

**Amendment 1
To the
Enterprise License Agreement
Between the
Shropshire Council and ESRI (UK) Ltd. ("Distributor")**

This Amendment No. 1 is entered into by and between Shropshire Council ("hereinafter referred to as "SC"), and ESRI (UK) Ltd. (hereinafter referred to as "Distributor").

WHEREAS, Distributor and SC entered into an Enterprise License Agreement that became effective on 14th February 2013 ("Agreement"); and

WHEREAS, the parties desire to amend the E512SC-G Enterprise License Terms and Conditions of the Agreement

NOW THEREFORE, the parties agree to the following, effective on the date last signed below:

1. That the Agreement be extended for a further year, from 14th February 2016 until 13th February 2017, and in consideration thereof, SC shall pay to Distributor the ELA Fee of £69,000 prior to 14th February 2016.

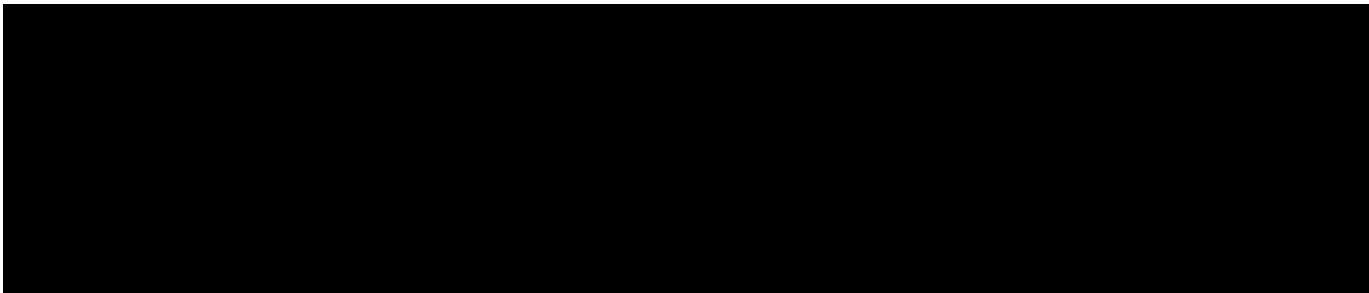
Except as may be specifically modified by this Amendment No. 1 all other terms and conditions of the Agreement and any Amendment(s) or Addendum(s) constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements or representations, written or oral, concerning the subject matter of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 as of the date of the last party to sign below.

ACCEPTED AND AGREED:

SHROPSHIRE COUNCIL

ESRI (UK) LTD.
(Distributor)



Amendment No. 1
To
Enterprise License Agreement

This Amendment No. 1 to Enterprise License Agreement (“Amendment”) modifies the Enterprise License Agreement (“EA”), by and between **Shropshire Council (“Licensee”)** and **Esri (UK) Ltd. (“Distributor”)** as set forth below.

Whereas, Licensee and Distributor executed the EA effective February 14, 2013;

Whereas, the EA has an initial term of 3 years, expiring February 13, 2017; and

Whereas, Licensee and Distributor wish to renew the EA for an additional 3 years (“Renewal Term”); and

NOW THEREFORE, for adequate consideration, the sufficiency of which is hereby acknowledged by the parties, Licensee and Distributor agree that this Amendment, when signed by the parties, shall effect the following modifications to the Agreement:

1. The term of the of the Agreement is modified for the Renewal Term, with the Renewal Term commencing on February 14, 2017 and expiring February 13, 2020.
2. During the Renewal Term described above, APPENDIX A, Products and Deployment Schedule, is deleted and replaced with the attached 2017 APPENDIX A, Products and Deployment Schedule.
3. Licensee shall pay Distributor the new and additional EA Fee as described in the Appendix B attached to this Amendment in accordance with the applicable payment terms in the EA for consideration of this extension to the EA Term. The attached Appendix B replaces in its entirety the Appendix B in the initial EA.

All other terms and conditions of the EA shall remain and in full force and effect.

The parties have executed this Amendment, and it shall become effective on the last date written below.

SHROPSHIRE COUNCIL
(Licensee)

ESRI (UK) LTD.
(Distributor)

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**2017 APPENDIX A
PRODUCTS AND DEPLOYMENT SCHEDULE**

Licensee may Deploy the EA Products up to the total quantity of licenses indicated below to Licensees during the term of this EA.

**Table A-1
EA Products—Uncapped Quantities**

Product Name	Included	Total Qty./Seats to Be Deployed
ArcGIS for Desktop Software (Single Use)		
Advanced (Arc Info)	✓	<i>uncapped</i>
Standard (Arc Editor)	✓	<i>uncapped</i>
Basic (ArcView)	✓	<i>uncapped</i>
ArcGIS for Desktop Extensions (Single Use)		
ArcGIS 3D Analyst	✓	<i>uncapped</i>
ArcGIS Spatial Analyst	✓	<i>uncapped</i>
ArcGIS Geostatistical Analyst	✓	<i>uncapped</i>
ArcGIS Publisher	✓	<i>uncapped</i>
ArcGIS Network Analyst	✓	<i>uncapped</i>
ArcGIS Schematics	✓	<i>uncapped</i>
ArcGIS Workflow Manager	✓	<i>uncapped</i>
ArcGIS Data Reviewer	✓	<i>uncapped</i>
ArcGIS Enterprise		
Enterprise - Advanced	✓	<i>uncapped</i>
Enterprise - Standard	✓	<i>uncapped</i>
Workgroup - Advanced	✓	<i>uncapped</i>
Workgroup - Standard	✓	<i>uncapped</i>
ArcGIS Enterprise Extensions		
ArcGIS 3D Analyst	✓	<i>uncapped</i>
ArcGIS Network Analyst	✓	<i>uncapped</i>
ArcGIS Spatial Analyst	✓	<i>uncapped</i>
ArcGIS Workflow Manager	✓	<i>uncapped</i>
ArcGIS Geostatistical Analyst	✓	<i>uncapped</i>
ArcGIS Schematics	✓	<i>uncapped</i>
ArcGIS Engine (Single Use)	✓	<i>uncapped</i>
ArcGIS Engine Extensions (Single Use)		
ArcGIS 3D Analyst	✓	<i>uncapped</i>
ArcGIS Spatial Analyst	✓	<i>uncapped</i>
ArcGIS Geodatabase Update	✓	<i>uncapped</i>
ArcGIS Network Analyst	✓	<i>uncapped</i>
ArcGIS Schematics Analyst	✓	<i>uncapped</i>
ArcGIS Runtime	✓	<i>uncapped</i>

Product Name	Included	Total Qty./Seats to Be Deployed
ArcGIS Runtime Extensions (Single Use)		
ArcGIS 3D Analyst	✓	<i>uncapped</i>
ArcGIS Spatial Analyst	✓	<i>uncapped</i>
ArcGIS Network Analyst	✓	<i>uncapped</i>

**Table A-2
EA Products—Capped Quantities**

Item	Level (if applicable)	Single Use (if applicable)	Existing Qty. (if applicable)	Qty./Seats to Be Deployed	Total
Esri Developer Network	Standard	n/a	2	0	2

Existing concurrent use licenses being rolled-into agreement that will be covered by maintenance:

Maintenance Items	Concurrent Use	Quantity
ArcGIS for Desktop Basic	CU	30
ArcGIS for Desktop Standard	CU	10
ArcGIS Network Analyst Desktop Extension	CU	2
ArcGIS Publisher Desktop Extension	CU	1
ArcGIS Spatial Analyst Desktop Extension	CU	1
ArcGIS 3D Analyst Desktop Extension	CU	1

Product	Number of Subscriptions	Level 1 Named Users	Level 2 Named Users	Annual Credits
ArcGIS Online Subscription	1		100	50,000

Product	License Type	Quantity	Level 1 Named Users	Level 2 Named Users
ArcGIS Enterprise Named Users	Term License	1		50

