complies with Clause 22.2.1; | |
| "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]

1. Words and expressions in this Variation shall have the meanings given to them in the Call Off Contract.
2. 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 |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |
|  |  |

CALL OFF SCHEDULE 2: SECURITY

# INTRODUCTION

## This Schedule covers:

### principles of protective security to be applied in delivering the Services;

### legal obligations under the Data Protection Act 1998, and requirements according to the Authority’s policy on offshoring;

### the development, implementation, operation, maintenance and continual improvement of an ISMS;

### the creation and maintenance of the Security Plan;

### audit and testing of ISMS compliance with the Security Requirements;

### certification of ISO/IEC 27001 (Information Security Requirements Specification) and conformance to ISO/IEC 27002 (Information Security Code of Practice) (Standard Specification) within 12 months of Contract Signature and with all associated costs borne by the Supplier, included but not limited to CLAS Consultancy;

### obligations in the event of actual, potential or attempted Breach of Security; and

### obligations in relation to Malware.

# PRINCIPLES OF SECURITY

## The Supplier acknowledges that the Authority and all Contracting Bodies place great emphasis on confidentiality, integrity and availability (CIA) of information (including Contracting Body Confidential Information) and consequently on the security provided by the Supplier and ISMS.

## The Supplier must receive prior approval from the Office of the Government SIRO for any off-shoring as defined in 2.2.1. Wherever possible, any data held off-shore should be kept within the European Economic Area, US-EU Safe Harbor or the limited number of countries with positive findings of adequacy from the European Commission.

## Off-shoring is defined as: “Any arrangement where the performance of any part of the services or a solution under a contract may occur outside the UK for domestic (UK) consumption.”

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

### is in accordance with Good Industry Practice, the Law, the Standards and this Framework Agreement (including the Service Description Response);

### complies with the [common elements of Contracting Bodies’] Security Policies, ISO/IEC 27001, ISO/IEC 27002 and the Security Policy Framework; and

### meets any specific security threats to the ISMS and Breach of Security.

## Without limiting Paragraph 2.3 above, the Supplier shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority from time to time):

### loss of integrity and confidentiality of Contracting Body Confidential Information; Note: “Confidential Information” references made within this document refer to the sharing of information carried out or revealed in the expectation that anything done or revealed will be kept private.

### unauthorised access to, use or disclosure of, or interference with Contracting Body Confidential Information by any person or organisation;

### unauthorised access to network elements, buildings, the Sites and tools (including Equipment) used by the Supplier and any Sub-Suppliers in the provision of the Services;

### use of the Supplier System or Services by any third party in order to gain unauthorised access to any computer resource or Contracting Body Data; and

### loss of availability of Contracting Body Confidential Information due to any failure or compromise of the Services.

## Where the Authority determines, acting reasonably, that certain Equipment is inadequate to provide the level of security required by the Authority for the provision of the Services, the Authority may require the Supplier to replace such Equipment with equipment which meets such level of security at the Supplier’s own cost.

## The references to standards, guidance and policies set out in Paragraph 2.3 above 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.

## In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier shall notify the Authority and Contracting Body Representatives in writing of such inconsistency within three (3) Working Days of becoming aware of the same. The Authority Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

# ISMS AND SECURITY PLAN

## Introduction

### Throughout the Term the Supplier shall develop, implement, comply with (and ensure that all Supplier Personnel and Sub-Suppliers implement and comply with) and maintain and continuously improve and maintain an ISMS which shall, without prejudice to Paragraphs 2.3 above and 4.1 below, be:

#### Approved by the Authority;

#### tested in accordance with Section 4 (Testing) and the requirements of the Authority; and

#### periodically updated and audited in accordance with ISO/IEC 27001/ISO/IEC 27002.

### The Supplier shall develop and maintain a Security Plan in accordance with this Schedule to apply during the Term (and after the end of the Term (as applicable) in both this Framework Agreement and all Call-Off Agreements.

### The Supplier shall comply with its obligations set out in the Security Policy and the other elements of this Framework Agreement relevant to security (including the Security Requirements).

### Both the ISMS and the Security Plan shall, unless otherwise specified in writing by the Authority, aim to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Sites, the Supplier System and any ICT, information and data (including the Contracting Body Confidential Information) to the extent used by the Authority, the Contracting Body or the Supplier in connection with this Framework Agreement.

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

## Development

### Within fifteen (15) Working Days after the Framework Signatory Date (or such other period specified in the Implementation Plan or as otherwise agreed by the Parties in writing) and in accordance with Paragraphs 3.3 and 3.4 below, the Supplier shall prepare and deliver to the Authority and (if required by the Authority) the Pan-Government Accreditor (PGA) for approval a fully complete and up-to-date Security Plan, relating specifically to the Services provided under this Framework Agreement. The Security Plan should include (but not be limited to) a secure password policy of a minimum of 9 Characters with a mixture of alpha numeric, with 1 capital letter.

### If the Security Plan or any subsequent revision to it in accordance with Paragraph 3.4 below, is Approved by the Authority and (if required by the Authority) approved the Pan-Government Accreditor, it shall be adopted immediately. If the Security Plan is not approved in accordance with the foregoing, the Supplier shall amend it within eight (8) Working Days (or such other period as the Parties agree in writing) of a notice of non-approval (and the reason(s) for non-approval) and re-submit it to the Authority and (if required by the Authority) the Pan-Government Accreditor for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties agree in writing) from the date of its first submission in accordance with Paragraph 3.2.1 above. If the Supplier does not achieve approval of the Security Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure.

## Content

### The Security Plan shall 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. Furthermore, the Security Plan shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with this Schedule (including the principles set out in Paragraph 2.3 above) and the other elements of this Framework Agreement relevant to security (including the Service Requirements).

### The Security Plan (including the draft version) shall also set out the plans for transiting all security arrangements and responsibilities from those in place at the Framework Signatory Date to those incorporated in the ISMS at the date agreed between the Parties for the Supplier to meet its security obligations set out in this Framework Agreement (including the Service Requirements).

### The Security Plan shall be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002 or equivalent, cross-referencing if necessary to other Schedules of this Framework Agreement which cover specific areas included within that standard and shall accord with the Security Policy Framework.

### The Security Plan shall be written in plain English and in a manner which is readily comprehensible to Supplier Personnel and the Authority’s staff engaged in the Services and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Framework Agreement.

## Amendment and Revision

### In addition to its obligations under Paragraph 3.1 above, the Supplier shall review and update the ISMS and the Security Plan annually (or such other period as agreed by the Parties in writing) to reflect:

#### emerging changes in Good Industry Practice;

#### any change or proposed change to the Supplier System, the Services and/or associated processes;

#### any new, perceived or changed Breach of Security; and

#### any reasonable requests by the Authority.

### The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Plan at no additional cost to the Authority. The results of the review shall include:

#### suggested improvements to the effectiveness of the ISMS;

#### updates to the risk assessments;

#### proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and

#### suggested improvements in measuring the effectiveness of controls.

### On receipt of the results of such reviews, the Authority shall approve any amendments or revisions to the ISMS and/or Security Plan in accordance with the process set out at Paragraph 3.2.2 above.

### Any change or amendment which the Supplier proposes to make to the ISMS and/or the Security Plan shall be subject to the Change Control Procedure and shall not be implemented until Approved by the Authority.

# TESTING

## The Supplier shall conduct tests of the ISMS (“Security Tests”) on an annual basis or as otherwise agreed in writing by the Parties. The date, timing, content and conduct of such Security Tests shall be approved by the Authority.

## The Authority may send a representative to witness the Security Tests (or any parts thereof). The Supplier shall provide the Authority with the results of such tests (in a form Approved by the Authority) as soon as practicable after completion of each Security Test.

## Without prejudice to any other right of audit or access granted to the Authority pursuant to this Framework Agreement, the Authority may and/or its authorised representatives may, at any time and on reasonable notice to the Supplier, carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with and implementation of the ISMS and Security Plan. The Authority may notify the Supplier in writing of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.

## Where any Security Test carried out pursuant to Paragraph 4.2 or 4.3 above or any audit under Paragraph 5 below, reveals any actual or potential Breach of Security and/or security failure or weaknesses, the Supplier shall determine what changes to the ISMS and Security Plan are required to remedy (as applicable) such Breach of Security and/or security failure or weakness. The Supplier shall promptly notify the Authority in writing of any such proposed changes. Subject to the Authority's Approval in accordance with Paragraph 3.4.4 above, the Supplier shall implement such changes to the ISMS and Security Plan in accordance with the timetable agreed in writing with the Authority or, otherwise, as soon as reasonably possible. Where the change to the ISMS and/or Security Plan addresses a non-compliance with the Security Policy or Security Requirements, the Supplier shall implement the change at no additional cost to the Authority or any Contracting Body.

## If required by the Authority, on each anniversary of the Framework Signatory Date the Supplier shall provide to the Authority a letter from its managing director (or equivalent officer) confirming that having made due and careful inquiry it:

### has in the previous year carried out all tests and has in place all procedures required in relation to security matters under this Framework Agreement; and

### is confident that its security and risk mitigation procedures with respect to the Services remain effective.

# CERTIFICATION OF ISO/IEC 27001, COMPLIANCE TO ISO/IEC 27002 AND AUDITING

## If required by the Authority, the Supplier shall obtain independent certification of the ISMS to ISO/IEC 27001 within twelve (12) months of the Framework Signatory Date (or such other period specified in the Implementation Plan or as otherwise agreed by the Parties in writing) and shall maintain such certification for the Term.  The scope of the ISMS and its certification to ISO/IEC 27001 shall be subject to the approval in advance of the Authority.  If certain parts of the ISMS do not conform to Good Industry Practice or the controls as described in ISO/IEC 27002 are not consistent with the Security Policy and, as a result the Supplier reasonably believes that it is not compliant with ISO/IEC 27001, the Supplier shall promptly notify the Authority in writing of this and the Authority in its absolute discretion may waive the requirement for certification in respect of the relevant parts.

## Authority Audit

## The Authority shall be entitled to carry out such regular security audits as may be required and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO/IEC 27001 and ISO/IEC 27002.

## If, on the basis of evidence provided by such audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 and ISO/IEC 27002 is not being achieved by the Supplier, then the Authority shall notify the Supplier in writing of the same and give the Supplier a reasonable period of time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001 and ISO/IEC 27002. If the Supplier does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.

## If, as a result of any such independent audit as described in Paragraph 5.3 above, the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 and ISO/IEC 27002 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

## Supplier Audit

## If required by the Authority, the Supplier shall commission at its own expense an annual security audit to be conducted by an independent organisation approved by the Authority as may be required in order to maintain delivery of the Services and the ISMS in compliance with*:*

### security aspects of ISO/IEC 27002:2005 or equivalent;

### ISO/IEC 27001 or equivalent;

### the Security Policy Framework; and

### the requirements issued by the National Technical Authority for Information Assurance,

### and shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority in writing of the results of such security audits. The provisions set out in Paragraphs 5.3 and 5.4 above shall apply mutatis mutandis to this Paragraph 5.5.

# BREACH OF SECURITY

## Either Party shall (which shall include the Supplier procuring that the Supplier Personnel shall) notify the other (in each case notification must go to the individual(s) designated in the Security Plan (as amended)) in writing immediately upon becoming aware of any Breach of Security including an actual, potential or attempted breach, or threat to, the Security Plan and/or the ISMS.

## Without prejudice to any security incident notification and management process set out in this Framework Agreement, upon becoming aware of any of the circumstances referred to in Paragraph 6.1 above, the Supplier shall:

### immediately take all reasonable steps necessary to:

#### remedy such breach or protect the Services and integrity of the ISMS against any such potential or attempted breach or threat; and

#### prevent an equivalent breach in the future.

Such steps shall include any action or changes required by the Authority. If such action is taken in response to a Breach of Security that is determined by the Authority, acting reasonably, not to be covered by the obligations of the Supplier under this Framework Agreement, then the Supplier may refer the matter to the Change Control Procedure, but this shall not delay the Supplier in taking steps to comply with Paragraph 6.2; and

### as soon as reasonably practicable provide to the Authority full details (using such reasonable reporting mechanisms as may be specified by the Authority from time to time) of the Breach of Security or the potential or attempted Breach of Security and of the steps taken to mitigate or resolve them.

# MALWARE

## Without prejudice to any other obligations which the Supplier has under this Framework Agreement in relation to Malware, the Supplier shall, as an enduring obligation throughout the Term (and after the end of the Term (as applicable) in accordance with the process for Exit Management), use its reasonable endeavours to prevent Malware from being introduced into the Authority’s or Contracting Body’s ICT environment via the Services. This shall include an obligation to use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malware from the Services. In this Paragraph 7 references to “anti-virus” shall mean to software or other data intended to detect, prevent and/or mitigate the effects of Malware.

## Notwithstanding Paragraph 7.1 above, if Malware is found the Parties shall cooperate with each other to reduce the effect of the Malware and, particularly if Malware causes loss of operational efficiency or loss or corruption of Contracting Body data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

## Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 7.2 above shall be borne by the Parties as follows:

### by the Supplier where the Malware originates from the Software (except where the Authority has waived the obligation set out in Paragraph 7.1 above) and/or the Contracting Body data (whilst the Contracting Body data was under the control of the Supplier and/or any Sub-Supplier) unless the Supplier can demonstrate that such Malware was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and

### by the Contracting Body if the Malware originates from Contracting Body data (whilst the Contracting Body data was under the control of the Authority).

ANNEX 1: SECURITY

1. [Customer Security Requirements (including details of the Security Policy)
   1. **[**Insert Security Requirements**]/[**Set out in Call Off Schedule**]**
   2. **[**Additional Security Requirements**]**

[Guidance Note: Certain provisions dealing with security are included in Clause 10.3 (Security of Premises), Clause 11.4 (Property), Clause 24 (Staff and Staffing Security), Clause 28 ( Security and Protection of Information) and this Call Off Schedule. The Customer to include any provisions that are appropriate to it or the location where the Services are being provided. The Customer to consider if there are any other specific security requirements relating to it and include details, including any Security Policy]

1. [Security Management Plan]
   1. **[**Set out in Call Off Schedule 2 (Security)**]**

[Guidance Note: See paragraph 1 of this Call Off Schedule. Where Customers have stipulated in a Further Competition Procedure that they require a Security Management Plan, they should ask the Supplier to provide an outline Security Management Plan and include this here]

[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.