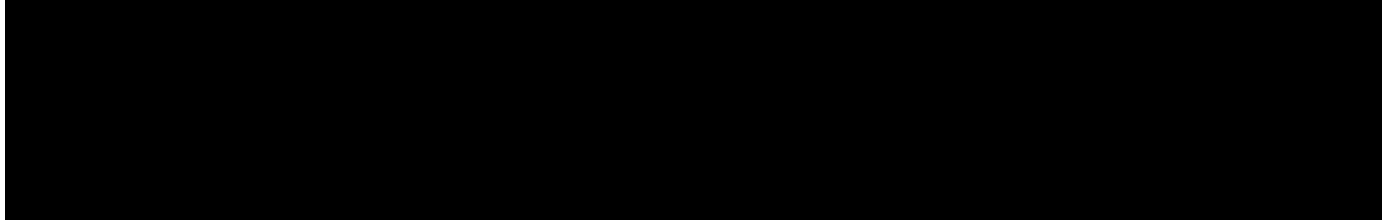
Table A-3

Unit-Priced Items

Licenses and Maintenance for Unit-Priced Items are available at Distributor's list prices and are not included in the EA Fee. Unit-Priced Items will be licensed in accordance with the terms and conditions of the License Agreement.

commercial info

**2016 APPENDIX B
EA FEE SCHEDULE**



Country	United Kingdom
Number of Esri International User Conference Registrations per Year	3
Designated Number of Technical Support Callers	5
Number of Sets of Backup Media, if Requested	2
Renewal Term	3 Years

Crown Commercial Service

Call Off Order Form and Call Off Terms for Local Authority Software Applications

ORDER FORM AND CALL OFF TERMS

PART 1 – ORDER FORM

SECTION A

This Order Form is issued in accordance with the provisions of the Framework Agreement for Local Authority Software Applications. The Supplier agrees to supply the Goods and/or 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.

DATE DD/MM/YYYY
ORDER NUMBER []
FROM Shropshire Council ('CUSTOMER').
TO ESRI (UK) Limited, Millennium House, 65 Walton Street, Aylesbury, Buckinghamshire HP21 7QG ('SUPPLIER' or 'Esri UK').

SECTION B

1. TERM

1.1 Call Off Commencement Date:

14/02/2017

1.2 Call Off Expiry Date:

End date of Call Off Initial Period (which cannot exceed five (5) years from the Call Off Commencement Date)

13/02/2020

End date of Call Off Extension Period (which cannot exceed seven (7) years from the Call Off Commencement Date)

N/A

2. CUSTOMER CORE GOODS AND/OR SERVICES REQUIREMENTS

2.1 Goods and/or Services required

In Call Off Schedule 2 (Services): Support and maintenance for Supplier Software and Third Party Software. Such Services will be provided solely in accordance with the Esri UK Letter Agreement effective 14th February 2017 (see Call Off Terms at Schedule 16).

2.2 Location/Sites of Delivery

[]

2.3 Dates for Delivery of the Goods and/or the Services

N/A

2.4 Implementation Plan

N/A

2.5 Standards

N/A

2.6 Service Levels and Service Credits

N/A

2.7 Critical Service Level Failure

N/A

2.8 Performance Monitoring

N/A

2.9 Period for providing the Rectification Plan

N/A

2.10 Exit Management

N/A

2.11 Quality Plan

N/A

2.12 Supplier Software, Customer Software and Third Party Software

In Call Off Schedule 9 (Supplier Software; Third Party Software); as further detailed in Call Off Schedule 16.

3. SUPPLIER'S INFORMATION

3.1 Supplier's inspection of Sites, Customer System, Customer Property and Customer Assets

N/A

3.2 Commercially Sensitive Information

Individual unit pricing detailed in the Supplier's Quotation and in Call Off Schedule 3 Annex 1. The 'Total' price is not considered commercially sensitive, save where the total quantity of licences is provided together with the total price.

3.3 Termination on Customer Cause for Failure to Pay an undisputed sum

In Clause 42.1.1

4. CUSTOMER RESPONSIBILITIES

4.1 Customer Responsibilities

N/A

5. CALL OFF CONTRACT CHARGES AND PAYMENT

5.1 Call Off Contract Charges payable by the Customer (including any applicable Milestone Payments and/or discount(s), but excluding VAT) and payment terms/profile including method of payment (e.g. Government Procurement Card (GPC) or BACS)

In Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).

SECTION C

6. CUSTOMER OTHER CONTRACTUAL REQUIREMENTS

6.1 Call Off Guarantor

N/A

6.2 Key Personnel

N/A

6.3 Staff Transfer

N/A

6.4 Relevant Convictions

N/A

6.5 Failure of Supplier Equipment

N/A

6.6 Maintenance of the ICT Environment

N/A

6.7 Protection of Customer Data

N/A

6.8 Limitations on Liability

In Clause 36 of Template Call Off Terms.

6.9 Insurance

The Supplier’s declared insurance levels shall apply (evidence of levels available upon request).

6.10 Termination without cause notice period

In Clause 41.6 of the Template Call Off Terms.

7. ADDITIONAL AND/OR ALTERNATIVE CLAUSES

7.1 Supplemental requirements to the Call Off Terms

N/A

7.2 Amendments to/refinements of the Call Off Terms

N/A.

For clarification, as permitted under the Call Off Terms at Schedule 16:

Third Party Software (products proprietary to Environmental Systems Research Institute, Inc. (“Esri” or “Esri Inc”) (Esri UK’s permitted subcontractor) shall be solely and exclusively governed by the terms of the Esri Inc Enterprise License Agreement as amended (see Call Off Terms at Schedule 16). No other terms shall apply to the Third Party Software. This shall take precedence over any conflicting provision.

Supplier Software (products proprietary to Esri UK), shall be solely and exclusively governed by the terms of the Esri UK Letter Agreement effective 14th February 2017 (see Call Off Terms at Schedule 16). No other terms shall apply to the Supplier Software. This shall take precedence over any conflicting provision.

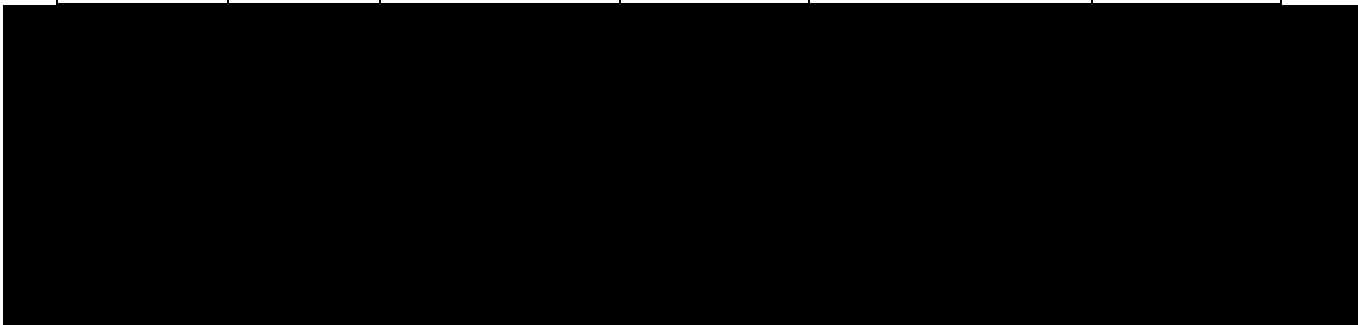
7.3 Alternative and/or Additional Clauses (select from Call Off Schedule 15 (Alternative and/or Additional Clauses))

N/A

SECTION D

THE FOLLOWING ARE THE KEY SUB-CONTRACTORS INVOLVED IN THE DELIVERY OF THE GOODS & SERVICES

Company Registration Number	Full legal name and trading name where applicable	Registered Address	Organisation Size (Micro, Small, Medium, Large)	Role of Key Sub-contractor	Approximate % of the contractual obligations sub contracted
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8. FORMATION OF CALL OFF CONTRACT

- 8.1** BY SIGNING AND RETURNING THIS ORDER FORM (which may be done by electronic means) the Supplier agrees to enter a Call Off Contract with the Customer to provide the Goods and/or Services.
- 8.2** 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.
- 8.3** 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 (which may be done by electronic means) the receipt of the signed copy of the Order Form from the Supplier within two (2) Working Days from receipt.