[ ]

[Guidance Note: include here a copy of the Supplier’s Call Off Solution in response to the Customer’s invitation to further competition; or switch this Call Off Schedule to “Not Used” if you are purchasing Services by way of Direct Award as set out in Framework Schedule 5 (Call Off Procedure)]

[CALL OFF SCHEDULE 4: TESTING]

[Guidance Note: Consider the Guidance Note on Testing in the Template Order Form and Clause 13 of the Template Call Off Terms. This Call Off Schedule is more likely to be relevant in the context of procuring Services, with emphasis on ICT Services. Switch to “Not Used” if not required. However, retain Annex 1 (Satisfaction Certificate) for use in respect of Achievement of any Milestones in an Implementation Plan (if any)]

1. INTRODUCTION
   1. This Call Off Schedule (Testing) sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Test Plans.
2. TESTING OVERVIEW
   1. All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy and the Test Plans.
   2. Any disputes between the Supplier and the Customer regarding this Testing shall be referred to the Dispute Resolution Procedure.
3. TEST STRATEGY
   1. The Supplier shall develop the final Test Strategy as soon as practicable but in any case no later than sixty (60) Working Days (or such other period as the Parties may agree) after the Call Off Commencement Date.
   2. The final Test Strategy shall include:
      1. an overview of how Testing will be conducted in relation to the Implementation Plan;
      2. the process to be used to capture and record Test results and the categorisation of Test Issues;
      3. the procedure to be followed should a Deliverable fail a Test or where a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
      4. the procedure to be followed to sign off each Test; and
      5. the process for the production and maintenance of reports relating to Tests.
4. TEST PLANS
   1. The Supplier shall develop Test Plans for the approval of the Customer as soon as practicable but in any case no later than sixty (60) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.
   2. Each Test Plan shall include as a minimum:
      1. the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested;
      2. a detailed procedure for the Tests to be carried out, including:
         1. the timetable for the Tests including start and end dates;
         2. the Testing mechanism;
         3. dates and methods by which the Customer can inspect Test results;
         4. the mechanism for ensuring the quality, completeness and relevance of the Tests;
         5. the process with which the Customer will review Test Issues and progress on a timely basis; and
         6. the re-Test procedure, the timetable and the resources which would be required for re-Testing.
   3. The Customer shall not unreasonably withhold or delay its approval of the Test Plans and the Supplier shall implement any reasonable requirements of the Customer in the Test Plans.
5. TESTING
   1. When the Supplier has completed the [Services] in respect of a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
   2. Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Customer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
   3. If the Supplier successfully completes the requisite Tests, the Customer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the [Services] are implemented in accordance with this Call Off Contract.
6. TEST ISSUES
   1. Where a Test Issue is identified by the Supplier, the Parties shall agree how such Test Issue shall be dealt with and any failure to agree by the Parties shall be resolved in accordance with the Dispute Resolution Procedure.
7. TEST QUALITY AUDIT
   1. Without prejudice to its rights pursuant to Clause 38 (Records and Audit Access), the Customer or an agent or contractor appointed by the Customer may perform on-going quality audits in respect of any part of the Testing.
   2. If the Customer has any concerns following an audit in accordance with paragraph 7.1 above the Customer will discuss such concerns with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.
   3. In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Customer.
8. OUTCOME OF TESTING
   1. The Customer will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.
   2. If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:
      1. the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or
      2. the Parties shall treat the failure as a Supplier Default.

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]

[Guidance Note: Consider the guidance note on Business Continuity and Disaster Recovery on the Template Order Form and Clause 18 of the Template Call Off Terms. Switch this Call Off Schedule to Not Used if not required]

1. CUSTOMER BCDR REQUIREMENTS
2. [ ]
3. SUPPLIER BCDR PLAN

**[ ]**

[Guidance Note: If you have refined your BCDR requirements through the Further Competition Procedure and/or required use of the optional provisions in Clause 18 of the Template Call off Terms, set out those BCDR requirements and include the Supplier’s BCDR Plan from the Supplier’s Call Off Solution.]

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

1. SCOPE
   1. This Call Off Schedule (Service Levels, Service Credits and Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Services, the mechanism by which failures to achieve Service Levels including Service Failures will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.
   2. This Call Off Schedule comprises:
      1. Part A: Service Levels and Service Credits;
      2. Annex 1 to Part A - Service Levels and Service Credits Table;
      3. Annex 2 to Part A – Critical Service Failure;
      4. Part B: Performance Monitoring; and
      5. Annex 1 to Part B: Performance Monitoring.

PART A: SERVICE LEVELS AND SERVICE CREDITS

1. GENERAL PROVISIONS
   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.
   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. **[**Supply performance;
      2. Quality of Services;
      3. Customer Support;
      4. Complaints handling; and
      5. Accurate and timely invoices.**]**
   3. The Supplier accepts and acknowledges that failure to meet the Service Levels set out in this Call Off Schedule will result in Service Credits being issued to Customers.
2. PRINCIPAL POINTS
   1. The objectives of the Service Levels and Service Credits are to:
      1. ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
      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
      3. incentivise the Supplier to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.
3. SERVICE LEVELS
   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.
   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. The Supplier shall, at all times, provide the Services in such a manner that the Service Levels are achieved.
   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:
      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
      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; or
      3. make a deduction from the Call Off Contract Charges in accordance with Annex 1 to Part A of this Call Off Schedule; or
      4. if the Service Failure constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Call Off Contract pursuant to Clause 31.5.
   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.
4. SERVICE CREDITS
   1. Framework Schedule 3 (Charging Structure) sets out the mechanism used to calculate Service Credits payable to the Customer as a result of a failure to meet the Service Level in a given service period which, for the purpose of this Call Off Schedule, shall be a recurrent period of [one Month] during the Call Off Contract Period (the “**Service Period**”).
   2. [Annex 1 to Part A of this Call Off Schedule includes details of each Service Credit available to each Service Level if not met by the Supplier.] *[Guidance Note: please add relevant calculations].*
   3. The Customer shall use performance reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
   4. Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with the provisions of Framework Schedule 3 (Charging Structure).
5. NATURE OF SERVICE CREDITS
   1. The Supplier confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Call Off Contract Charges. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

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

|  |  |  |  |
| --- | --- | --- | --- |
| **Service Level Ref** | **Detail** | **Target** | **Measurement** |
| System Availability | The System should be available at all times during core hours. Planned maintenance should be undertaken during none core hours. GPS will accept a maximum of 10 hours unplanned down time per annum without penalty. | 100% per annum | Monthly performance reports emailed to GPS and verified by Contracting Bodies |
| Telephone System | The supplier should answer all telephone calls within 30 seconds and provide a monthly telephone call log to GPS via email | 98% per month | Monthly performance reports emailed to GPS and verified by Contracting Bodies |
| User Queries | The supplier should respond to all user queries, regardless ofwhether placed via the system, via the phone or via email within 1 hour. | 98% per month | Monthly performance reports emailed to GPS and verified by Contracting Bodies |
| Booking Confirmations – Online | Users should receive their booking confirmation via the system within 5 seconds. | 100% per month | Monthly performance reports emailed to GPS and verified by Contracting Bodies |
| Booking Confirmations - Offline | Users should receive their booking confirmation from the offline team within 2 hours. | 100% per month | Monthly performance reports emailed to GPS and verified by Contracting Bodies |
| Travel Ticket(s) | Users should receive their travel tickets (if not issued at the time of booking) when being sent by the supplier, no later than the day before the departure date. | 100% per month | Monthly performance reports emailed to GPS and verified by Contracting Bodies |
| Ticket Refunds | Refunds being processed by the supplier should be completed within 5 days from receipt of unused tickets and any monies returned to the user | 100% per month | Monthly performance reports emailed to GPS and verified by Contracting Bodies |

**Service Credit Calculation:**

Performance against service levels will be measured, reported and monitored on a monthly

Basis.

Service credits will apply if a service level is missed for any rolling 3 month period.

A Service Credit will be £100.

If a Supplier misses the required % target for 3 consecutive months, a service credit will apply and this will be formally documented at the subsequent quarterly Supplier review meeting.

If a Supplier misses the target for any two consecutive months this will be recorded by GPS

and a remedial action plan will be agreed.

If a Supplier misses the target for any one single month this will be recorded by GPS and remedial action points will be agreed.

**Example:**

Service level = System Availability:

If Supplier achieves 99% for rolling 3 month period, one service credit will be due equals £100,

if Supplier achieves 98% for rolling period, two service credits will be due equalling £200

Service credits will be allocated on a pro-rata basis for performance results e.g. 99.5% equals £50

If applicable, the collection of service credits will be managed directly between the Supplier and Contracting Body.

ANNEX 2 TO PART A: CRITICAL SERVICE FAILURE

In relation to **[**     **]** a Critical Service Failure shall include a delay in producing **[     ]** ordered by the Customer in excess of twenty four (24) hours more than once in any **[**three (3) Month**]** period or more than three (3) times in any rolling twelve (12) Month period.

In relation to the **[ ]** a Critical Service Failure shall include a loss of **[    ]** during core hours (08:00 – 18:00 Mon – Fri excluding bank holidays) to the **[ ]** for more than twenty four (24) hours accumulated in any **[**three (3) Month**]** period, or forty eight (48) hours in any rolling twelve (12) Month period.

In relation to the **[ ]** a Critical Service Failure shall include the loss of **[ ]** during core hours (08:00 – 18:00 Mon – Fri excluding bank holidays) to the **[ ]** for more than twenty four (24) hours accumulated in any **[**three (3) Month**]** period, or forty eight (48) hours in any rolling twelve (12) Month period.

[Guidance Note: Clause 31.5 of the Template Call Off Terms provides the Customer with a right to terminate the Call Off Contract with immediate effect if a Material Default occurs. Material Default includes a Critical Service Failure. It is intended that the definition of Critical Service Failure should link to a specified threshold of performance in relation to Service Levels. The intention is to provide certainty over what level of performance would trigger a termination right for Critical Service Failure. If you wish to include such a mechanism then the above definition should be populated with relevant thresholds.]

[  ]

[Guidance Note: Consider if additional provisions should be added]

PART B: PERFORMANCE MONITORING

1. PRINCIPAL POINTS
   1. Part B to this Call Off Schedule provides the methodology for monitoring the provision of the Services:
      1. to ensure that the Supplier is complying with the Service Levels; and
      2. for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services ("**Performance Monitoring System**").
   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
   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
   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:
      1. for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
      2. a summary of all failures to achieve Service Levels that occurred during that Service Period;
      3. any Critical Service Failures and details in relation thereto;
      4. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
      5. the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
      6. such other details as the Customer may reasonably require from time to time.
   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):
      1. take place within one (1) week of the reports referred to in paragraph 3.1 above being issued by the Supplier;
      2. take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
      3. be attended by the Supplier's Representative and the Customer's Representative; and
      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. The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
   4. The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.
4. SATISFACTION SURVEYS
   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.
   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.
   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

[ ]

[Guidance Note: Please see the Guidance Note on Performance Monitoring in the Template Order Form, Clause 15 of the Template Call Off Terms, and the provisions of this Call Off Schedule (Service Levels. Service Credits and Performance Monitoring). The Customer to insert any further details of Performance Monitoring as stipulated in a Further Competition Procedure.

[Guidance Note: See Clauses 15 and 38.7 of the Template Call Off Terms, as well as Clause 12 of the Framework Agreement and Framework Schedule 8 (Management Information). The Customer to specify any date(s) during the Call Off Contract Period on which the Supplier will supply Management Information to the Authority in the form set out in Framework Schedule 8 (Management Information) (as amended from time to time) and to specify such Management Information]

[CALL OFF SCHEDULE 7: EXIT PLANNING]

[Guidance Note: Consider the guidance note on Exit Planning in the Template Order Form and Clause 20 of the Template Call Off Terms. This Schedule is more likely to be relevant in the context of procuring Services, with emphasis on ongoing Services. Switch to “Not Used” if not required]

1. INTRODUCTION
   1. This Call Off Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Call Off Contract and the transfer of service provision to a Replacement Supplier.
   2. The objectives of the Exit Planning and Service Transfer Arrangements are to ensure a smooth transition of the availability of the Services from the Supplier to a Replacement Supplier at the termination (howsoever arising) (including partial termination) or expiry of this Call Off Contract.
2. EXIT PLANNING AND SERVICE TRANSFER ARRANGEMENTS
   1. The Supplier agrees to indemnify and keep the Customer fully indemnified for itself and on behalf of any Replacement Supplier in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) from the provision of incorrect information provided to the Customer by the Supplier, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Services.
3. EXIT PLAN
   1. Further to Clause 20 (Exit Planning), the Customer shall review the draft Exit Plan within twenty (20) Working Days of receipt from the Supplier and shall notify the Supplier of any suggested revisions to the draft Exit Plan. In this respect, the Customer will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days. The agreed Exit Plan shall be signed within thirty (30) Working Days after submission by the Supplier to the Customer of the draft Exit Plan, as provided for in Clause 20.3.
   2. The Exit Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the provision of the Services. The Supplier shall ensure that the Exit Plan shall include as a minimum:
      1. a detailed description of how the provision of the Services will be ceased and transferred to the Customer and/or the Replacement Supplier as the case may be;
      2. details of the management structure to be employed by the Supplier to effectively transfer the provision of the Services to the Customer and/or Replacement Supplier as the case may be;
      3. details of how relevant knowledge will be transferred to the Customer and/or the Replacement Supplier; and
      4. details of contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon expiry or termination of the Call Off Contract together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
      5. proposals for the training of key members of the Replacement Supplier’s personnel in connection with the continuation of the provision of the Services following the expiry or termination (howsoever arising) of this Call Off Contract charged at rates agreed between the Parties at that time;
      6. proposals for providing the Customer or a Replacement Supplier copies of all documentation:
         1. used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
         2. relating to the use and operation of the Services;
      7. proposals for the methods of transfer of the provision of the Services to the Customer or a Replacement Supplier;
      8. proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
      9. proposals for the identification and return of all Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
      10. proposals for the disposal of any redundant Services and materials; and
      11. proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.
   3. The Exit Plan shall be reviewed and updated by the Supplier in accordance with Clause 20.4. The revised Exit Plan shall be reviewed and agreed in accordance with the provisions of paragraph 3.1 of this Call Off Schedule.
4. ASSISTANCE ON EXPIRY OR TERMINATION
   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 including as set out in the Exit Plan.

[Guidance Note: Please refer to Part D of Call Off Schedule 9 (TUPE and Pensions) which sets out the Supplier’s obligations to provide Staff lists and Staffing Information pre and post exit from the Call Off Contract]

CALL OFF SCHEDULE 8: DIVERSITY & EQUALITY

1. INTRODUCTION
   1. This Call Off Schedule sets out the Diversity and Equality requirements which are applicable to the provision of the Services.
2. GENERAL
   1. The Supplier acknowledges that the Customer has a ‘duty to promote’ equality and must at all times be seen to be actively promoting equality of opportunity for, and good relations between, all persons, irrespective of their race, gender, gender reassignment, disability, age, sexual orientation or religion/belief or in terms of pregnancy and maternity or marriage and civil partnership. The Supplier must ensure that each of its Sub-Contractors involved in delivery of this Call Off Contract are aware of, and acknowledge, that the Customer has a ‘duty to promote’ equality.
   2. In providing the Services, the Supplier shall, and shall procure that its Sub-Contractors, assist and cooperate with the Customer in satisfying Equality duties by fully complying with the requirements of this Call Off Schedule.
3. COMPLIANCE
   1. The Supplier acknowledges the provisions of the Equality Legislation.
   2. The Supplier shall provide a copy of their Diversity and Equality Policy in accordance with paragraphs 3.5 and 3.6 (and sub paragraphs) of this Call Off Schedule, within six (6) Months of the Call Off Commencement Date, and on any revision within the Call Off Contract Period thereafter.
   3. The Supplier will provide workforce monitoring data in accordance with paragraph 4 (and sub paragraphs) of this Call Off Schedule, within six (6) Months of the Call Off Commencement Date and annually thereafter during the Term of the Call Off Contract.
   4. The Customer will consider and agree the submissions made by the Supplier when complying with paragraphs 3 and 4 of this Call Off Schedule. Any issues will be raised with the Supplier by the Call Off Contract manager acting on behalf of the Customer. If an issue relates to a Sub-Contractor, the Supplier must raise and resolve the issue with the Sub-Contractor. Once submissions are Approved by the Customer the Supplier will formally review, revise and resubmit all information required in paragraph 3.2 and paragraph 3.3 on an annual basis. Diversity and equality aspects will also be discussed jointly by the Customer and the Supplier as an ongoing item at the Call Off Contract review meetings.
   5. The Supplier shall produce a Diversity and Equality Policy within six (6) Months of the Call Off Commencement Date to which it shall adhere in providing the Services, though it does not have to be specific to the Call Off Contract, the Policy, as a minimum shall:
      1. address the prevention of unlawful discrimination and promoting equality of opportunity in respect of:
         1. Race;
         2. Gender;
         3. Gender reassignment;
         4. Disability;
         5. Age;
         6. Sexual orientation;
         7. Religion/belief;
         8. Pregnancy and maternity; and
         9. Marriage and civil partnerships;
      2. contain commitment and sign off from senior management;
      3. apply to the treatment of Staff, Customers, Sub-Contractors, suppliers and other stakeholders;
      4. identify the structures (if any) already in place, or which will be in place (and by when) and what resources are, or will be (and by when), directed towards diversity and equality within the Supplier’s organisation including in relation to:
         1. Harassment;
         2. Bullying;
         3. Victimisation;
         4. Recruitment procedures; and
         5. Staff training and development;
      5. provide for the setting and monitoring of targets in relation to diversity and equality; and
      6. detail how the policy will be (and by when) communicated to Staff and Sub-Contractors.
   6. In providing the Services, the Supplier shall provide written evidence that demonstrate:
      1. reasonable adjustments are made, as required by Equality Legislation to make the provision of those Services accessible to disabled people and that in the case of Information Technology services, those services are in accordance with the Customer’s standards; and
      2. all Staff have had appropriate training so that they understand the duties required by Equality Legislation not to discriminate and to promote equality.
   7. The Customer may request further information and assurance relating to Diversity & Equality at any point during the duration of this Call Off Contract.
   8. The Supplier shall notify the Customer of the details of any diversity and equality cases and tribunals (including volumes and outcomes) relating to the Supplier and any Sub-Contractors.
4. MONITORING AND REPORTING
   1. The Supplier shall provide workforce monitoring data as detailed in paragraph 4.2 of this Call Off Schedule. A template for data collected in paragraphs 4.2, 4.3 and 4.4 will be provided by the Customer. Completed templates for the Supplier and each Sub-Contractor will be submitted by the Supplier with the Diversity and Equality Delivery Plan within six (6) Months of the Call Off Commencement Date and annually thereafter. Suppliers are required to provide workforce monitoring data for the workforce involved in delivery of this Call Off Contract. Data relating to the wider Supplier workforce and wider Sub-Contractors workforce would however be well received by the Customer. Suppliers and any Sub-Contractors are required to submit percentage figures only in response to paragraphs 4.2.1.1, 4.2.2 and 4.3.
   2. The Supplier and Sub-Contractors will each provide separate information detailing:
      1. the proportion of employees who are:
         1. female; and/or
         2. disabled;
         3. those who prefer not to state gender and/or disability
      2. the proportion of Staff who in terms of ethnicity are:

White;

* + - 1. white British
      2. white Irish;
      3. of any other white background;

Mixed

* + - 1. white and black Caribbean;
      2. white and black African;
      3. white and Asian;
      4. of any other mixed background;

Asian or Asian British

* + - 1. Indian;
      2. Pakistani;
      3. Bangladeshi;
      4. of any other Asian background;

Black or Black British

* + - 1. Caribbean;
      2. African;
      3. of any other Black background;

Chinese or other ethnic group;

* + - 1. Chinese;
      2. of any other ethnic group;

Prefer not to state;

* + - 1. Prefer not to state ethnicity.

For the avoidance of doubt, the seventeen percentage figures submitted under categories 4.2.2.1 to 4.2.2.17 of this paragraph 4.2.2 (in each template in respect of the Supplier’s employees and each Sub-Contractors employees) should total one hundred percent (100%).

* 1. The Supplier will provide details of the proportion of its Sub-Contractors retained in relation to this Call Off Contract that are:
     1. small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and a maximum annual turnover of forty (40) million pounds);
     2. ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of one (1) or more ethnic minority groups, or, if there are few owners, where at least fifty percent (50%) of the owners are members of one (1) or more ethnic minority groups). For this purpose, ethnic minority groups means ethnic groups other than White as referred to at paragraph 4.2.2 of this Call Off Schedule and
     3. black ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least fifty percent (50%) of the owners are members of the Black or Black British ethnic group). For this purpose, the Black or Black British ethnic group has the meaning referred to at categories 4.2.2.12 to 4.2.2.14 in paragraph 4.2.2 of this Call Off Schedule.
  2. The Supplier shall, and shall procure that its Sub-Contractors will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Customer.

[CALL OFF SCHEDULE 9: TUPE & PENSIONS]

[Guidance note: switch this Call Off Schedule to Not Used if procuring Goods only]

[Guidance note: TUPE paragraphs in Part A and Part B must be used where TUPE applies at the Call Off Commencement Date.

* Part A applies where the Customer itself currently carries out the supply of the Services and is being replaced by the Supplier.
* Part B applies where the Customer currently engages a third party to provide the Services and is replacing such third party with the Supplier.
* Part C applies where TUPE is not intended to apply at the Call Off Commencement Date.
* Part D applies on the termination or expiry of the Call Off Contract and should be included in each case (whether or not TUPE applies at the Call Off Commencement Date).
* Part E applies in all circumstances and should always be included.]

DEFINITIONS FOR TUPE MATTERS

The following definitions shall apply in addition to the definitions contained in the Glossary to the Call Off Form and Call Off Terms:

|  |  |
| --- | --- |
| “Acquired Rights Directive” | means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time; |
| “CRiTPA” | means the Contracts (Rights of Third Parties) Act 1999; |
| “Employment Liabilities” | means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:   1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; 2. unfair, wrongful or constructive dismissal compensation; 3. compensation for discrimination on grounds of  sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity  or sexual orientation or claims for equal pay; 4. compensation for less favourable treatment of part-time workers or fixed term employees; 5. outstanding debts and unlawful deduction of wages, including any PAYE and National Insurance Contributions; 6. claims whether in tort, contract or statute or otherwise; 7. any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation); |
| “Former Supplier” | means the party providing services to the Customer similar or the same as the Services and which is being replaced by the Supplier; |
| “Relevant Transfer” | means a transfer of employment to which TUPE applies; |
| “Relevant Transfer Date” | means the date upon which the Relevant Transfer takes place; |
| “Second Generation Fair Deal Employee” | means any employee whose employment transfers under a Relevant Transfer from the Former Supplier to the Supplier on the Relevant Transfer Date and who (i) in relation to previous employment with the Customer, had been accruing pension rights as an active member of [insert name of public sector pension scheme] immediately before a Relevant Transfer of his employment from the Customer to the Former Supplier, or a series of Relevant Transfers starting with employment with the Customer and finishing with employment with the Former Supplier, and (ii) had elected to transfer such pension rights from [insert name of public sector pension scheme] to the Former Supplier’s Scheme; |
| “Service Transfer” | means any Relevant Transfer of the Services (or any part), subsequent to the commencement of performance of the Services by the Supplier for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier; |
| “Service Transfer Date | means the date of a Service Transfer; |
| “Staff” | means all persons employed by the Supplier and/or any Sub-Contractor to perform its obligations under this Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors used in the performance of its obligations under this Contract (or any Sub-Contract); |
| “Staffing Information” | means written information about each of the Supplier or its Sub-Contractor’s Staff including in particular: the percentage of working time spent by each of them in the provision of the Services, job title, remuneration (meaning salary and benefits and any enhanced redundancy terms), age, length of service, notice period, particulars of employment in accordance with section 1 of the Employment Rights Act 1996, the applicability of any collective agreement to such staff, any disciplinary action taken against any of them in the preceding two (2) Years, details of any grievances raised by any of them in the preceding two (2) Years, any Court or employment tribunal proceedings brought by any of them in the preceding two (2) Years, any potential proceedings which the Supplier or its Sub-Contractor reasonably considers may be raised by any of them, and information about any of them who have been absent from work for one (1) month or more regardless of the reason at the time the staffing information is requested; |
| "Supplier's Final Staff List” | means the relevant list of all Supplier Staff engaged in or wholly or mainly assigned to, the provision of the Services or any relevant part of the Services which is ceasing to be provided by the Supplier at the Transfer Date; |
| "Supplier's Provisional Staff List” | means a list prepared and updated by the Supplier of all Supplier Staff who are engaged in or wholly or mainly assigned to, the provision of the Services (or any relevant part of the Services which it is envisaged will no longer be provided by the Supplier) as at the date of such list; |
| "Transferring Customer Employees" | means those employees of the Customer to which TUPE will apply on the Relevant Transfer Date; |
| "Transferring Former Supplier Employees” | means those employees of the Former Supplier to which TUPE will apply on the Relevant Transfer Date ; |
| "Transferring Supplier Employees" | means those employees of the Supplier to which TUPE will apply on the Relevant Transfer Date. |

PART A

The Customer and the Supplier shall proceed on the basis that the commencement of the provision of the Services by the Supplier under this Call Off Contract will be a Relevant Transfer to which TUPE and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE, the contracts of employment between the Customer and the Transferring Customer Employees (save insofar as such contracts relate to benefits for old age, invalidity or survivors under any occupational pension scheme and are therefore disapplied through operation of Regulation 10(2) of TUPE) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and each such Transferring Customer Employee.

The Customer shall comply with all its obligations under TUPE and will perform and discharge all its obligations in respect of all the Transferring Customer Employees prior to the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, and any necessary apportionments in respect of any periodic payments will be made.

Subject to paragraph 4 below, the Customer shall indemnify the Supplier against any Employment Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:

* 1. any act or omission by the Customer occurring before the Relevant Transfer Date;
  2. the breach or non-observance by the Customer on or before the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Customer Employee;
  3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
     1. in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising prior to the Relevant Transfer Date; and
     2. in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Customer to the Supplier, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising prior to the Relevant Transfer Date.
  4. a failure by the Customer to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Transferring Customer Employees in respect of the period prior to the Relevant Transfer Date;
  5. any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for which it is alleged the Supplier may be liable by virtue of this Call Off Contract and/or TUPE and/or the Acquired Rights Directive; and
  6. any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under Regulation 13 of TUPE.

The indemnities in paragraph 3 will not apply to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employment Liabilities:

* 1. arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period on or after the Relevant Transfer Date); or
  2. arising from the Supplier’s failure and/or any Sub-Contractor’s failure to comply with its obligations under TUPE).

If any person who is not a Transferring Customer Employee claims, or it is determined, that his/her contract of employment has been transferred from the Customer to the Supplier pursuant to TUPE or the Acquired Rights Directive then:

* 1. the Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer; and
  2. where legally possible for it to do so, the Customer may offer employment to such person within fifteen (15) Working Days of the notification by the Supplier, or otherwise take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

If such offer is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall immediately release the person from his/her employment or alleged employment.

If, after the fifteen (15) Working Day period specified in paragraph 5.2 has elapsed:

* 1. no such offer of employment has been made; or
  2. such offer has been made but not accepted; or
  3. the situation has not otherwise been resolved,

the Supplier may within five (5) Working Days give notice to terminate the employment of such person.

Subject to the Supplier acting in accordance with the provisions of paragraphs 5 to 7 and in accordance with all applicable proper employment procedures set out in Law, the Customer shall indemnify the Supplier against all Employment Liabilities arising out of the termination pursuant to the provisions of paragraph 7.

The indemnity in paragraph 8 above shall:

* 1. not apply to any claim for discrimination including but not limited to sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or claims for equal pay, or compensation for less favourable treatment of part-time workers or fixed term employees in relation to any alleged act or omission of the Supplier and/or Sub-Contractor or to any claim that the termination of employment was unfair because the Supplier neglected to follow a fair dismissal procedure; and
  2. only apply where the notification referred to in paragraph 5.1 is made by the Supplier to the Customer within six (6) Months of the Call Off Commencement Date.

If any such person as is described in paragraph 5 is neither re-employed by the Customer nor dismissed by the Supplier within the time scales set out in paragraphs 5 to 7 such person will be treated as having transferred to the Supplier and the Supplier shall comply with such obligations as may be imposed upon it under the Law.