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

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PART 2 – LOCAL AUTHORITY SOFTWARE APPLICATIONS CALL OFF TERMS

TERMS AND CONDITIONS

THIS AGREEMENT is made on [REDACTED] 2016

BETWEEN

1. **Shropshire Council**, of **Shirehall, Anney Foregate, Shrewsbury, Shropshire SY2 6ND**

(the “**Customer**”); and

2. **ESRI (UK) Limited**, which is a company registered in England and Wales under company number 01288342 and whose registered office is at Millennium House, 65 Walton Street, Aylesbury, Buckinghamshire HP21 7QG (the “**Supplier**”);

together (“**the Parties**”);

RECITALS

- (A) The Authority undertook a procurement as a central purchasing body on behalf of public sector bodies, to select suppliers, including the Supplier, to provide the Goods and/or Services.
- (B) The Supplier is a provider of the Goods and/or Services and undertook to provide such Services under the terms set out in the Framework Agreement number RM1059.
- (C) The Customer is entitled to enter into this Call Off Contract under the Framework Agreement and has completed the Order Form served by the Customer on the Supplier
- (D) The Customer served an Order Form for Goods and/or Services on the Supplier on [REDACTED].
- (E) The Supplier confirmed its agreement to the terms of the Call Off Contract, the Order Form and its acceptance of the Call Off Contract terms and the Order Form and the Parties hereby duly execute this Call Off Contract.

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Call Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions).
- 1.2 If a capitalised expression does not have an interpretation in Call Off Schedule 1 (Definitions) or relevant Call Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Call Off Contract, unless the context otherwise requires:
 - 1.3.1 the singular includes the plural and vice versa;
 - 1.3.2 reference to a gender includes the other gender and the neuter;
 - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.3.5 the words **including, other, in particular, for example** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words **without limitation**;
 - 1.3.6 references to **writing** include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of

representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

- 1.3.7 references to **representations** shall be construed as references to present facts, to **warranties** as references to present and future facts and to **undertakings** as references to obligations under this Call Off Contract;
 - 1.3.8 references to **Clauses** and **Call Off Schedules** are, unless otherwise provided, references to the clauses and schedules of this Call Off Contract and references in any Call Off Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Call Off Schedule in which these references appear; and
 - 1.3.9 the headings in this Call Off Contract are for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract.
- 1.4 Subject to Clauses 1.5 and 1.6 (Definitions and Interpretation), 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:
- 1.4.1 the Framework Agreement, except Framework Schedule 20 (Tender);
 - 1.4.2 the Order Form;
 - 1.4.3 the Call Off Terms;
 - 1.4.4 Framework Schedule 20 (Tender);
 - 1.4.5 Call Off Schedule 16 (License Terms for Supplier Software and Third Party Software)
- 1.5 Any permitted changes by the Customer to the Call Off Terms and the Order Form under Clause 4 (Call Off Procedure) of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to them becoming the Call Off Terms and the Order Form and the Parties entering this Call Off Contract shall prevail over the Framework Agreement.
- 1.6 Where Framework Schedule 20 (Tender) contains provisions which are more favourable to the Customer in relation to this Call Off Contract, such provisions of the Tender shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in this context.

2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
- 2.1.1 the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call Off Contract;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Call Off Commencement Date) of all relevant details relating to the:
 - (a) suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Call Off Commencement Date) future Operating Environment;
 - (b) operating processes and procedures and the working methods of the Customer;
 - (c) ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Customer Assets; and

- (d) existing contracts (including any licenses, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Call Off Contract and/or which the Supplier will require the benefit of for the provision of the Services; and
- 2.1.4 it has advised the Customer in writing of:
- (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - (b) the actions needed to remedy each such unsuitable aspect; and
 - (c) a timetable for and the costs of those actions.
- 2.1.5 the Supplier shall not be excused from the performance of any of its obligations under this Call Off Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
- (a) unsuitable aspects of the Operating Environment;
 - (b) misinterpretation of the requirements of the Customer in the Order Form or elsewhere in this Call Off Contract; and/or
 - (c) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3. REPRESENTATIONS AND WARRANTIES

- 3.1 Each Party represents and warranties that:
- 3.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;
 - 3.1.2 this Call Off Contract is executed by its duly authorised representative;
 - 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Call Off Contract; and
 - 3.1.4 its obligations under this Call Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
- 3.2 The Supplier represents and warrants that:
- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Call Off Contract;
 - 3.2.3 its execution, delivery and performance of its obligations under this Call Off Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
 - 3.2.4 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender and any other documents submitted remain

true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract;

- 3.2.5 as at the Call Off Commencement Date, it has notified the Customer and throughout the Call Off Contract it shall keep the Customer notified in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
 - 3.2.6 it has and shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call Off Contract including the receipt of the Services by the Customer;
 - 3.2.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Contract; and
 - 3.2.8 it is not affected by an Insolvency Event and 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.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Call Off Contract.
 - 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
 - 3.5 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 Default.

4. CALL OFF GUARANTEE

- 4.1 Where the Customer has stipulated during 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:
 - 4.1.1 an executed Call Off Guarantee from a Call Off Guarantor; and
 - 4.1.2 a certified copy extract of the board minutes and/or resolution of the Call Off Guarantor approving the execution of the Call Off Guarantee.
- 4.2 The Customer may in its sole discretion at any time agree to waive compliance with the requirement in Clause 4.1 by giving the Supplier notice in writing.

B. DURATION OF CALL OFF CONTRACT

5. CALL OFF CONTRACT PERIOD

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

C. CALL OFF CONTRACT PERFORMANCE

6. IMPLEMENTATION PLAN

- 6.1 **Formation of Implementation Plan**

- 6.1.1 Where the Parties agreed in the Order Form (or elsewhere in this Call Off Contract) 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 and as the Customer may require. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 6.1.2 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 (or elsewhere in this Call Off Contract).
- 6.1.3 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
- 6.1.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in this Call Off Contract and report to the Customer on such performance.

6.2 **Control of Implementation Plan**

- 6.2.1 Subject to Clause 6.2.2, the Supplier shall keep the Implementation Plan under review in accordance with the Customer's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Services. The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 6.2.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) 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 Customer Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 6.2.3 Where so specified by the Customer in the Implementation Plan or elsewhere in this Call Off Contract, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

6.3 **Rectification of Delay in Implementation**

- 6.3.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Call Off Contract:
 - (a) it shall:
 - (i) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
 - (ii) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (iii) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - (b) if the Delay or anticipated Delay relates to a Milestone in respect which a Delay Payment has been specified in the Implementation Plan, Clause 6.4 (Delay Payments) shall apply.

6.4 Delay Payments

- 6.4.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Customer such Delay Payments (calculated as set out by the Customer in the Implementation Plan) and the following provisions shall apply:
- (a) the Supplier acknowledges and agrees that any Delay Payment 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 Achieve the corresponding Milestone;
 - (b) Delay Payments shall be the Customer's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
 - (i) the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause); or
 - (ii) the delay exceeds the period of one hundred (100) days commencing on the relevant Milestone Date;
 - (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and shall continue to accrue until the date when the Milestone is Achieved (unless otherwise specified by the Customer in the Implementation Plan);
 - (d) 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 48 (Waiver and Cumulative Remedies) and refers specifically to a waiver of the Customer's rights to claim Delay Payments; and
 - (e) the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 6.4.1 and Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 36 (Liability).

7. SERVICES

7.1 Provision of the Services

- 7.1.1 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.
- 7.1.2 The Supplier shall ensure that the Services:
- (a) comply in all respects with the Customer's description of the Services in Call Off Schedule 2 (Services) (or elsewhere in this Call Off Contract); and
 - (b) are supplied in accordance with the provisions of this Call Off Contract or the Tender.
- 7.1.3 The Supplier shall perform its obligations under this Call Off Contract in accordance with:
- (a) all applicable Law;
 - (b) Good Industry Practice;
 - (c) the Standards;
 - (d) the Security Policy;

- (e) the Quality Plans;
- (f) the ICT Policy (if so required by the Customer); and
- (g) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.1.3(a) to 7.1.3(f).