The Supplier shall comply, and shall procure that any Sub-Contractor shall comply, with all its obligations under TUPE (including without limitation its obligation to inform and consult in accordance with Regulation 13 of TUPE) and shall perform and discharge all its obligations in respect of all the Transferring Customer Employees, on and from the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, and any necessary apportionments in respect of any periodic payments will be made.

Each Party shall promptly provide to the other Party in writing such information as is necessary to carry out their respective duties under Regulation 13 of the TUPE .

Subject to paragraph 14 below, the Supplier shall indemnify the Customer against any Employment Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative (as defined in TUPE) of any Transferring Customer Employee) arising from or as a result of:

* 1. any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date or any other matter, event or circumstance occurring or having its origin after the Relevant Transfer Date or in respect of an award of compensation under Regulation 15 of TUPE (except to the extent that the liability arises from the Customer's failure to comply with its obligations under TUPE);
  2. the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Customer Employee;
  3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
     1. in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
     2. in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Customer to the Supplier, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date.
  4. any statement communicated to or action undertaken by the Supplier and/or any Sub-Contractor to, or in respect of, any Transferring Customer Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing.
  5. any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the Supplier in relation to its obligations under Regulation 13 of TUPE.

The indemnities in paragraph 13 will not apply to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employment Liabilities arising from the Customer’s failure to comply with its obligations under TUPE).

The Supplier shall, and shall procure that any Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in: (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; and/or (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; and/or (c) HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; or any other replacement statement of practice, paper or other guidance.

The Supplier shall comply with the pensions provisions of Annex 1 to this Schedule 9 below.

PART B

[Please Note: Indemnity position to be carefully considered given that the Customer may not have back to back protection from the Former Supplier.]

The Customer and the Supplier shall proceed on the basis that the commencement of the provision of the Services by the Supplier under this Call Off Contract will be a Relevant Transfer to which TUPE and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE, the contracts of employment between the Former Supplier and the Transferring Former Supplier’s Employees save insofar as such contracts relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and each such Transferring Former Supplier Employee.

The Customer shall use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Supplier shall comply with all its obligations under TUPE and will perform and discharge all its obligations in respect of all the Former Supplier Employees, prior to the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions, and any necessary apportionments in respect of any periodic payments will be made.

The Customer shall use reasonable endeavours to procure (and to the extent it has a contractual right to do so) that the Former Supplier shall subject to paragraph 20 below, indemnify the Supplier against any Employment Liabilities, in respect of any Former Supplier Employee (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:

* 1. any act or omission of the Former Supplier occurring before the Relevant Transfer Date;
  2. the breach or non-observance by the Former Supplier during the period prior to the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Former Supplier Employees;
  3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
     1. in relation to any Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
     2. in relation to any employee who is not a Former Supplier Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Supplier to the Supplier, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising prior to the Relevant Transfer Date.
  4. a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Transferring Former Supplier Employees in respect of the period prior to the Relevant Transfer Date;
  5. any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for which it is alleged the Supplier may be liable by virtue of this Call Off Contract and/or TUPE and/or the Acquired Rights Directive; and
  6. any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under Regulation 13 of TUPE, except to the extent that the liability arises from the Supplier's or any Sub-Contractor's failure to comply with Regulation 13(4) of TUPE.

The indemnities in paragraph 19 will not apply to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employment Liabilities:

* 1. arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period on or after the Relevant Transfer Date); or
  2. arising from the Supplier’s failure and/or any Sub-Contractor’s failure to comply with its obligations under TUPE);

If any person who is not a Former Supplier Employee claims, or it is determined, that his/her contract of employment has been transferred from the Former Supplier to the Supplier pursuant to TUPE or the Acquired Rights Directive then:

* 1. the Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer (which may include, at the Customer’s option, notice to a Former Supplier); and
  2. the Former Supplier may offer employment to such person within fifteen (15) Working Days of the notification by the Supplier or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

If such offer is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier shall immediately release the person from his/her employment or alleged employment.

If, after the fifteen (15) Working Day period specified in 21.2 has elapsed:

* 1. no such offer of employment has been made; or
  2. such offer has been made but not accepted; or
  3. the situation has not otherwise been resolved;

the Supplier may within five (5) Working Days give notice to terminate the employment or alleged employment of such person

Subject to the Supplier acting in accordance with the provisions of paragraphs 21 to 23 and in accordance with all applicable proper employment procedures set out in Law, the Customer shall use its reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Supplier indemnifies the Supplier against all Employment Liabilities arising out of the termination pursuant to the provisions of paragraph 23.

The indemnity in paragraph 24 above shall:

* 1. not apply to any claim for discrimination, including but not limited to sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or claims for equal pay, or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor or to any claim that the termination of employment was unfair because the Supplier neglected to follow a fair dismissal procedure; and
  2. only apply where the notification referred to in paragraph 20 is made by the Supplier to the Customer and/or the Former Supplier, as appropriate within six (6) Months of the Call Off Commencement Date.

If any such person as is described in paragraph 21 is neither re-employed by the Former Supplier and/or the Customer nor dismissed by the Supplier within the time scales set out in paragraphs 21 to 23 such person will be treated as a Transferring Former Supplier Employee and the Supplier shall comply with such obligations as may be imposed upon it under the Law.

The Supplier shall comply, and shall procure that any Sub-Contractor shall comply, with all its obligations under TUPE (including without limitation its obligation to inform and consult in accordance with Regulation 13 of TUPE) and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, and any necessary apportionments in respect of any periodic payments will be made.

The Supplier shall, and the Customer shall use its reasonable endeavours to procure that the Former Supplier shall, promptly provide to the other Party in writing such information as is necessary to carry out their respective duties under Regulation 13 of the TUPE.

The Supplier shall indemnify the Customer and the Former Supplier against any Employment Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative (as defined in TUPE) of any Transferring Former Supplier Employee) arising from or as a result of:

* 1. any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date and/or any other matter, event or circumstance occurring or having its origin after the Relevant Transfer Date or in respect of an award of compensation under Regulation 15 of TUPE except to the extent that the liability arises from the Customer's and/or Former Supplier’s failure to comply with its obligations under TUPE;
  2. the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Former Supplier Employee;
  3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
     1. in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
     2. in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Customer to the Supplier, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
  4. the resignation of any Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period on or after the Relevant Transfer Date;
  5. any statement communicated to or action undertaken by the Supplier and/or any Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Supplier in writing;
  6. any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier in relation to its obligations under Regulation 13 of TUPE.

The indemnities in paragraph 29 will not apply to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Customer and/or the Former Supplier (as appropriate) whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employment Liabilities arising from the Customer’s and/or the Former Supplier’s (as appropriate) failure to comply with its obligations under TUPE).

CRiTPA will apply to paragraph 29 so that any Former Supplier shall have the right to enforce the obligations owed and the indemnities given to it pursuant to paragraph 29 in its own right pursuant to Section 1(1) of CRiTPA.

The Supplier shall, and shall procure that any Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Former Supplier Employee who is a Second Generation Fair Deal Employee as set down in: (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; and/or (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; and/or (c) HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; or any other replacement statement of practice, paper or other guidance.

The Supplier shall comply with the pension provisions set out in at Annex 1 to this Schedule 9 below.

PART C

Guidance Note: Only to be used where TUPE is not intended to apply at commencement.

The Customer and the Supplier shall proceed on the basis that the commencement of the provision of the Services by the Supplier under this Call Off Contract will not be a Relevant Transfer to which TUPE will apply in relation to any employees of the Customer.

If any employee of the Customer and/or the Former Supplier claims or it is determined that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier pursuant to TUPE or the Acquired Rights Directive then:

* 1. the Supplier shall , within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer (and/or at the Customer’s option, the Former Supplier);
  2. the Customer and/or the Former Supplier may offer employment to such person within fifteen (15) Working Days of the notification by the Supplier or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law;
  3. if such offer as referred to in paragraph 35.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall immediately release the person from his/her employment or alleged employment;
  4. if after the fifteen (15) Working Day period has elapsed, no such offer of employment as referred to in paragraph 35.2 has been made or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Supplier may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

Subject to the Supplier acting in accordance with the provisions of paragraph 35 and in accordance with all applicable proper employment procedures set out in Law and subject also to paragraph 39 below, the Customer shall indemnify the Supplier against all reasonable costs arising out of the termination of the employment of any employees of the Customer referred to in paragraph 35 which the Supplier has carried out pursuant to the provisions of paragraph 35.4 and shall use reasonable endeavours to procure (to the extent that it is contractually entitled to do so) that the Former Supplier indemnifies the Supplier against all Employment Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of paragraph 35.4.

If any such person as is described in paragraph 35 is neither re employed by the Customer and/or the Former Supplier nor dismissed by the Supplier within the time scales set out in paragraph 35 such person will be treated as having transferred to the Supplier’s employment and the Supplier shall comply with such obligations as may be imposed upon it under Law.

Where in accordance with paragraph 37, any person remains employed by the Supplier (or the relevant Sub-Contractor, as the case may be) all Employment Liabilities in relation to such employee shall remain with the Supplier or the relevant Sub-Contractor and the Supplier shall indemnify the Customer and any Former Supplier against any Employment Liabilities that the Customer and/or any other Former Supplier may incur in respect of any such employees of the Supplier or the relevant Sub-Contractor.

The indemnity in paragraph 36 above:

* 1. shall not apply:
     1. to any claim for discrimination, including but not limited to sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or claims for equal pay, or compensation for less favourable treatment of part-time workers or fixed term employees in relation to any alleged act or omission of the Supplier and/or the Sub-Contractor or to any claim that the termination of employment was unfair because the Supplier neglected to follow a fair dismissal procedure; and
     2. shall only apply where the notification referred to in paragraph 35.1 is made by the Supplier to the Customer and Former Supplier within six (6) Months of the Call Off Commencement Date.

[If the Parties cannot agree whether or not based upon a reasonable assessment of the facts that the transfer of the services from the Customer and/or Former Supplier to the Supplier is a situation to which TUPE and/or the Acquired Rights Directive may apply, the Customer shall based on a reasonable assessment of the evidence available to it make such determination. In assisting the Customer to make such determination, the Supplier and the Former Supplier shall be permitted to make representations to the Customer within such time period as the Customer may reasonably specify.]

CRiTPA will apply to paragraph 38 so that any Former Supplier shall have the right to enforce the obligations owed and the indemnities given to it pursuant to paragraph 38 in its own right pursuant to Section 1(1) of CRiTPA.

PART D

[Guidance Note: applies on the termination of the Call Off Contract and should be included in each case (whether or not TUPE applies at the Call Off Commencement Date)].

PRE-SERVICE TRANSFER OBLIGATIONS

The Supplier agrees that, subject to compliance with the DPA within twenty (20) Working Days of the earliest of:

* 1. receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or
  2. receipt of the giving of notice of early termination of this Call Off Contract or any part thereof;
  3. the date which is [twenty four (24)] Months before the Call Off Expiry Date; or
  4. receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) Month period),

it shall provide the Supplier's Provisional Staff List of those Transferring Supplier Employees which the Supplier believes will transfer to a Replacement Supplier (as the case may be), together with Staffing Information in relation to such employees and it will provide an updated Supplier's Provisional Staff List at such intervals as are reasonably requested by the Customer;

At least [twenty-eight (28)] Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer for itself or on behalf of any Replacement Supplier (as the case may be):

* 1. a final list of Transferring Supplier Employees which shall transfer under TUPE (the "Supplier's Final Staff List"); and
  2. the Customer shall be permitted to use and disclose information provided by the Supplier under paragraphs 42 and 43 for informing any tenderer or prospective Replacement Supplier for any services which are substantially the same type of services (or any part thereof) as the Services (subject always to compliance with the DPA).

The Supplier's Final Staff List will identify the Transferring Supplier Employees.

The Supplier warrants, for the benefit of the Customer and any Replacement Supplier, that the information provided under paragraphs 42 and 43 shall be true and accurate in all material respects.

From the date of the earliest event referred to in paragraphs 42.1 to 42.3 (inclusive), the Supplier agrees, that it shall not, and agrees to procure that its Sub-Contractors shall not, assign any person to the provision of the Services who is not listed on the Supplier’s Provisional Staff List and shall not without Approval(not to be unreasonably withheld or delayed):

* 1. replace or re-deploy any Staff listed on the Supplier’s Provisional Staff List other than where any replacement is of equivalent grade, skills, experience and expertise;
  2. make, promise, propose or permit any changes to the terms and conditions of employment of the Staff listed on the Supplier’s Provisional Staff List (including any payments connected with the termination of employment);
  3. increase the proportion of working time spent on the Services (or the relevant part) by any of the Staff listed on the Supplier’s Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed;
  4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Staff List; and
  5. increase or reduce the total number of employees so engaged;
  6. replace any Staff listed on the Supplier's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List save for:
     1. the execution of assigned operations as detailed in 46.3; and/or
     2. the replacement of Staff as a result of their: voluntary resignation, absence due to maternity leave, death, retirement or ill-health or termination by due disciplinary process;
     3. to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces; and

The Supplier shall promptly notify or as appropriate shall procure that the Sub-Contractor shall promptly notify the Customer or, at the direction of the Customer, the Replacement Supplier of any notice to terminate employment given by the Supplier or any Sub-Contractor or received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.

During the Call Off Contract Period, the Supplier shall provide to the Customer any information the Customer may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the DPA) including without limitation the Staffing Information and, upon reasonable request by the Customer and subject only to any limitation imposed by the DPA, the Supplier shall provide, and will procure that its Sub-Contractors shall provide, the Customer or at the request of the Customer, the Replacement Supplier, with access (on reasonable notice and during normal working hours) to such employment records as the Customer reasonably requests and shall allow the Customer or the Replacement Supplier to have copies of any such documents.

Within seven (7) Working Days following the Service Transfer Date, the Supplier shall provide to the Customer or any Replacement Supplier, in respect of each person on the Supplier's Final Staff List who is a Transferring Supplier Employee:

* 1. the most recent Month's pay slip data;
  2. details of cumulative pay for tax and pension purposes;
  3. details of cumulative tax paid;
  4. tax code;
  5. details of any voluntary deductions from pay; and
  6. bank/building society account details for payroll purposes.

TUPE EXIT PROVISIONS

The Customer and the Supplier agree that where the commencement of the provision of the Services (or part thereof) by the Replacement Supplier constitutes a Relevant Transfer, the contracts of employment between the Supplier and the Transferring Supplier Employees (save insofar as such contracts relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and each such Transferring Supplier Employee.

The Supplier shall, and shall procure that any Sub-Contractor shall, comply with all its obligations in respect of all the Transferring Supplier Employees prior to the Service Transfer Date under TUPE and shall perform and discharge all its obligations in respect of all the Transferring Supplier Employees up to and including the Service Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and any necessary apportionments in respect of any periodic payments shall be made.

Subject to paragraph 53 below, the Supplier shall indemnify the Replacement Supplier against any Employment Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:

* 1. any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
  2. the resignation of any Transferring Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier to occur in the period on or before the Relevant Transfer Date);
  3. the breach or non-observance by the Supplier or any Sub-Contractor on or before the Service Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employee;
  4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
     1. in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or prior to the Service Transfer Date; and
     2. in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from Supplier to the Customer and/or Replacement Supplier, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or prior to the Service Transfer Date.
  5. a failure by the Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Transferring Supplier Employees in respect of the period on or before the Service Transfer Date);
  6. any claim made by or in respect of any person employed or formerly employed by the Supplier other than a Transferring Supplier Employee for which it is alleged the Customer and/or the Replacement Supplier may be liable by virtue of this Call Off Contract and/or TUPE and/or the Acquired Rights Directive
  7. any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Supplier in relation to its obligations under Regulation 13 of TUPE, except to the extent that the liability arises from the Customer’s and/or Replacement Supplier's failure to comply with Regulation 13(4) of TUPE.

The indemnities in paragraph 52 will not apply to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Replacement Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employment Liabilities:

* 1. arising out of the resignation of any Transferring Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier to occur in the period on or after the Service Transfer Date); or
  2. arising from the Replacement Supplier’s failure to comply with its obligations under TUPE.

If any person who is not a Transferring Supplier Employee claims, or it is determined, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier pursuant to TUPE or the Acquired Rights Directive, then:

* 1. the Customer shall and shall use its reasonable endeavours to procure that the Replacement Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
  2. the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Customer or the Replacement Supplier or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

If such offer as referred to in paragraph 52.2 is accepted, or if the situation has otherwise been resolved by the Supplier, the Customer shall and shall use its reasonable endeavours to procure (to the extent that it is contractually entitled to do so) that the Replacement Supplier shall immediately release the person from his/her employment or alleged employment.

If, after the fifteen (15) Working Day period specified in paragraph 54.2 has elapsed:

* 1. no such offer of employment has been made; or
  2. such offer has been made but not accepted; or
  3. the situation has not otherwise been resolved,

the Customer may and shall advise the Replacement Supplier that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

Subject to the Customer or the Replacement Supplier acting in accordance with the provisions of paragraphs 54 to 56 and in accordance with all applicable proper employment procedures set out in Law, the Supplier shall indemnify the Customer and the Replacement Supplier against all Employment Liabilities arising out of the termination pursuant to the provisions of paragraph 56.

The indemnity in paragraph 57 above shall:

* 1. not apply to any claim for discrimination, including but not limited to sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or claims for equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Sub-Contractor or to any claim that the termination of employment was unfair because the Supplier neglected to follow a fair dismissal procedure; and
  2. shall only apply where the notification referred to in paragraph 54.1 is made by the Customer or the Replacement Supplier (as the case may be) to the Supplier within six (6) Months of the Call Off Commencement Date.

If any such person as is described in paragraph 53 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Customer or Replacement Supplier within the time scales set out in paragraphs 54 to 56, such person shall be treated as a Transferring Supplier Employee and the Supplier shall comply with such obligations as may be imposed upon it under the Law.

The Supplier shall comply, and shall procure that any Sub-Contractor shall comply, with all its obligations under TUPE and will perform and discharge all its obligations in respect of all the Transferring Supplier Employees, prior to the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, and any necessary apportionments in respect of any periodic payments will be made.

The Supplier shall promptly provide to the Replacement Supplier and the Customer shall use reasonable endeavours to procure (to the extent that it is contractually entitled to do so) that the Replacement Supplier shall promptly provide to the Supplier in writing such information as is necessary to carry out their respective duties under Regulation 13 of TUPE.

Subject to paragraph 63, the Customer [shall indemnify] [shall use its reasonable endeavours to procure to the extent that it is contractually entitled to do so that the Replacement Supplier indemnifies] the Supplier against any Employment Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative (as defined in TUPE) of any Transferring Supplier Employee) arising from or as a result of:

* 1. any act or omission of the Replacement Supplier;
  2. the breach or non-observance by the Customer or any Replacement Supplier on or after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employee;
  3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
     1. in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
     2. in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Supplier, to the Replacement Supplier to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date.
  4. the resignation of any Transferring Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Sub-Contractor to occur on or after the Service Transfer Date;
  5. any statement communicated to or action undertaken by the Customer and/or any Replacement Supplier to, or in respect of, any Transferring Supplier Employee on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
  6. any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Customer and/or Replacement Supplier in relation to its obligations under Regulation 13 of TUPE.

The indemnities in paragraph 62 will not apply to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as appropriate) whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employment Liabilities arising from the Supplier’s and/or any Sub-Contractor’s (as appropriate) failure to comply with its obligations under TUPE).

[In the event of a Service Transfer to which TUPE or the Acquired Rights Directive does not apply the following provisions shall apply:

* 1. The Supplier shall provide a list to the Customer or the Replacement Supplier (as appropriate), detailing all those employees who immediately before the date on which the Customer or the Replacement Supplier (as appropriate) started to perform the Services, had as their primary purpose the performing of the Service for the Customer.
  2. The Customer may in its discretion and shall advise the Replacement Supplier that it may in its discretion, make to any of the employees identified on the list provided by the Supplier under paragraph 64.1, an offer, in writing, to employ that employee under a new contract of employment.
  3. When an offer of employment has been made by the Customer or Replacement Supplier and accepted by any employee or worker, the Supplier shall and shall procure that any Sub-Contractor shall, permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the Supplier, which could be without the employee or worker having worked his full notice period, if the employee so requests.
  4. If the employee does not accept an offer of employment made by the Customer or Replacement Supplier, or no such offer is made, the employee shall remain employed by the Supplier (or the relevant Sub-Contractor, as the case may be) and all Employment Liabilities in relation to the employee shall remain with the Supplier or the relevant Sub-Contractor and the Supplier shall indemnify the Customer for itself and on behalf of any Replacement Supplier against any Employment Liabilities that either of them may incur in respect of any such employees of the Supplier or the relevant Sub-Contractor.]

CRiTPA will apply to paragraphs 52, 57 and 64.4 so that any Former Supplier shall have the right to enforce the obligations owed and the indemnities given to it pursuant to those paragraphs in its own right pursuant to Section 1(1) of CRiTPA

PART E

conduct of claims

This paragraph 66 shall apply to the conduct, by a Party from whom an indemnity is sought under this Schedule 9, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The Party having, or claiming to have, the benefit of the indemnity is referred to as the “Beneficiary” and the Party giving the indemnity is referred to as the “Indemnifier”.

If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Schedule 9 (“Claim”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the Claim.

Subject to paragraphs 70 and 71 below, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to paragraph 70 below, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.

With respect to any Claim conducted by the Indemnifier pursuant to paragraph 68 above:

* 1. the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  2. the Indemnifier shall not bring the name of the Beneficiary into disrepute;
  3. the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  4. the Indemnifier shall conduct the Claim with all due diligence.

The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

* 1. the Indemnifier is not entitled to take conduct of the Claim in accordance with paragraph 68 above;
  2. the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within ten (10) Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
  3. the Indemnifier fails to comply in any material respect with the provisions of paragraph 69 above.

SENSITIVE CLAIMS

With respect to any Claim for which the Customer or the Supplier are the Beneficiary and the conduct of which the Customer or the Supplier acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Customer or the Supplier (“Sensitive Claim”), the Indemnifier shall only be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.

The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which paragraph 71 above applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

RECOVERY OF SUMS

If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

* 1. an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
  2. the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

MITIGATION

Each of the Customer and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule 9.

SUB-CONTRACTORS

References in this Schedule 9 to the Supplier shall include any relevant Supplier party providing any of the Services.

Where a provision in this Schedule 9 imposes an obligation on the Supplier and/or where Supplier provides an indemnity, undertaking or warranty in this Schedule, the Supplier shall procure that each of its Sub-Contractors or other agents and contractors shall comply with such obligation and/or provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

References in this Schedule 9 to the Former Suppliers shall include any of their relevant sub-contractors providing any services which are the same as or similar to the Services which are provided by the Supplier in replacement of those services.

ANNEX 1: PENSIONS

PURPOSE AND STRUCTURE OF THIS ANNEX 1

This Annex 1 sets out the pension arrangements for employees whose employment is transferred from the Customer or a Former Supplier to the Supplier through a Relevant Transfer with effect on and from the Transfer Date.

This Annex 1 comprises five (5) sections:

* Section A contains definitions which apply for the purposes of this Annex 1 only;
* Section B contains provisions governing the pensions aspects of any Relevant Transfer of any Transferring Pensionable Customer Employee;
* Section C contains provisions governing the pensions aspects of any Relevant Transfer of any Second Generation Fair Deal Employee to the Supplier from any Former Supplier;
* Section D contains provisions governing the resolution of any dispute relating to actuarial calculations required under this Annex 1; and
* Section E contains provisions governing the pensions aspects of the termination of the Services or any part of them.

SECTION A – DEFINITIONS FOR PENSIONS MATTERS

For the purposes of this Annex 1, the following terms have the following meanings:

|  |  |
| --- | --- |
| “Actuary” | a Fellow of either the Institute of Actuaries or Faculty of Actuaries or any successor to such a body; |
| “Broadly Comparable” | in respect of a pension scheme, a status demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate relating to:  the [\*\*\* insert name of relevant public sector pension scheme \*\*\*] (in respect of Transferring Pensionable Customer Employees); or  the [\*\*\* insert name of relevant public sector pension scheme \*\*\*] (in respect of Second Generation Fair Deal Employees). |
| “Customer’s Actuary” | [an Actuary employed by [\*\*\* insert name of firm \*\*\*] who is advising the Customer in relation to the pensions aspects of this Call Off Contract]/[the Government Actuary’s Department]; |
| “Employee” | any Transferring Pensionable Customer Employee or Second Generation Fair Deal Employee; |
| “Former Supplier’s Actuary” | an Actuary employed by [\*\*\* insert name of firm \*\*\*] who is advising the Former Supplier in relation to pension aspects of this Call Off Contract or its contract with the Customer, as appropriate; |
| “Former Supplier’s Actuary’s Letter” | the letter in the agreed form signed by the Former Supplier’s Actuary and the Customer’s Actuary, a copy of which is attached to this Annex 1 and identified as Former Supplier’s Actuary’s Letter; |
| “Former Supplier’s Scheme” | a pension scheme established or nominated by the Former Supplier which was certified by the Government Actuary Department as being broadly comparable to t at the effective date of a Relevant Transfer (to which the Employment Regulations applied) of any Second Generation Fair Deal Employee to the Former Supplier; |
| “Payment Date” | as appropriate, the first Working Day more than twenty eight (28) days after the date when the last of the paragraph 82 Provisos and/or the paragraph 89 Provisos of this Annex 1 has been satisfied; |
| [\*\*\* “PCSPS” | the Principal Civil Service Pension Scheme as laid before Parliament on 19 November 1974 under section 2(11) of the Superannuation Act 1972 and subsequently amended; \*\*\*] |
| [\*\*\* “PCSPS Actuary” | an Actuary employed by [\*\*\*insert name of firm\*\*\*] or such other firm engaged from time to time to advise on PCSPS; \*\*\*] |
| [\*\*\* “PCSPS Actuary’s Letter” | the letter in the agreed form signed by the PCSPS Actuary and the Customer’s Actuary, a copy of which is attached to this Annex 1 and identified as PCSPS Actuary’s Letter; \*\*\*] |
| “Pension Service Credit” | a period of pensionable service under the Supplier’s Scheme credited to any Employee in respect of the rights accrued by the Employee under, as appropriate, [\*\*\* PCSPS \*\*\*] or the Former Supplier’s Scheme (including, for the avoidance of doubt and in respect of any Second Generation Fair Deal Employee, rights transferred into the Former Supplier’s Scheme from [\*\*\* PCSPS \*\*\*]) calculated on a day for day, year for year basis (or such other appropriate basis as determined by the [\*\*\* PCSPS Actuary \*\*\*] if, in his reasonable opinion, the actuarial differences between the Supplier’s Scheme and [\*\*\* PCSPS \*\*\*] or the Former Supplier’s Scheme, as appropriate, so require); |
| “Required Transfer Amount One” | the amount calculated in accordance with the assumptions, principles and adjustments (but excluding any timing adjustment in respect of the period after the Transfer Date) contained in the Supplier’s Actuary’s Letter One as representing the amount required to fund the Pension Service Credit for each Transferring Pensionable Customer Employee who takes up Transfer Option One; |
| “Required Transfer Amount Two” | the amount calculated in accordance with the assumptions, principles and adjustments (but excluding any timing adjustment in respect of the period after the Transfer Date) contained in the Supplier’s Actuary’s Letter Two as representing the amount required to fund the Pension Service Credit for each Second Generation Fair Deal Employee who takes up Transfer Option Two; |
| “Second Generation Fair Deal Employee” | means any employee whose employment transfers under a Relevant Transfer from the Former Supplier to the Supplier on the Relevant Transfer Date and who (i) in relation to previous employment with the Customer, had been accruing pension rights as an active member of [insert name of public sector pension scheme] immediately before a Relevant Transfer of his employment from the Customer to the Former Supplier, or a series of Relevant Transfers starting with employment with the Customer and finishing with employment with the Former Supplier, and (ii) had elected to transfer such pension rights from [insert name of public sector pension scheme] to the Former Supplier's Scheme; |
| “Supplier’s Actuary” | an Actuary employed by [\*\*\* insert name of firm \*\*\*] who is advising the Supplier in relation to the pensions aspects of this Call Off Contract; |
| “Supplier’s Actuary’s Letter One” | the letter in the agreed form signed by the Supplier’s Actuary and the Customer’s Actuary, a copy of which is attached to this Annex 1 and identified as Supplier’s Actuary’s Letter One; |
| “Supplier’s Actuary’s Letter Two” | the letter in the agreed form signed by the Supplier’s Actuary and the Former Supplier’s Actuary, a copy of which is attached to this Annex 1 and identified as Supplier’s Actuary’s Letter Two; |
| [Note to the Parties: If the Services will commence on a series of future dates which are unknown at the date of this Call Off Contract (or just one future date), definitions of the Supplier’s Actuary’s Letter One and Supplier’s Actuary’s Letter Two may require revision as follows:  [“a letter which is as far as is reasonably possible based on the draft letter from the [specify]’s Actuary to the [specify]’s Actuary, agreed at or prior to the date of this Call Off Contract between the [insert Party] and the [insert Party] and dated [insert date]. A copy of such draft letter is attached to this Annex 1. . Actuarial bases used by the [specify]’s Actuary to calculate the underlying transfer value at any Transfer Date shall be either (a) those set out in the appendices to the draft letter or (b) those which the [specify]’s Actuary considers appropriate at the time of finalising the draft letter; any variation in the letter as compared with the draft letter shall be confined to legitimate changes to actuarial practice since the date of this Call Off Contract as described at limb (b) of this definition.”] | |
| “Supplier’s Scheme” | a pension scheme established or nominated by the Supplier which is Broadly Comparable at the effective date of the Relevant Transfer of employment of any Employee to the Supplier; |
| “Top Up One” | the amount calculated in accordance with paragraph 84.8 of this Annex 1; |
| “Top Up Two” | the amount calculated in accordance with paragraph 91.8 of this Annex 1; |
| “Transfer Amount One” | the amount calculated in accordance with the assumptions, principles and adjustments contained in the [\*\*\* PCSPS Actuary’s Letter \*\*\*] as representing, for each Transferring Pensionable Customer Employee who takes up Transfer Option One, the value of his accrued rights under [\*\*\* PCSPS \*\*\*] on a past service reserve basis as at the Transfer Date, adjusted to the Payment Date in accordance with the timing adjustment in the [\*\*\* PCSPS Actuary’s Letter \*\*\*]; |
| “Transfer Amount Two” | the amount calculated in accordance with the assumptions, principles and adjustments contained in the Former Supplier’s Actuary’s Letter as representing, for each Second Generation Fair Deal Employee who takes up Transfer Option Two, the value of his accrued rights under the Former Supplier’s Scheme and the value of rights he had accrued under [\*\*\* PCSPS \*\*\*] and transferred into the Former Supplier’s Scheme, on a past service reserve basis as at the Transfer Date, adjusted to the Payment Date in accordance with the timing adjustment in the Former Supplier’s Actuary’s Letter; |
| “Transfer Date” | the date on which the Transferring Pensionable Customer Employee and/or the date on which the Second Generation Fair Deal Employee transfers to the Supplier; |
| “Transfer Option One” | an option given to each Transferring Pensionable Customer Employee to transfer rights [excluding any rights in \*\*\* insert any applicable pensions or rights under the pension scheme which are to be excluded (for example pensions which fall outside of Fair Deal) \*\*\*], accrued under [\*\*\* PCSPS \*\*\*] before the Transfer Date, from [\*\*\* PCSPS \*\*\*] to the Supplier’s Scheme; |
| “Transfer Option Two” | an option given to each Second Generation Fair Deal Employee to transfer rights ([excluding any rights \*\*\* insert any applicable pensions which are not subject to Fair Deal policies]) accrued under [\*\*\* PCSPS \*\*\*] and transferred into the Former Supplier’s Scheme and accrued under the Former Supplier’s Scheme, from the Former Supplier’s Scheme to the Supplier’s Scheme; |
| “Transfer Option Deadline” | the first Working Day to fall at least three (3) months after Transfer Option One or Transfer Option Two has been sent to each Employee, as applicable; |
| “Transferee Employer” | any employer of Transferring Former Supplier Employees immediately after a transfer which is a Relevant Transfer (to which the Employment Regulations [shall] apply) of any Service; and |
| “Transferring Pensionable Customer Employee” | each Customer employee whose employment is transferred to the Supplier (by virtue of being a Relevant Transfer) and who, immediately before such transfer, was a member of the [\*\*\* PCSPS \*\*\*] who was either:  [\*\*\*in reckonable service as defined by rule 1.5 of the 1972 Section of the PCSPS \*\*\*]; or  an active member as defined by rule A.1(4) of the 2002 Section of the PCSPS \*\*\*]; or  an active member as defined by rule A.1(4) of the 2007 Section of the PCSPS \*\*\*]. |