7.1.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Call Off Contract;
- (b) subject to Clause 21.1 (Variation Procedure), obtain, and maintain throughout the duration of this Call Off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) the release of any new Supplier Software or upgrade to any Supplier Software complies with the interface requirements of the Customer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Customer three (3) Months before the release of any new Supplier Software or Upgrade;
 - (ii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (iii) any products or services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Customer as specified by the Customer at the time of entering into this Call Off Contract and subject to any subsequent Variation;
 - (iv) the Supplier System and Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer) and will be Euro Compliant; and
 - (v) the Services are fully compatible with any Customer Software, Customer System, Customer Property or Customer Assets described in Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) (or elsewhere in this Call Off Contract) or otherwise used by the Supplier in connection with this Call Off Contract;
- (d) minimise any disruption to the Services, the ICT Environment and/or the Customer's operations when providing the Services;
- (e) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the Call Off Expiry Date for any reason, to enable the timely transition of the Services (or any of them) to the Customer and/or to any Replacement Supplier;

- (g) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
- (h) provide the Customer with such assistance as the Customer may reasonably require during the Call Off Contract Period in respect of the supply of the Services;
- (i) deliver the Services in a proportionate and efficient manner;
- (j) ensure that neither it, nor any of its Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract; and
- (k) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call Off Contract.

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

7.2 Time of Delivery of the Services

7.2.1 The Supplier shall provide the Services on the date(s) specified in the Order Form (or elsewhere in this Call Off Contract) and the Milestone Dates (if any). Such provision shall include compliance with the obligation on the Supplier set out in Clause 6 (Implementation Plan).

7.3 Location and Manner of Delivery of the Services

7.3.1 Except where otherwise provided in this Call Off Contract, the Supplier shall provide the Services to the Customer through the Supplier Personnel at the Sites.

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

7.4 Undelivered Services

7.4.1 In the event that any of the Services are not Delivered in accordance with Clauses 7.1 (Provision of the Services) and 7.2 (Time of Delivery of the Services) (**Undelivered Services**), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call Off Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.

7.4.2 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 7.1, (Provision of the Services), 7.2 (Time of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

7.5 Specially Written Software warranty

7.5.1 The Supplier warrants to the Customer that all components of the Specially Written Software shall:

- (a) be free from material design and programming errors;
- (b) perform in all material respects in accordance with the relevant specifications contained in Call Off Schedule 2 (Services) and Documentation; and
- (c) not infringe any Intellectual Property Rights.

7.6 Obligation to Remedy of Default in the Supply of the Services

7.6.1 Subject to Clauses 33.9.2 and 33.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 7.4.2 (Undelivered Services) and 38 (Customer Remedies for Default)), the Supplier shall, as soon as reasonably possible:

- (a) remedy any breach of its obligations in this Clause 7 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred); and
- (b) meet all the costs of, and incidental to, the performance of such remedial work.

7.7 Continuing Obligation to Provide the Services

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

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

8. NOT USED

9. NOT USED

10. STANDARDS AND QUALITY

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

10.2 If so required by the Customer in the Order Form or elsewhere in this Call Off Contract, the Supplier shall develop, within **Not Required (N/A)** Working Days of the Call Off Commencement Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it (**Quality Plans**).

10.3 The Supplier shall seek Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed) of the Quality Plans before implementing them. The Supplier acknowledges and accepts that Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Call Off Contract.

10.4 Following the approval by the Customer of the Quality Plans:

10.4.1 the Supplier shall implement all Deliverables in accordance with the Quality Plans; and

- 10.4.2 any Variation to the Quality Plans shall be agreed in accordance with the Variation Procedure.
- 10.5 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
 - 10.5.1 be appropriately experienced, qualified and trained to supply the Services in accordance with this Call Off Contract;
 - 10.5.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services; and
 - 10.5.3 obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Services to the reasonable satisfaction of the Customer.

11. TESTING

- 11.1 The Parties shall comply with any provisions set out Call Off Schedule 5 (Testing).

12. SERVICE LEVELS AND SERVICE CREDITS

- 12.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).
- 12.2 The Supplier shall at all times during the Call Off Contract Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 12.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to the rights set out in the provisions of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.
- 12.4 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 Performance Measure.
- 12.5 A Service Credit shall be the Customer's exclusive financial remedy for a Service Level Failure except where:
 - 12.5.1 the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;
 - 12.5.2 the Service Level Failure:
 - (a) exceeds the relevant Service Level Threshold;
 - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and
 - (c) results in:
 - (i) the corruption or loss of any Customer Data (in which case the remedies under Clause 34.3.8 (Protection of Customer Data) shall also be available); and/or
 - (ii) the Customer being required to make a compensation payment to one or more third parties; and/or
 - 12.5.3 the Customer is otherwise entitled to or does terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause).
- 12.6 Not more than once in each Contract Year the Customer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Supplier

shall not be entitled to object to, or increase the Call Off Contract Charges as a result of such changes, provided that:

12.6.1 the total number of Service Level Performance Criteria does not exceed N/A;

12.6.2 the principal purpose of the change is to reflect changes in the Customer's business requirements and/or priorities or to reflect changing industry standards; and

12.6.3 there is no change to the Service Credit Cap.

13. CRITICAL SERVICE LEVEL FAILURE

13.1 On the occurrence of a Critical Service Level Failure:

13.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

13.1.2 the Customer shall (subject to the Service Credit Cap set out in Clause 36.2.1(b) (Financial Limits)) be entitled, on written notice to the Supplier, to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Call Off Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period (**Compensation for Critical Service Level Failure**),

provided that the operation of this Clause 13.1 shall be without prejudice to the right of the Customer to terminate this Call Off Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.

13.2 The Supplier:

13.2.1 agrees that the application of Clause 13.1 is commercially justifiable where a Critical Service Level Failure occurs; and

13.2.2 acknowledges that it has taken legal advice on the application of Clause 13.1 and has had the opportunity to price for that risk when calculating the Call Off Contract Charges.

14. BUSINESS CONTINUITY AND DISASTER RECOVERY

14.1 The Parties shall comply with the provisions of Call Off Schedule 10 (Business Continuity and Disaster Recovery).

15. DISRUPTION

15.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.

15.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.

15.3 In the event of industrial action by the Supplier Personnel, 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.

15.4 If the Supplier's proposals referred to in Clause 15.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for material Default.

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

16. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

- 16.1 Without prejudice to any other obligations of the Supplier in this Call Off Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 42.1.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall:
- 16.1.1 notify the Customer as soon as reasonably practicable ((and in any event within two (2) Working Days of the Supplier becoming aware)) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:
- (a) the Customer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Call Off Contract; and
 - (b) any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
 - (c) use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

17. CONTINUOUS IMPROVEMENT

- 17.1 The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause 17 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. As part of this obligation the Supplier shall identify and report to the Customer once every twelve (12) months:
- 17.1.1 the emergence of new and evolving relevant technologies which could improve the ICT Environment and/or the provision of the Services, and those technological advances potentially available to the Supplier and the Customer which the Parties may wish to adopt;
- 17.1.2 new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
- 17.1.3 changes in business processes and ways of working that would enable the Services to be provided at lower costs and/or at greater benefits to the Customer; and/or
- 17.1.4 changes to the ICT Environment, business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Services.
- 17.2 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Customer requests.
- 17.3 If the Customer wishes to incorporate any improvement identified by the Supplier, the Customer shall request a Variation in accordance with the Variation Procedure and the Supplier shall implement such Variation at no additional cost to the Customer.

D. CALL OFF CONTRACT GOVERNANCE

18. PERFORMANCE MONITORING

- 18.1 Unless otherwise Approved or notified by the Customer, the Supplier shall comply with the monitoring requirements set out in Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).
- 18.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels. The Supplier shall obtain

Approval of the relevant measuring and monitoring tools and procedures prior to using the same.