[Note to Customers: The Customer must decide whether it will bear the cost of any Top Up One or Top Up Two payment or whether this risk is to be allocated to the Supplier. This Annex 1 should be amended as applicable to the Customer’s requirements]

SECTION B – PENSIONS ON A TRANSFER OF ANY TRANSFERRING PENSIONABLE CUSTOMER EMPLOYEE

1. ESTABLISHMENT OF THE SUPPLIER’S SCHEME
   1. The Supplier undertakes to establish or nominate the Supplier’s Scheme on or before the Transfer Date.
   2. The Supplier undertakes to supply all material details of the Supplier’s Scheme to the Customer at least twenty one (21) Working Days before the Transfer Date. This must include evidence showing that a certificate from the Government Actuary’s Department certifying that the Supplier’s Scheme is Broadly Comparable will be in force as at the Transfer Date.
2. JOINING THE SUPPLIER’S SCHEME
   1. Subject to paragraph 79.2 and 79.3 of this Annex 1, the Supplier shall procure that each Transferring Pensionable Customer Employee is admitted to the Supplier’s Scheme as an active member with effect on and from the Transfer Date.
   2. The Customer shall procure that each Transferring Pensionable Customer Employee is informed of such admission referred to in paragraph 79.1 at least five (5) Working Days before the Transfer Date.
   3. Each Transferring Pensionable Customer Employee has the right to opt out of automatic admission to the Supplier’s Scheme. The Customer shall procure that each Transferring Pensionable Customer Employee is informed at least five (5) Working Days before the Transfer Date. of the right to opt out and of the manner of exercising the right (by way of written notice to the Supplier).
3. TRANSFER OPTION ONE AND PENSION SERVICE CREDIT
   1. The Customer shall use all reasonable endeavours to procure that Transfer Option One is sent to each Transferring Pensionable Customer Employee no later than ten (10) Working Days following the receipt by the Supplier or the Supplier’s Actuary, as appropriate, of all such information and documentation as is relevant in relation to the description of Transfer Option One.
   2. This paragraph 80.2 is subject always to prior receipt of Transfer Amount One and, if relevant, Top Up One, if any, by the trustees of the Supplier’s Scheme in accordance with paragraphs 82 and 84 respectively of this Annex 1. The Supplier shall procure that each Transferring Pensionable Customer Employee who takes up Transfer Option One is granted his Pension Service Credit as soon as reasonably practicable following receipt of Transfer Amount One and, where relevant, Top Up One, if any, in accordance with paragraphs 82 and 84 respectively of this Annex 1.
4. CALCULATION AND VERIFICATION OF TRANSFER AMOUNT ONE
   1. The Customer shall use all reasonable endeavours to procure that the [\*\*\* PCSPS Actuary \*\*\*] calculates the Transfer Amount One within three (3) months after the Transfer Option Deadline.
   2. The Customer shall use all reasonable endeavours to procure that the Supplier’s Actuary is notified of the Transfer Amount One, and any appropriate underlying methodology, within three (3) months after the Transfer Option Deadline.
   3. The Supplier shall procure that, within four (4) weeks after having been notified of the Transfer Amount One, the Supplier’s Actuary verifies such calculation or sets out in writing to the [\*\*\* PCSPS Actuary \*\*\*] his reasons for not verifying such calculation.
   4. This paragraph 81.4 applies where the Supplier’s Actuary sets out in writing his reasons for not verifying the calculation of the Transfer Amount One in accordance with paragraph 81.3 of this Annex 1. Where this paragraph 81.4 applies, the Customer and the Supplier shall, as appropriate, use all reasonable endeavours to procure that the Supplier’s Actuary and the [\*\*\* PCSPS Actuary \*\*\*] work together to agree the Transfer Amount One within a period agreed to be reasonable by the Supplier’s Actuary and the [\*\*\* PCSPS Actuary \*\*\*].
   5. The Customer and the Supplier shall, as appropriate, use all reasonable endeavours to procure that the [\*\*\* PCSPS Actuary \*\*\*] and the Supplier’s Actuary shall act reasonably and shall cooperate with each other for the purposes of this paragraph 81.
   6. If the Supplier’s Actuary and the [\*\*\* PCSPS Actuary \*\*\*] fail to agree the Transfer Amount One in accordance with paragraph 81.4 of this Annex 1, paragraph 92 of this Annex 1 shall apply.
5. PAYMENT OF TRANSFER AMOUNT ONE
   1. paragraph 82 of this Annex 1 is subject always to the paragraph 82 Provisos.
   2. The Customer shall use all reasonable endeavours to procure that the Transfer Amount One is transferred in cash to the trustees of the Supplier’s Scheme on the Payment Date.
   3. The Supplier agrees[, following resolution of all material queries in a time period agreed to be reasonable by both the Supplier and the Customer,] to fully accept the outcome of the exercise of Transfer Option One. The Supplier agrees to use all reasonable endeavours to procure that the trustees of the Supplier’s Scheme shall accept the Transfer Amount One and, where relevant, Top Up One, if any.
   4. The paragraph 82 Provisos are:
      1. the Transfer Option Deadline has passed;
      2. the Customer has provided to the trustees of the Supplier’s Scheme completed and signed forms of consent in respect of the transfer of accrued rights under [\*\*\* PCSPS \*\*\*] from each Transferring Pensionable Customer Employee who takes up Transfer Option One;
      3. a contracting-out certificate in respect of the Supplier’s Scheme has been issued which covers the employment of the Transferring Pensionable Customer Employees;
      4. the Transfer Amount One has been agreed under paragraph 81 of this Annex 1; and
      5. the trustees of the Supplier’s Scheme have confirmed in writing (and have not revoked that confirmation) to the administrators of [\*\*\* PCSPS \*\*\*] that they are ready, willing and able to receive the Transfer Amount One and, where relevant, Top Up One, if any.
6. SUPPLIER’S FURTHER OBLIGATIONS
   1. The Supplier covenants with the Customer that the Supplier shall:
      1. secure the status of the Supplier’s Scheme as a registered pension scheme under the Finance Act 2004 or any statutory modification or re-enactment of that Act;
      2. procure that the Supplier’s Scheme is contracted-out on a salary-related basis using the reference scheme test;
      3. procure that the Supplier’s Scheme is able to and shall accept a bulk past service transfer;
      4. procure that no amendments are made to the provisions of the Supplier’s Scheme which would cause it to cease to be certified by the Government Actuary’s Department as Broadly Comparable[, and in respect of such certification, a certificate was supplied in accordance with paragraph 78.2 of this Annex 1, prior to the date on which payment of the Transfer Amount One and, where relevant, Top Up One, if any, is made to the Supplier’s Scheme under paragraphs 82 and 84 respectively of this Annex 1]; and
      5. procure that the benefits offered under the Supplier’s Scheme for each Transferring Pensionable Customer Employee in respect of employment after the Transfer Date are Broadly Comparable.
   2. The Supplier shall comply with any applicable obligations under section 258 of the Pensions Act 2004.
7. REQUIRED TRANSFER AMOUNT ONE AND TOP UP ONE
   1. paragraph 84 of this Annex 1 applies where the Customer has notified the Supplier that it will pay any shortfall between the Transfer Amount and the amount required by the trustees of the Supplier’s Scheme to fund the Pension Service Credit in the Supplier’s Scheme in respect of each Transferring Pensionable Customer Employee who takes up Transfer Option One.
   2. The Supplier shall procure that the Supplier’s Actuary calculates the Required Transfer Amount One within three (3) months of the Transfer Option Deadline.
   3. The Supplier shall procure that the [\*\*\* PCSPS Actuary \*\*\*] is notified of the Required Transfer Amount One, and any appropriate underlying methodology, within three (3) months of the Transfer Option Deadline.
   4. The Customer shall procure that, within four (4) weeks of having been notified of the Required Transfer Amount One, the [\*\*\* PCSPS Actuary \*\*\*] verifies such calculation or sets out in writing to the Supplier’s Actuary his reasons for not verifying such calculation.
   5. This paragraph 84.5 applies where the [\*\*\* PCSPS Actuary \*\*\*] sets out in writing his reasons for not verifying the calculation of the Required Transfer Amount One in accordance with paragraph 84.4 of this Annex 1. Where this paragraph 84.5 applies, the Customer and the Supplier, as appropriate, shall use all reasonable endeavours to procure that the [\*\*\* PCSPS Actuary \*\*\*] and the Supplier’s Actuary work together to agree the Required Transfer Amount One within a period agreed to be reasonable by the [\*\*\* PCSPS Actuary \*\*\*] and the Supplier’s Actuary.
   6. The Customer and the Supplier, as appropriate, shall use all reasonable endeavours to procure that the [\*\*\* PCSPS Actuary \*\*\*] and the Supplier’s Actuary act reasonably and cooperate with each other for the purposes of this paragraph 84.
   7. If the [\*\*\* PCSPS Actuary \*\*\*] and the Supplier’s Actuary fail to agree the Required Transfer Amount One in accordance with paragraph 84.5 of this Annex 1, paragraph 15 of this Annex 1 shall apply.
   8. Where relevant, as soon as reasonably possible after the calculation and verification or determination of the Required Transfer Amount One, as appropriate, Top Up One shall be calculated (ignoring, for the purposes of this calculation, any timing adjustment relating to the period after the Payment Date) by the Supplier’s Actuary and verified by the [\*\*\* PCSPS Actuary \*\*\*], in accordance with the following formula:

B minus A as varied in accordance with C but subject to D, where:

A means the Transfer Amount One;

B means the Required Transfer Amount One (ignoring, for the purposes of this calculation, any timing adjustment relating to the period after the Transfer Date);

C means the timing adjustment contained in the Supplier’s Actuary’s Letter One for the period on and from the Transfer Date up to and including the Payment Date; and

D means that Top Up One shall be deemed to be zero where such calculation produces a negative result.

* 1. Where relevant, the Customer shall pay Top Up One (as adjusted by the timing adjustment set out in the Supplier’s Actuary’s Letter One for the period from the Payment Date through to the date on which payment is made), if any, to the Supplier no later than five (5) Working Days from the date of the calculation and verification or, as appropriate, determination of Top Up One.
  2. Where relevant, the Supplier shall, immediately on receipt of Top Up One, pay Top Up One to the trustees of the Supplier’s Scheme.

SECTION C – PENSIONS ON TRANSFER OF ANY SECOND GENERATION FAIR DEAL EMPLOYEE

1. ESTABLISHMENT OF THE SUPPLIER’S SCHEME
   1. The Supplier undertakes to establish or nominate the Supplier’s Scheme on or before the Transfer Date.
   2. The Supplier undertakes to supply all material details of the Supplier’s Scheme to the Customer at least twenty one (21) Working Days before the Transfer Date. This must include evidence that a valid certificate from the Government Actuary’s Department certifying that the Supplier’s Scheme is Broadly Comparable will be in force at the Transfer Date.
2. JOINING THE SUPPLIER’S SCHEME
   1. Subject to paragraph 86.2 of this Annex 1, the Supplier shall procure that each Second Generation Fair Deal Employee is automatically admitted to the Supplier’s Scheme as an active member with effect on and from the Transfer Date.
   2. The Customer shall procure that each Second Generation Fair Deal Employee is informed of such automatic admission at least five (5) Working Days before the Transfer Date.
   3. Each Second Generation Fair Deal Employee has the right to opt out of automatic admission to the Supplier’s Scheme. The Customer shall procure that each Second Generation Fair Deal Employee is informed of this right and of the manner of exercise of this right (by way of written notice to the Supplier on or before the Transfer Date) at least five (5) Working Days before the Transfer Date.
3. TRANSFER OPTION TWO AND PENSION SERVICE CREDIT
   1. The Supplier shall use all reasonable endeavours to procure that Transfer Option Two is sent to each Second Generation Fair Deal Employee no later than ten (10) Working Days following the receipt by the Supplier or the Supplier’s Actuary, as appropriate, of all such information and documentation as is relevant in relation to the description of the Transfer Option Two.
   2. This paragraph 87.2 is subject always to prior receipt of Transfer Amount Two and, where relevant, Top Up Two, if any, by the trustees of the Supplier’s Scheme in accordance with paragraphs 89 and 91 respectively of this Annex 1. The Supplier shall procure that each Second Generation Fair Deal Employee who takes up Transfer Option Two is granted his Pension Service Credit as soon as reasonably practicable following receipt of the Transfer Amount Two and, where relevant, Top Up Two, if any, in accordance with paragraphs 89 and 91 respectively of this Annex 1.
4. CALCULATION AND VERIFICATION OF TRANSFER AMOUNT TWO
   1. The Customer shall use all reasonable endeavours to procure that the Former Supplier’s Actuary (or for the purposes of this paragraph 88.1, the Customer Actuary where the Customer determines at its sole discretion, that this is not practical or possible) calculates the Transfer Amount Two within three (3) months of the Transfer Option Deadline.
   2. The Customer shall use all reasonable endeavours to procure that the Supplier’s Actuary is notified of the Transfer Amount Two, and any appropriate underlying methodology, within three (3) months of the Transfer Option Deadline.
   3. The Supplier shall procure that, within four (4) weeks of having been notified of the Transfer Amount Two, the Supplier’s Actuary verifies such calculation or sets out in writing to the Former Supplier’s Actuary his reasons for not verifying such calculation.
   4. This paragraph 88.4 applies where the Supplier’s Actuary sets out in writing his reasons for not verifying the calculation of the Transfer Amount Two in accordance with paragraph 88.3 of this Annex 1. Where this paragraph 88.4 applies, the Supplier shall use all reasonable endeavours to procure that the Supplier’s Actuary works with the Former Supplier’s Actuary, the Customer having used all reasonable endeavours to procure that the Former Supplier’s Actuary works with the Supplier’s Actuary for the purposes of this paragraph 88.4, to agree the Transfer Amount Two within a period agreed to be reasonable by the Supplier’s Actuary and the Former Supplier’s Actuary.
   5. The Customer and the Supplier, as appropriate, shall use all reasonable endeavours to procure that the Former Supplier’s Actuary and the Supplier’s Actuary act reasonably and cooperate with each other for the purposes of this paragraph 88.
   6. If the Supplier’s Actuary and the Former Supplier’s Actuary fail to agree the Transfer Amount Two in accordance with paragraph 88.4 of this Annex 1, paragraph 92 of this Annex 1 shall apply.
5. PAYMENT OF TRANSFER AMOUNT TWO
   1. Paragraph 89 of this Annex 1 is subject always to the paragraph 12 Provisos.
   2. The Customer shall use all reasonable endeavours to procure that the Transfer Amount Two is transferred in cash to the trustees of the Supplier’s Scheme on the Payment Date.
   3. The Supplier agrees, following resolution of all material queries in a time period agreed to be reasonable by both the Supplier and the Customer, to fully accept the outcome of the exercise of Transfer Option Two. The Supplier agrees to use all reasonable endeavours to procure that the trustees of the Supplier’s Scheme shall accept Transfer Amount Two and, where relevant, Top Up Two, if any.
   4. The paragraph 89 Provisos are:
      1. the Transfer Option Deadline has passed;
      2. the Customer has provided to the trustees of the Supplier’s Scheme completed and signed forms of consent in respect of the transfer of rights under Former Supplier’s Scheme (including, for the avoidance of doubt rights accrued under [\*\*\* PCSPS \*\*\*] in respect of employment with the Customer prior to transfer to the Former Supplier and transferred into the Former Supplier’s Scheme) from each Second Generation Fair Deal Employee who takes up Transfer Option Two;
      3. a contracting-out certificate in respect of the Supplier’s Scheme has been issued which covers the employment of the Second Generation Fair Deal Employees;
      4. the Transfer Amount Two has been agreed under paragraph 88 of this Annex 1; and
      5. the trustees of the Supplier’s Scheme have confirmed in writing (and have not revoked that confirmation) to the trustees of the Former Supplier’s Scheme that they are ready, willing and able to receive the Transfer Amount Two and, where relevant, Top Up Two, if any.
6. SUPPLIER’S FURTHER OBLIGATIONS
   1. The Supplier covenants with the Customer that the Supplier shall:
      1. use all reasonable endeavours to secure the status of the Supplier’s Scheme as a registered pension scheme under the Finance Act 2004 or any statutory modification or re-enactment of that Act;
      2. procure that the Supplier’s Scheme is contracted-out on a salary-related basis using the reference scheme test;
      3. procure that the Supplier’s Scheme is able to and shall accept a bulk past service transfer;
      4. procure that no amendments are made to the provisions of the Supplier’s Scheme as certified by the Government Actuary’s Department, and in respect of such certification, a certificate was supplied in accordance with paragraph 85.2 of this Annex 1, prior to the date on which payment of the Transfer Amount Two and, where relevant, Top Up Two, if any, is/are made to the Supplier’s Scheme under paragraphs 89 and 91 respectively of this Annex 1; and
      5. procure that the benefits offered under the Supplier’s Scheme for each Second Generation Fair Deal Employee in respect of service after the Transfer Date are Broadly Comparable.
   2. The Supplier shall comply with any applicable obligations under section 258 of the Pensions Act 2004.
7. REQUIRED TRANSFER AMOUNT TWO AND TOP UP TWO
   1. Paragraph 91 of this Annex 1 applies where the Customer has notified the Supplier that it shall pay any shortfall between Transfer Amount Two and the amount required by the trustees of the Supplier’s Scheme to fund the Pension Service Credit in the Supplier’s Scheme in respect of each Second Generation Fair Deal Employee who takes up Transfer Option Two.
   2. The Supplier shall use all reasonable endeavours to procure that the Supplier’s Actuary calculates the Required Transfer Amount Two within three (3) months of the Transfer Option Deadline.
   3. The Supplier shall use all reasonable endeavours to procure that the Customer’s Actuary is notified of the Required Transfer Amount Two, and any appropriate underlying methodology, within three (3) months of the Transfer Option Deadline.
   4. The Customer shall procure that, within four (4) weeks of having been notified of the Required Transfer Amount Two, the Customer’s Actuary verifies such calculation or sets out in writing to the Supplier’s Actuary his reasons for not verifying such calculation.
   5. This paragraph 91.5 applies where the Customer’s Actuary sets out in writing his reasons for not verifying the calculation of the Required Transfer Amount Two in accordance with paragraph 91.4 of this Annex 1. Where this paragraph 91.5 applies, the Customer and the Supplier shall, as appropriate, procure that the Customer’s Actuary and the Supplier’s Actuary work together to agree the Required Transfer Amount Two within a period agreed to be reasonable by the Customer’s Actuary and the Supplier’s Actuary.
   6. The Customer and the Supplier, as appropriate, shall use all reasonable endeavours to procure that the Customer’s Actuary and the Supplier’s Actuary act reasonably and cooperate with each other for the purposes of this paragraph 91.
   7. If the Customer’s Actuary and the Supplier’s Actuary fail to agree the Required Transfer Amount Two in accordance with paragraph 91.5 of this Annex 1, paragraph 92 of this Annex 1 shall apply.
   8. Where relevant, as soon as reasonably possible after the calculation and verification or determination of the Required Transfer Amount Two, as appropriate, Top Up Two (ignoring, for the purposes of this calculation, any timing adjustment relating to the period after the Payment Date) shall be calculated by the Supplier’s Actuary and verified by the Customer’s Actuary, in accordance with the following formula:

B minus A as varied in accordance with C but subject to D, where:

A means the Transfer Amount Two;

B means the Required Transfer Amount Two (ignoring, for the purposes of this calculation, any timing adjustment relating to the period after the Transfer Date);

C means the timing adjustment contained in the Supplier’s Actuary’s Letter Two for the period on and from the Transfer Date up to and including the Payment Date; and

D means that Top Up Two shall be deemed to be zero where such calculation produces a negative result.

* 1. Where relevant, the Customer shall pay Top Up Two (as adjusted by the timing adjustment set out in the Supplier’s Actuary’s Letter Two for the period from the Payment Date through to the date on which payment is made), if any, to the Supplier no later than five (5) Working Days from the date of the calculation and verification or, as appropriate, determination of Top Up Two.
  2. Where relevant, the Supplier shall, immediately on receipt of Top Up Two, pay Top Up Two to the trustees of the Supplier’s Scheme.

SECTION D – DISPUTE RESOLUTION OF PENSIONS MATTERS

1. DISPUTE RESOLUTION
   1. In the event of dispute between, as appropriate, the [\*\*\* PCSPS Actuary \*\*\*], the Customer’s Actuary and/or the Supplier’s Actuary which cannot be resolved within fourteen (14) days of such dispute arising, either the Customer or the Supplier may request that the matter is referred to an independent Actuary.
   2. If the Parties fail to agree on the identity of the independent Actuary within a reasonable period of time, he shall be appointed by the President for the time being of the Institute of Actuaries, or such equivalent officer of any successor organisation, for definitive determination of the disputed matter.
   3. The independent Actuary shall determine the dispute by acting as an expert and not an arbitrator and his decision and directions shall be binding upon the Customer and the Supplier.
   4. The charges and expenses incurred pursuant to this provision shall be paid one-half by the Customer and one-half by the Supplier unless the independent Actuary determines otherwise.

SECTION E – PENSIONS ON TERMINATION OF THE CONTRACT

1. THE SUPPLIER’S OBLIGATIONS ON ANY FUTURE TRANSFER
   1. The Supplier shall, and shall use all reasonable efforts to procure that the trustees of the Supplier’s Scheme, do and/or provide all such acts and things as may, in the reasonable opinion of the Customer, be necessary or desirable to enable the Customer, and/or a Transferee Employer, to achieve the following objectives:
      1. to maintain ongoing pension accrual for any Employee whose employment is compulsorily transferred at the termination of the Services or any part of them in a pension arrangement where the benefits are Broadly Comparable (for the avoidance of doubt, in respect of a Transferring Pensionable Customer Employee, the measure is against the benefits that he was accruing in [\*\*\* PCSPS \*\*\*] immediately before the Transfer Date and, in respect of a Second Generation Fair Deal Employee, the measure is against the benefits that he was accruing in [\*\*\* PCSPS \*\*\*] immediately before the transfer of his employment to the Former Supplier);
      2. to comply with all applicable legislation, binding codes of practice and non-binding codes of practice issued by any statutory authority (including but not limited to any then applicable principles of "Fair Deal" set out in the HM Treasury guidance note "Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues" dated June 2004 (as amended) and/or any successor policy to Fair Deal); and
      3. to ensure that each Employee whose employment is so compulsorily transferred is given the Pension Transfer Rights.
      4. not to adversely affect pension rights accrued by ((including any rights attributable to a credit for past service) ) any such Transferring Pensionable Customer Employee in the period ending on the date of the relevant future transfer;
      5. provide for Transferring Former Supplier Employees who are not subject to "Fair Deal" as described in 93.1.3 above, defined benefits or defined contribution terms for service from the Transfer Date which comply with s.257 of the Pensions Act 2004 and, if relevant, Part I of the Pensions Act 2008;

such Broad Comparability in 93.1.1 above being assessed by the Government Actuary's Department at the relevant time to reflect prevailing Government guidance on transfers;

* 1. The “Pension Transfer Rights” are each of
     1. the option to transfer fully funded rights from the Supplier’s Scheme in respect of his pensionable service under the Supplier’s Scheme (excluding any rights transferred to the Supplier’s Scheme from [\*\*\* PCSPS \*\*\*]) such rights being funded on a reasonable past service reserve basis;
     2. the option to transfer any rights transferred to the Supplier’s Scheme from [\*\*\* PCSPS \*\*\*] and the Former Supplier’s Scheme under the provisions of this Annex 1 to an occupational pension scheme sponsored by the Transferee Employer on an actuarial basis which is, as at the time of the future Relevant Transfer of employment, an actuarial basis which is no less favourable than that applied in the calculation of, ( as applicable);, Transfer Amount One or, if greater, the Required Transfer Amount One; or Transfer Amount Two or, if greater, the Required Transfer Amount Two; as at the Transfer Date, according to, and calculated using the method and assumptions set out in, the [\*\*\* PCSPS Actuary’s Letter \*\*\*] or the Supplier’s Actuary’s Letter, as appropriate; and
     3. the right to retain the rights referred to in paragraphs 93.2.1 and/or 93.2.2 in the Supplier’s Scheme is on the fully funded basis set out in paragraph 93.2.2 above.
  2. Where any Employee’s employment is terminated by the Supplier for reasons of redundancy the Supplier shall at its own expense:
     1. procure that the trustees of the Supplier’s Scheme pay out from the Supplier’s Scheme an amount equivalent to any additional pension benefits (both in value and manner of payment) which would have been paid to the Employee from [\*\*\* PCSPS \*\*\*] had the Employee remained in service with the Customer and remained a member of [\*\*\* PCSPS \*\*\*], had [\*\*\* PCSPS \*\*\*] not changed and had the Employee been made redundant by the Customer at the date on which the Supplier terminates his employment;
     2. provide compensation to the Employee which is equivalent in terms of value and manner of payment to that payable under paragraph 93.3.1 of this Annex 1 where the Supplier is unable to procure the additional pension benefits from the Supplier’s Scheme in accordance with paragraph 93.3.1 of this Annex 1; and
     3. procure the payment of any other benefit other than those referred to at paragraphs 93.3.1 and 93.3.2 of this Annex 1 that are not old age, invalidity or survivors’ benefits either through the Supplier’s Scheme or, if that is not possible, by providing compensation, where the obligation to do so has transferred to the Supplier under the Acquired Rights Directive and/or the Employment Regulations and/or in accordance with applicable statements of practice and/or guidance of the Government Actuary’s Department.
  3. Paragraph 93 of this Annex 1 shall only apply to the extent that the relevant benefit shall not be provided under [\*\*\* PCSPS \*\*\*] or, as the case may, the Former Supplier’s Scheme.