18.3 N/A

19. REPRESENTATIVES

- 19.1 Each Party shall have a representative for the duration of this Call Off Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Call Off Contract.
- 19.2 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 26 (Supplier Personnel) and implemented following the procedure set out in Clause 21.1 (Variation Procedure).
- 19.3 The Customer shall notify the Supplier of the identity of the initial Customer Representative within five (5) Working Days of the Call Off Commencement Date. The Customer may, by written notice to the Supplier, revoke or amend the authority of the Customer Representative or appoint a new Customer Representative.

20. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

- 20.1 The Supplier shall keep and maintain for seven (7) years after the Call Off Expiry Date (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.
- 20.2 The Supplier shall:
- 20.2.1 keep the records and accounts referred to in Clause 20.1 in accordance with Good Industry Practice and Law; and
- 20.2.2 afford any Auditor access to the records and accounts referred to in Clause 20.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, 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 20.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call Off Contract Agreement including for the following purposes to:
- (a) verify the accuracy of the Call Off Contract Charges and any other amounts payable by the Customer under this Call Off Contract (and proposed or actual variations to them in accordance with this Call Off Contract);
 - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
 - (c) verify the Open Book Data;
 - (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Framework Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the Services;

- (g) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Call Off Contract;
 - (i) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;
 - (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - (k) review any Performance Monitoring Reports provided under Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - (l) verify the accuracy and completeness of any information delivered or required by this Call Off Contract;
 - (m) inspect the ICT Environment (or any part of it) and the wider service delivery environment (or any part of it);
 - (n) review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - (o) review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
 - (p) review the Supplier's compliance with the Standards;
 - (q) inspect the Customer Assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date; and/or
 - (r) review the integrity, confidentiality and security of the Customer Data.
- 20.3 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.
- 20.4 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:
- 20.4.1 all reasonable information requested by the Customer within the scope of the audit;
 - 20.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 20.4.3 access to the Supplier Personnel.
- 20.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 20, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

21. CHANGE

21.1 Variation Procedure

- 21.1.1 Subject to the provisions of this Clause 21 and of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a **Variation**.
- 21.1.2 A Party may request a Variation by completing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 21.1.3 The Customer may require the Supplier to carry out an impact assessment of the Variation on the Services (the **Impact Assessment**). The Impact Assessment shall be completed in good faith and shall include:
- (a) details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Call Off Contract;
 - (b) details of the cost of implementing the proposed Variation;
 - (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Call Off Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - (e) such other information as the Customer may reasonably request in (or in response to) the Variation request.
- 21.1.4 N/A
- 21.1.5 The Parties may agree to adjust the time limits specified in the Variation request to allow for the preparation of the Impact Assessment.
- 21.1.6 Subject to 21.1.5, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Order and the proposed Variation.
- 21.1.7 In the event that:
- (a) the Supplier is unable to agree to or provide the Variation; and/or
 - (b) the Parties are unable to agree a change to the Call Off Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,
- the Customer may:
- (i) agree to continue to perform its obligations under this Call Off Contract without the Variation; or
 - (ii) terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Order in accordance with this Call Off Contract or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

21.1.8 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Call Off Contract.

21.2 Legislative Change

21.2.1 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:

- (a) General Change in Law;
- (b) Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Call Off Commencement Date.

21.2.2 If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than as referred to in Clause 21.2.1(b)), the Supplier shall:

- (a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether any Variation is required to the provision of the Services, the Call Off Contract Charges or this Call Off Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
- (b) provide to the Customer with evidence:
 - (i) 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;
 - (ii) that the Variation being requested does not result in increased profit for the Supplier and is evidenced by a full breakdown of cost impacts on the provision of the Goods and/or Services; as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 17 (Continuous Improvement), has been taken into account in amending the Call Off Contract Charges.

21.2.3 Any change in the Call Off Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 21.2.1(b)) shall be implemented in accordance with the Variation Procedure.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

22. CALL OFF CONTRACT CHARGES AND PAYMENT

22.1 Call Off Contract Charges

22.1.1 In consideration of the Supplier carrying out its obligations under this Call Off Contract, including the provision of the Goods and/or Services, the Customer shall pay the undisputed Call Off Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing).

22.1.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 11 (Testing), 20 (Records, Audit Access and Open Book Data), 34.6 (Freedom of Information), 34.7 (Protection of Personal Data).

22.1.3 If the Customer fails to pay any undisputed Call Off Contract Charges properly invoiced under this Call Off Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

22.1.4 If at any time during this Call Off Contract Period the Supplier reduces its Framework Prices for any Goods and/or Services which are provided under the Framework Agreement (whether or not such Goods and/or 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 Goods and/or Services under this Call Off Contract by the same amount.

22.2 VAT

22.2.1 The Call Off Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a Valid Invoice.

22.2.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is 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 (VAT) shall be paid in cleared funds 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.

22.3 Retention and Set Off

22.3.1 The Customer may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call Off Contract or under any other agreement between the Supplier and the Customer.

22.3.2 If the Customer wishes to exercise its right pursuant to Clause 22.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Call Off Contract Charges.

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

22.4 Euro

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

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

22.5 Income Tax and National Insurance Contributions

22.5.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call Off Contract, the Supplier shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

- (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Goods and/or Services by the Supplier or any Supplier Personnel.

23. PROMOTING TAX COMPLIANCE

- 23.1 If, at any point during the Call Off Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
 - 23.1.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
 - 23.1.2 promptly provide to the Customer:
 - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

24. BENCHMARKING

- 24.1 Notwithstanding the Supplier's obligations under Clause 17 (Continuous Improvement), the Customer shall be entitled to regularly benchmark the Call Off Contract Charges and level of performance by the Supplier of the supply of the Goods and/or Services, against other suppliers providing services substantially the same as the Goods and/or Services during the Call Off Contract Period.
- 24.2 The Customer, acting reasonably, 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 24.1 above.
- 24.3 The Customer shall be entitled to disclose the results of any benchmarking of the Call Off Contract Charges and provision of the Goods and/or Services to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).
- 24.4 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 and such information requirements shall be at the discretion of the Customer.
- 24.5 Where, as a consequence of any benchmarking carried out by the Customer, the Customer decides improvements to the Goods and/or Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Customer.
- 24.6 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 Goods and/or Services, facilitate their delivery to any other Contracting Body and/or any alterations or variations to the Charges or the provision of the Goods and/or 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 12 (Continuous Improvement and Benchmarking), shall be implemented by the Supplier in accordance with the Variation Procedure and at no additional cost to the Customer.

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

25. KEY PERSONNEL

- 25.1 The Parties have agreed to the appointment of the Key Personnel. Part C of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) lists the key roles (**Key Roles**) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call Off Commencement Date.
- 25.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Call Off Contract Period.
- 25.3 The Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 25.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Call Off Schedule 11 (Exit Management)) unless:
- 25.4.1 requested to do so by the Customer;
 - 25.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 25.4.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
 - 25.4.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 25.5 The Supplier shall:
- 25.5.1 notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 25.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 25.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;
 - 25.5.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Goods and/or Services;
 - 25.5.5 ensure that any replacement for a Key Role:
 - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
 - 25.5.6 not remove or replace any Key Personnel during the Call Off Contract Period without the Approval; and
 - 25.5.7 procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Call Off Contract Period without Approval
- 25.6 The Customer may require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

26. SUPPLIER PERSONNEL

26.1 **Supplier Personnel**

26.1.1 The Supplier shall:

- (a) provide to the Customer a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Goods and/or Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards; and
 - (iii) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call Off Schedule 8 (Security);
- (c) subject to Call Off Schedule 12 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Call Off Contract shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Call Off Expiry Date.

26.1.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Call Off Contract, it may:

- (a) refuse admission to the relevant person(s) to the Customer Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Goods and/or Services of the relevant person(s).

26.1.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

26.2 **Relevant Convictions**

N/A

27. **STAFF TRANSFER**

27.1 N/A

27.2 The Parties agree that:

27.2.1 on the Call Off Commencement Date there is no a relevant transfer for the purposes of the Employment Regulations, and the provisions of Parts C and E of Call Off Schedule 12 (Staff Transfer) will apply; and

27.2.2 on the Call Off Expiry Date there may be a relevant transfer for the purposes of the Employment Regulations and Parts D and E of Call Off Schedule 12 (Staff Transfer) will apply.]

27.3 N/A

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

28. SUPPLY CHAIN RIGHTS AND PROTECTION

28.1 Appointment of Sub-Contractors

28.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:

- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Call Off Contract in the delivery of the Goods and/or Services; and
- (c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Call Off Contract.

28.1.2 Prior to sub-contacting any of its obligations under this Call Off Contract, the Supplier shall provide the Customer with:

- (a) the proposed Sub-Contractor's name, registered office and company registration number;
- (b) the scope of any Goods and/or Services to be provided by the proposed Sub-Contractor; and
- (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on arm's-length terms.

28.1.3 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 28.1.2, the Supplier shall also provide:

- (a) a copy of the proposed Sub-Contract; and
- (b) any further information reasonably requested by the Customer.

28.1.4 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 28.1.2 (or, if later, receipt of any further information requested pursuant to Clause 28.1.3), object to the appointment of the relevant Sub-Contractor they consider that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to the interests respectively of the Customer under this Call Off Contract;
- (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable goods and/or services to its other customers; and/or
- (c) the proposed Sub-Contractor employs unfit persons,

in which case, the Supplier shall not proceed with the proposed appointment.

28.1.5 If:

- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 28.1.2; and
 - (ii) any further information requested by the Customer pursuant to Clause 28.1.3; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Customer in accordance with Clause 28.2 (Appointment of Key Sub-Contractors).

the Supplier may proceed with the proposed appointment.

28.2 Appointment of Key Sub-Contractors

- 28.2.1 The Authority and the Customer have consented to the engagement of the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors) and in Section D of the Order Form.
- 28.2.2 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Customer (the decision to consent or not will not be unreasonably withheld or delayed). The Authority and/or the Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if either of them considers that:
- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Goods and Services or may be contrary to its interests;
 - (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Key Sub-Contractor employs unfit persons.
- 28.2.3 Except where the Authority and the Customer have given their prior written consent under Clause 28.2.1, the Supplier shall ensure that each Key Sub-Contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Call Off Contract;
 - (b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
 - (c) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
 - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
 - (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Call Off Contract in respect of:
 - (i) data protection requirements set out in Clauses 34.1 (Security Requirements), 34.3 (Protection of Customer Data) and 34.7 (Protection of Personal Data);
 - (ii) FOIA requirements set out in Clause 34.6 (Freedom of Information);
 - (iii) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in Clause 7.1.4(j) (Provision of Services);

- (iv) the keeping of records in respect of the services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
- (v) the conduct of audits set out in Clause 20 (Records, Audit Access & Open Book Data);
- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 41 (Customer Termination Rights), 43 (Termination by Either Party) and 45 (Consequences of Expiry or Termination) of this Call Off Contract;
- (g) a provision restricting the ability of the Key Sub-Contractor to sub-contract all or any part of the provision of the Goods and/or Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;
- (h) a provision, where a provision in Call Off Schedule 12 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

28.3 Supply Chain Protection

28.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice; and
- (b) a right for the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

28.3.2 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;
- (b) include within the Performance Monitoring Reports required under Part B of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) a summary of its compliance with this Clause 28.3.2, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.

28.3.3 Notwithstanding any provision of Clauses 34.4 (Confidentiality) and 35 (Publicity and Branding) if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

28.4 Termination of Sub-Contracts

28.4.1 The Customer may require the Supplier to terminate:

- (a) a Sub-Contract where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant any of the termination events in Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause); and/or
 - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by

engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Goods and/or Services or otherwise; and/or

- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
 - (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Customer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

28.5 **Competitive Terms**

28.5.1 If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Goods and/or Services, on an exactly comparable basis, 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; or

28.5.2 subject to Clause 28.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

- (a) If the Customer exercises the option pursuant to Clause 28.5.1, then the Call Off Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
- (b) The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:

28.5.3 the Customer making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods and/or Services; and

28.5.4 any reduction in the Call Off Contract Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any license fees or early termination charges.

28.6 **Retention of Legal Obligations**

28.6.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 28 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

G. PROPERTY MATTERS

29. CUSTOMER PREMISES

29.1 Licence to occupy Customer Premises

29.1.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Call Off Contract. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call Off Contract and in accordance with Call Off Schedule 11 (Exit Management).

29.1.2 The Supplier shall limit access to the Customer Premises to such Supplier Personnel 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 Supplier Personnel co-operate) with such other persons working concurrently on such Customer Premises as the Customer may reasonably request.

- 29.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2.1.3(a) (Due Diligence) and set out in the Order Form (or elsewhere in this Call Off Contract), should the Supplier require modifications to the Customer 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 29.1.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 29.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 29.1.5 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 Supplier Personnel 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 Premises in any manner it sees fit.

29.2 **Security of Customer Premises**

- 29.2.1 The Customer shall be responsible for maintaining the security of the Customer Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy and any other reasonable security requirements of the Customer while on the Customer Premises.
- 29.2.2 The Customer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

30. CUSTOMER PROPERTY

- 30.1 Where the Customer issues Customer Property free of charge to the Supplier such Customer 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 Customer Property.
- 30.2 The Supplier shall not in any circumstances have a lien or any other interest on the Customer Property and at all times the Supplier shall possess the Customer Property as fiduciary agent and bailee of the Customer.
- 30.3 The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer 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 Customer Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.
- 30.4 The Customer 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.
- 30.5 The Supplier shall maintain the Customer Property in good order and condition (excluding fair wear and tear) and shall use the Customer Property solely in connection with this Call Off Contract and for no other purpose without Approval.

- 30.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Goods and/or Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.
- 30.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely due to a Customer Cause. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

31. SUPPLIER EQUIPMENT

- 31.1 Unless otherwise stated in the Order Form (or elsewhere in this Call Off Contract), the Supplier shall provide all the Supplier Equipment necessary for the provision of the Goods and Services.
- 31.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.
- 31.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Call Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.
- 31.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Supplier's property located on Customer Premises which is due to the negligent act or omission of the Customer.
- 31.5 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Goods and Services in accordance with this Call Off Contract, including the Service Level Performance Measures.
- 31.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.
- 31.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
 - 31.7.1 remove from the Customer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Call Off Contract; and
 - 31.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.
- 31.8 Where a failure of Supplier Equipment or any component part of Supplier Equipment causes [N/A] or more Service Failures in any [N/A], the Supplier shall notify the Customer in writing and shall, at the Customer's request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).

32. MAINTENANCE OF THE ICT ENVIRONMENT

- 32.1 If specified by the Customer in the Order Form (or elsewhere in this Call Off Contract), the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment (**Maintenance Schedule**).
- 32.2 The Supplier shall provide to the Customer a draft Maintenance Schedule for Approval within such period of time and in accordance with any other instructions of the Customer as specified in the Order Form (or elsewhere in this Call Off Contract).

- 32.3 Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as **Permitted Maintenance**) in accordance with the Maintenance Schedule.
- 32.4 The Supplier shall give as much notice as is reasonably practicable to the Customer prior to carrying out any Emergency Maintenance.
- 32.5 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Goods and Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Goods and Services.

H. INTELLECTUAL PROPERTY AND INFORMATION

33. INTELLECTUAL PROPERTY RIGHTS

33.1 Allocation of title to IPR

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

- (a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
- (i) in the Supplier Software;
 - (ii) the Supplier Background IPR;
 - (iii) in the Third Party Software;
 - (iv) the Third Party IPR;
 - (v) in the Specially Written Software; and
 - (vi) the Project Specific IPR.
- (b) 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:
- (i) Customer Software;
 - (ii) Customer Background IPR; and
 - (iii) Customer Data.

33.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 33.1, 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).

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

33.2 Licenses granted by the Supplier: Specially Written Software and Project Specific IPR

33.2.1 The Supplier hereby grants to the Customer, or shall procure the direct grant to the Customer of, a perpetual, royalty-free, irrevocable, non-exclusive license to use:

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software (including any Supplier Background IPR or Third Party IPR that are embedded in or which are an integral part of the Specially Written Software) which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate such Specially Written Software;

- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the **Software Supporting Materials**); and
- (c) the Project Specific IPR including but not limited to the right to copy, adapt, publish (including on the ICT Environment) and distribute such Project Specific IPR.