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CALL OFF SCHEDULE 10: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION
   1. This Call Off Schedule specifies the range of Alternative Clauses and Additional Clauses that may be requested at paragraph 7.3 of the Order Form and, if requested, shall apply to this Call Off Contract.
2. CLAUSES SELECTED
   1. The Customer may, in the Order Form, request the following Alternative Clauses:
      1. Scots Law (see paragraph 4.1 below);
      2. Northern Ireland Law (see paragraph 4.2 below)
      3. Termination (see paragraph 4.3 below);
      4. Non-discrimination (see paragraph 4.4 below); or
      5. Non-Crown Bodies (see paragraph 4.5 below); or
      6. Non-FOIA Public Bodies (see paragraph 4.6 below).
   2. The Customer, in the Order Form, requested that the following Additional Clauses should apply:
      1. Security Measures (see paragraph 5 below);
3. IMPLEMENTATION
   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 1.1 shall be deemed to be incorporated into this Call Off Contract.
4. ALTERNATIVE CLAUSES

SCOTS LAW

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.

NORTHERN IRELAND LAW

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.

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”.

DISCRIMINATION (Clause [39])

The originalClause [39.1] shall be replaced with the following:

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.

NON-CROWN BODIES

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

In Clause [33.3.5.2], "...[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".

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."

1. ADDITIONAL CLAUSES: GENERAL
   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.

* 1. The following new Clause [57] shall apply:

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

1. [SECURITY MEASURES]
   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:
      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;
      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;
      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
      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.
   2. Without prejudice to the provisions of Clause 57.1, the Supplier shall, both before and after the completion or termination of this Call Off Contract, take all reasonable steps to ensure:
      1. no such person as is mentioned in Clauses 57.1, 57.1.1 or 57.1.2 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;
      2. that no visitor to any premises in which there is any item to be supplied under this Call Off Contract or where Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter unless the visitor is authorised in writing by the Customer so to do;
      3. that no photograph of any item to be supplied under this Call Off Contract or any portions of the Services shall be taken except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;
      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
      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 57.2.3, 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.
   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 57 shall be final and conclusive.
   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.
   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.
   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.
   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 57.1and 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 57 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.
   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 57, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:
      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 57 into operation in such cases and to such extent as the Customer may direct;
      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 57, notify such breach forthwith to the Customer; and
      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 57.11.
   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 57 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.
   10. Nothing in this Clause 57 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.
   11. If the Customer shall consider that any of the following events has occurred:
       1. that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 57; or
       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
       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 57.11.2, 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.

* 1. A decision of the Customer to terminate this Call Off Contract in accordance with the provisions of Clause 57.11 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.
  2. Supplier’s notice
     1. The Supplier may within five (5) Working Days of the termination of this Call Off Contract in accordance with the provisions of Clause 57.11, 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 57.11, 57.11.1 or 57.11.2 and to give particulars of that event; and
     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.
  3. Matters pursuant to termination
     1. The termination of this Call Off Contract pursuant to Clause 57.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;
     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;
     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 57 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 57.14.3, 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 57.14.3; and
     4. Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination of this Call Off Contract
  4. If, after notice of termination of this Call Off Contract pursuant to the provisions of 57.11:
     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 57.13.1; or
     2. the Customer shall state in the statement and particulars detailed in Clause 57.13.2. that the event upon which the Customer's decision to terminate this Call Off Contract was based is an event mentioned in Clause 57.11.3,

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

* + 1. 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 57.11 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;
    2. 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;
    3. 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;
    4. if hardship to the Supplier should arise from the operation of this Clause 57.15 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 57.15.6 shall be final and conclusive; and
    5. subject to the operation of Clauses 57.15.3, 57.15.4, 57.15.5 and 57.15.6 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.

1. [Guidance Note: Include details of Customer’s Representative, Invoice address, Customer contract reference number and Customer contact details (including postal address and email address), any Key Personnel and/or other Customer profile information as appropriate] [↑](#footnote-ref-1)
2. [Guidance Note: Include details of Supplier’s Representative, Supplier’s account manager, Supplier’s contact details (including postal address and email address), any Key Personnel and/or other Supplier profile information as appropriate] [↑](#footnote-ref-2)
3. [Guidance Note: Insert the date on which the Call Off Contract is to commence] [↑](#footnote-ref-3)
4. [Guidance Note: Insert the date on which the Call Off Contract is to expire or leave blank if appropriate. Please see Clause 4 (Call Off Contract Period) of the Template Call Off Terms] [↑](#footnote-ref-4)
5. [Guidance note: Include a description of the Services required. In the event that your specification or requirements in relation to the Services are particularly detailed or complex, consider setting out this information in a separate Call Off Schedule. Details of all the Services can be found in Part A of Framework Schedule 1 (Services and Key Performance Indicators)] [↑](#footnote-ref-5)
6. [Guidance Note: Insert details of Services] [↑](#footnote-ref-6)
7. [Guidance Note: Include details of where the Services will be Delivered and any related instructions] [↑](#footnote-ref-7)
8. [Specify the date(s) and the time(s) or time period(s) when the Services completed. See also Clause 6.2.2 of the Template Call Off Terms in relation to time of Delivery. Consider if you should change this to 'time of the essence” (see Clause 15.7 of the Template Call Off Terms)] [↑](#footnote-ref-8)
9. [Guidance Note: See Clauses 6 and 15 of the Template Call Off Terms and refer to the Specification in Part A of Framework Schedule 1 (Services and Key Performance Indicators). Consider If your need an Implementation Plan including/or dates for delivery =of the Services. If so, consider what Milestones should be inserted, together with associated Deliverables and Milestone Dates for achievement of those Milestones. Consider if you should ask the Supplier to provide a draft Implementation Plan and, if so, specify within what period. See also Clauses= 6.2.2 = of the Template Call Off Terms in relation to time of Delivery. Consider if you should state 'time of the essence” (see Clause 15.7 of the Template Call Off Terms) in respect of any Milestone Dates. Also consider whether milestone payments should be linked to the Achievement of certain Milestones. If so, set out definition and terms for milestone payments during the Further Competition Procedure and tie this to Clause 22.2 of the Template Call Off Terms and paragraph 5 of the Template Order Form. See also Clause 16.1.2 of the Template Call Off Terms in relation to Delay payments and refine/set out as needed] [↑](#footnote-ref-9)
10. [Guidance Note: See Clause 16.1.2 in relation to Delay Payments. Delete if you order by way of Direct Award] [↑](#footnote-ref-10)
11. [Guidance note: Bulleted list showing all Deliverables (and associated tasks) required for each Milestone] [↑](#footnote-ref-11)
12. [Guidance Note: See Clause 10.1 of the Template Call Off Terms. Consider if inspection of the Premises by the Supplier is required. Insert any issues raised by the Supplier in respect of any aspects of the Premises or Property being unsuitable for the provision of the = Services and any action which is to be taken in respect thereof] [↑](#footnote-ref-12)
13. [Guidance Note: See the definition of the Supplier Software. If necessary, insert here details of any specific software packages that the Supplier will use to provide the Services] [↑](#footnote-ref-13)
14. [Guidance Note: Include any Commercially Sensitive Information of the Supplier and the duration it should be confidential for. This will be relevant in e.g. assisting the Customer in respect of compliance with the Freedom of Information Act (FOIA)] [↑](#footnote-ref-14)
15. [Guidance Note: Insert Customer Responsibilities above (or in the Implementation Plan (if any)). Include details of any specific responsibilities of the Customer for example, the granting of access to the Customer’s Premises, provision of Property, information or equipment etc. and in a separate Call Off Schedule if necessary. See Clauses 6.1.2 and 9.1 of the Template Call Off Terms. Consider whether to include any specific mechanisms to deal with the consequences of a failure by the Customer to comply with its responsibilities e.g. the Supplier will be given extra time to fulfil its obligations] [↑](#footnote-ref-15)
16. [Guidance Note: Consider the list of contractual requirements set out in this paragraph, as indicated in each sub-paragraph and the footnotes therein. Then populate and/or settle this paragraph 7 according to your requirements. Customers placing Orders of the same nature and containing the same requirements may decide to populate and/or settle this information once and repeat it in respect of future Orders] [↑](#footnote-ref-16)
17. [Guidance Note: See Clause 3, Clause 31.4 and Clause 33.1 of the Template Call Off Terms. Consider whether the Supplier should provide a Call Off Guarantee on or before the Call Off Commencement Date. If so, set out the details of the Call Off Guarantor. Delete if you order by way of Direct Award] [↑](#footnote-ref-17)
18. [Guidance Note: See Clause 24.2 of the Template Call Off Terms and state if it should apply. Consider the definition of Relevant Convictions and, if required, set out specific Relevant Convictions. Include in a separate Call Off Schedule if necessary] [↑](#footnote-ref-18)
19. [Guidance Note: See Clause 24.3 of the Template Call Off Terms. If required, include any guidance/procedures that will be used to vet the Staff. Include in a separate Call Off Schedule if necessary. Delete if you order by way of Direct Award] [↑](#footnote-ref-19)
20. [Guidance Note: Clause 26 of the Template Call Off Terms and Call Off Schedule 9 (TUPE & Pensions) relate to the transfer of any employees to the Supplier (incoming and outgoing) in respect of the provision of Services =. Please see the Guidance Note at the outset of Call Off Schedule 9 (TUPE & Pensions). The Customer, based upon a reasonable assessment of facts, to decide if the TUPE provisions should apply. If to apply, please see the guidance in Call Off Schedule 9 (TUPE & Pensions)] [↑](#footnote-ref-20)
21. [Guidance Note: See Clause 20 of the Template Call Off Terms and state if it should apply. Consider whether you require including Call Off Schedule 7 (Exit Planning) or need to set out any specific exit requirements] [↑](#footnote-ref-21)
22. [Guidance Note: See the definitions of Security Policy and Security Management Plan. Consider if you need to set out any specific security requirements. See Appendix A to Call Off Schedule 2 (Security) of the Template Call Off Terms. Consider if you require the Supplier to provide a draft Security Management Plan (on or before the Call Off Commencement Date) in accordance with Call Off Schedule 2 (Security)] [↑](#footnote-ref-22)
23. [Guidance Note: See Clause 28.3.6 of the Template Call Off Terms. Set out any Customer Data that is protectively marked and should be accredited using a specified accreditation policy or system] [↑](#footnote-ref-23)
24. [Guidance Note: See Clause 13 of the Template Call Off Terms. Consider whether you require the application of Call Off Schedule 4 (Testing) or need to set out any specific testing requirements] [↑](#footnote-ref-24)
25. [Guidance Note: See Clause 12 of the Template Call Off Terms and the definition of Standards. Consider whether you need any additional standards. If so, consider setting them out in a separate Call Off Schedule if necessary and refine the definition of Standards by reference to that new Call Off Schedule] [↑](#footnote-ref-25)
26. [Guidance Note: See Clause 25 of the Template Call Off Terms. Insert details of any training that the Supplier is required to provide to the Customer's staff in the use and maintenance of the Services] [↑](#footnote-ref-26)
27. [Guidance Note: Key Performance Indicators are included in Framework Schedule 1 (Services) and are for the Authority to monitor performance of the Framework Agreement. These are separate from Service Levels at call off stage, for which see Clause 14 of the Template Call Off terms and Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring). Populate the Service Levels/Service Credits table in Appendix A of Part A to that Call Off Schedule] [↑](#footnote-ref-27)
28. [Guidance Note: See Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) of the Template Call Off Terms and, in particular, Appendix B to Part A of that Call Off Schedule. Consider if you require the operation of the definition of Critical Service Failure. If so, populate the definition] [↑](#footnote-ref-28)
29. [Guidance Note: See Clause 18 of the Template Call Off Terms and consider if not required. See also Call Off Schedule 5 (Business Continuity and Disaster Recovery) and consider if you need to set out any specific business continuity and disaster recovery requirements] [↑](#footnote-ref-29)
30. [Guidance Note: See Clause 15.9 of the Template Call Off Terms. Consider Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) and, in particular, Appendix A to Part B. Consider if you need to set out any specific monitoring requirements] [↑](#footnote-ref-30)
31. [Guidance Note: See Clause 29.4 of the Template Call Off Terms and consider if the limits of Liability therein are appropriate in respect of your requirements] [↑](#footnote-ref-31)
32. [Guidance Note: See Clause 30 of the Template Call Off Terms. Consider if you require the Supplier to effect and maintain insurance and any specific minimum insurance policies] [↑](#footnote-ref-32)
33. [Guidance Note: See Clause 31.6 of the Template Call Off Terms. Consider if you require a different notice period in respect of termination without cause] [↑](#footnote-ref-33)
34. [Guidance Note: Include any other amendments/refinements to the Template Call-off Terms prior to those becoming the Call Off Terms. Note that any such changes must always be in accordance with the Law and the requirements of Framework Schedule 5 (Call Off Procedure). Also, specify whether any of the specific Alternative Clauses or Additional Clauses set out in Call Off Schedule 10 of the Template Call Off Terms should apply. If you place repeat Orders of the same nature and containing the same requirements, consider creating a customised set of amended/refined Template Call Off Terms or a Call Off Schedule containing those amendments or refinements to the existing Template Call Off Terms (including incorporating any Alternative or Additional Clauses from Call Off Schedule 10) which you can use with every Order] [↑](#footnote-ref-34)