33.2.2 The Supplier shall:

- (a) inform the Customer of all Specially Written Software that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
- (b) deliver to the Customer the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Customer.

33.2.3 The Supplier acknowledges and agrees that the ownership of the media referred to in Clause 33.2.2(b) shall vest in the Customer upon their receipt by the Customer.

33.3 **Licenses granted by the Supplier: Supplier Software and Supplier Background IPR**

33.3.1 The Supplier hereby grants to the Customer a royalty-free and non-exclusive license to use (in accordance with the terms referred to in Schedule 16):

- (a) the Supplier Software for any purpose relating to the Goods and Services (or substantially equivalent Goods and Services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display); and
- (b) the Supplier Background IPR for any purpose relating to the Goods and Services (or substantially equivalent Goods and Services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.

33.3.2 At any time during the Call Off Contract Period or following the Call Off Expiry Date, the Supplier may terminate a license granted in respect of the Supplier Software or the Supplier Background IPR under Clause 33.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Customer Cause which constitutes a material breach of the terms of Clauses 33.3.1(a) or 33.3.1(b) (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.

33.3.3 In the event the license of the Supplier Software or the Supplier Background IPR is terminated pursuant to Clause 33.3.2), the Customer shall:

- (a) immediately cease all use of the Supplier Software or the Supplier Background IPR (as the case may be);

- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Supplier Software and/or Supplier Background IPR that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Customer) from any computer, word processor, voicemail system or any other device containing such Supplier Software and/or Supplier Background IPR.

33.4 **Customer's right to sub-license**

33.4.1 The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 33.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR).

33.4.2 The Customer may sub-license:

- (a) the rights granted under Clause 33.3.1 (Licenses granted by the Supplier: Supplier Software and Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier only in circumstances where this Call Off Contract is being terminated by the Authority for material Default by the Supplier or as a result of an Insolvency Event occurring) provided that:
 - (i) the sub-license is on terms no broader than those granted to the Customer; and
 - (ii) the sub-license only authorises the third party to use the rights licensed in Clause 33.3.1 (Licenses granted by the Supplier: Supplier Software and Supplier Background IPR) for purposes relating to the Goods and Services (or substantially equivalent Goods and Services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 33.3.1 (Licenses granted by the Supplier: Supplier Software and Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPR provided that the sub-license is on terms no broader than those granted to the Customer.

33.5 **Customer's right to assign/novate licenses**

33.5.1 The Customer:

- (a) shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the license granted to it pursuant to Clause 33.2.1 (Licenses granted by the Supplier: Specially Written Software and Project Specific IPR); and
- (b) may assign, novate or otherwise transfer its rights and obligations under the license granted pursuant to Clause 33.3.1 (Licenses granted by the Supplier: Supplier Software and Supplier Background IPR) to:
 - (i) a Central Government Body; or

- (ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.
- (c) Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any license granted in Clause 33.2.1 (Licenses granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 33.3.1 (Licenses granted by the Supplier: Supplier Software and Supplier Background IPR). If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licenses granted in Clause 33.2.1 (Licenses granted by the Supplier: Specially Written Software and Project Specific IPR) and Clause 33.3.1 (Licenses granted by the Supplier: Supplier Software and Supplier Background IPR).
- (d) If a license granted in Clause 33.2.1 (Licenses granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 33.3.1 (Licenses granted by the Supplier: Supplier Software and Supplier Background IPR) is novated under Clause 33.5.1(b) or there is a change of the Customer's status pursuant to Clause 33.5.1(c) (both such bodies being referred to as the **Transferee**), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

33.6 **Third Party IPR and Third Party Software**

33.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not commercial off-the-shelf software grant a direct license to the Customer on terms at least equivalent to those set out in Clause 33.3.1 (Licenses granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 33.5.1(b) (Customer's right to assign/novate licenses). If the Supplier cannot obtain for the Customer a license materially in accordance with the license terms set out in Clause 33.3.1 (Licenses granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 33.5.1(b) (Customer's right to assign/novate licenses) in respect of any such Third Party IPR and/or Third Party Software, the Supplier shall:

- (a) notify the Customer in writing giving details of what license terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
- (b) only use such Third Party IPR and/or Third Party Software if the Customer Approves the terms of the license from the relevant third party.

33.6.2 The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct license to the Customer on terms no less favourable than such software is usually made available and includes these license terms within Call Off Schedule 16.

33.7 **License granted by the Customer**

33.7.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable license during the Call Off Contract Period to use the Customer Software, the Customer Background IPR and the Customer Data solely to the extent necessary for providing the Goods and Services in accordance with this Call Off Contract, including (but not limited to) the right to grant sub-licenses to Sub-Contractors provided that:

- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 34.4 (Confidentiality); and
- (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

33.8 Termination of licenses

- 33.8.1 Subject to Clauses 33.3.2 and/or 33.3.3 (Licenses granted by the Supplier: Supplier Software and Supplier Background IPR), all licenses granted pursuant to this Clause 33 (Intellectual Property Rights) (other than those granted pursuant to Clause 33.6.2 (Third Party IPR and Third Party Software) and 33.7.1 (License granted by the Customer)) shall survive the Call Off Expiry Date.
- 33.8.2 The Supplier shall, if requested by the Customer in accordance with Call Off Schedule 11 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a license to use any Supplier Software, Supplier Background IPR, Third Party IPR and/or Third Party Software on terms equivalent to those set out in Clause 33.3.1 (Licenses granted by the Supplier: Supplier Software and Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 33.8.3 The license granted pursuant to Clause 33.7.1 (License granted by the Customer) and any sub-license granted by the Supplier in accordance with Clause 33.7.1 (License granted by the Customer) shall terminate automatically on the Call Off Expiry Date and the Supplier shall:
- (a) immediately cease all use of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be);
 - (b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six months of the termination of the license, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Software, the Customer Background IPR and the Customer Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Customer Software, Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Software, Customer Background IPR and/or Customer Data.

33.9 IPR Indemnity

- 33.9.1 The Supplier shall at during and after the Call Off Contract Period, on written demand indemnify the Customer against all Losses incurred by, awarded against or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 33.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:

- (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Goods and/or Services or the ICT Environment;
 - (iii) there is no additional cost to the Customer; and
 - (iv) the terms and conditions of this Call Off Contract shall apply to the replaced or modified Goods and/or Services.
- 33.9.3 If the Supplier elects to procure a license in accordance with Clause 33.9.2(a) or to modify or replace an item pursuant to Clause 33.9.2(b), but this has not avoided or resolved the IPR Claim, then:
- (a) the Customer may terminate this Call Off Contract by written notice with immediate effect; and
 - (b) without prejudice to the indemnity set out in Clause 33.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute Goods and Services including the additional costs of procuring, implementing and maintaining the substitute items.
- 33.9.4 The provisions of Clauses 33.9.1 to 33.9.3 (inclusive) shall not apply to the extent that any IPR Claim is caused by any use by or on behalf of the Customer of the Software, or the use of the Customer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Call Off Contract or in a manner not reasonably to be inferred from the description of the Goods and/or Services in Call Off Schedule 2 (Goods and Services) or the provisions of this Call Off Contract.
- 33.9.5 The Customer agrees that:
- (a) it will notify the Supplier in writing of any IPR Claim;
 - (b) it will allow the Supplier to conduct all negotiations and proceedings and will provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
 - (c) it will not, without first consulting with the Supplier, agree to make any payment or make an admission relating to the IPR Claim.
- 33.9.6 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute. The Supplier shall not settle or compromise any IPR Claim without the Customer's Approval (not to be unreasonably withheld or delayed)

34. SECURITY AND PROTECTION OF INFORMATION

34.1 Security Requirements

- 34.1.1 The Supplier shall comply with the Security Policy and the requirements of Call Off Schedule 8 (Security) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 34.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 34.1.3 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 Goods and/or Services it may propose a Variation to 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.

34.1.4 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 Goods and/or Services in accordance with its existing obligations.

34.2 Malicious Software

34.2.1 The Supplier shall, as an enduring obligation throughout the Call Off Contract Period use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).

34.2.2 Notwithstanding Clause 34.2.1, 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 Goods and/or Services to its desired operating efficiency.

34.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 34.2.2 shall be borne by the Parties as follows:

- (a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Customer has waived the obligation set out in Clause 34.2.1) 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
- (b) by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in Clause 34.2.1) or the Customer Data (whilst the Customer Data was under the control of the Customer).

34.3 Protection of Customer Data

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

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

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

34.3.4 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

34.3.5 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).

34.3.6 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).

- 34.3.7 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 34.3.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Call Off Schedule 10 (Business Continuity and Disaster Recovery) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
 - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Call Off Schedule 10 (Business Continuity and Disaster Recovery)

34.4 **Confidentiality**

- 34.4.1 For the purposes of this Clause 34.4, the term **Disclosing Party** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **Recipient** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 34.4.2 Except to the extent set out in this Clause 34.4 or where disclosure is expressly permitted elsewhere in this Call Off Contract, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call Off Contract or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 34.4.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 34.6 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call Off Contract;
 - (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Services Goods and/or Services provided under this Call Off Contract; or

- (iii) the conduct of a Central Government Body review in respect of this Call Off Contract; or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 34.4.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 34.4.5 Subject to Clauses 34.4.2 and 34.4.7, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:
- (a) Supplier Personnel who are directly involved in the provision of the Goods and/or Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Call Off Contract; and
 - (b) its professional advisers for the purposes of obtaining advice in relation to this Call Off Contract.
- 34.4.6 Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 34.4.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Contract by the persons to whom disclosure has been made.
- 34.4.7 The Customer may disclose the Confidential Information of the Supplier:
- (a) on a confidential basis to any Central Government Body for any proper purpose of the Customer or of the relevant Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Bodies;
 - (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
 - (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 34.4.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Call Off Contract;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this Call Off Contract; or
 - (f) on a confidential basis to a proposed Transferee body as defined in Clause 47.2 (Assignment and Novation) in connection with any assignment, novation transfer, or disposal of any of its rights, obligations or liabilities under this Call Off Contract, or successor in title to the Customer.
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 34.
- 34.4.8 Nothing in this Clause 34.4 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does

not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

34.4.9 In the event that the Supplier fails to comply with Clauses 34.4.2 to 34.4.5, the Customer reserves the right to terminate this Call Off Contract for material Default.

34.5 Transparency

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

34.5.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives his consent for the Customer to publish this Call Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Call Off Contract agreed from time to time.

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

34.6 Freedom of Information

34.6.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Customer all Requests for Information relating to this Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is 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 reasonably specify) of the Customer's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

34.6.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Call Off Contract) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

34.7 Protection of Personal Data

34.7.1 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Call Off Contract, the Parties acknowledge that the Customer is the Data Controller and that the Supplier is the Data Processor.

34.7.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call Off Contract;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Clauses 34.1 (Security Requirements) and 34.3 (Protection of Customer Data);
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call Off Contract)
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under this Clause 34.7.2 and Clauses 34.1 (Security Requirements), 34.3 (Protection of Customer Data) and 34.4 (Confidentiality);
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Customer within five (5) Working Days if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint, communication or request made (as referred to at Clause 34.7.2(e)), including by promptly providing:
 - (i) the Customer with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and

- (g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 34.7.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

34.7.3 The Supplier shall not Process or cause or permit any Personal Data to be transferred in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together **Restricted Countries**) without Approval. If, after the Call Off Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to the Customer which, if it is agreed by the Customer, shall be dealt with in accordance with the Variation Procedure and Clauses 34.7.3(b) to 34.7.3(d);
- (b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries, including the purpose for the transfer;
 - (ii) (if applicable) the countries through which the Personal Data will be transited and the nature of the transit;
 - (iii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
 - (iv) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
- (c) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;
- (d) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (e) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (A) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or
 - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the

Customer and the Sub-Contractor relating to the relevant Personal Data transfer, and

- (iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

34.7.4 The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the DPA and shall not perform its obligations under this Call Off Contract in such a way as to cause the Customer to breach any of the Customer's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

35. PUBLICITY AND BRANDING

35.1 The Supplier shall not:

35.1.1 make any press announcements or publicise this Call Off Contract in any way; or

35.1.2 use the Customer's name or brand in any promotion or marketing or announcement of orders,

without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed).

35.2 Each Party acknowledges to the other that nothing in this Call Off Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Goods and/or Services, the Supplier System and the Customer System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

I. LIABILITY AND INSURANCE

36. LIABILITY

36.1 Unlimited Liability

36.1.1 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) bribery or Fraud by it or its employees;
- (c) breach of any obligation as to title implied by section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be excluded or limited by Law.

36.2 Financial Limits

36.2.1 Subject to Clause 36.1.1 (Unlimited Liability), the Supplier's total aggregate liability:

- (a) in respect of the indemnities in Clauses 22.2.2 (VAT), 22.5.1(b) (Income Tax and National Insurance Contributions), 27.4 (Staff Transfer), 33.9 (IPR Indemnity) and, in each case, whether before or after the making of a demand pursuant to the indemnities therein) shall be unlimited.
- (b) in respect of all:
 - (i) Service Credits; and
 - (ii) Compensation for Critical Service Level Failure;

incurred in any rolling period of any contiguous twelve (12) month period shall be subject in aggregate to the Service Credit Cap;

- (c) in respect of all other Losses incurred by the Customer under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed:
- (i) in relation to any Defaults occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, the higher of £[100,000] or a sum equal to one hundred and twenty five per cent (125%) of the Estimated Year 1 Call Off Contract Charges;
 - (ii) in relation to any Defaults occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, the higher of £[100,000] in each such Call Off Contract Year [or a sum equal to one hundred and twenty five per cent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
 - (iii) in relation to any Defaults occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, the higher of £[100,000] in each such Call Off Contract Year or a sum equal to one hundred and twenty five per cent (125%) of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period,

unless a different aggregate limit or percentage under this Clause (c) is stipulated by the Customer during a Further Competition Procedure.

36.2.2 Subject to Clauses 36.1.1 (Unlimited Liability) and 36.2.1 (Financial Limits) and without prejudice to its obligation to pay the undisputed Call Off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:

- (a) in relation to any Customer Causes occurring from the Call Off Commencement Date to the end of the first Call Off Contract Year, a sum equal to the Estimated Year 1 Call Off Contract Charges;
- (b) in relation to any Customer Causes occurring in each subsequent Call Off Contract Year that commences during the remainder of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the previous Call Off Contract Year; and
- (c) in relation to any Customer Causes occurring in each Call Off Contract Year that commences after the end of the Call Off Contract Period, a sum equal to the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the last Call Off Contract Year commencing during the Call Off Contract Period.

36.3 **Non-recoverable Losses**

36.3.1 Subject to Clause 36.1.1 (Unlimited Liability) neither Party shall be liable to the other Party for any:

- (a) indirect, special or consequential Loss;
- (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

36.4 **Recoverable Losses**

36.4.1 Subject to Clause 36.2.1 (Financial Limits), and notwithstanding Clause 36.3.1 (Non-recoverable Losses), the Supplier acknowledges that the Customer may, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Goods and/or Services for the remainder of the Call Off Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Goods and/or Services and/or replacement Deliverables above those which would have been payable under this Call Off Contract;
- (d) any compensation or interest paid to a third party by the Customer; and
- (e) any fine, penalty or costs incurred by the Customer pursuant to Law.

36.5 **Miscellaneous**

36.5.1 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).

36.5.2 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call Off Contract.

36.5.3 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 36.2.1 (Financial Limits).

37. **INSURANCE**

37.1 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause (Insurance) of the Framework Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Framework Agreement in respect of all 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 during a Further Competition Procedure.

37.2 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause 37.1 above for six (6) years after the Call Off Expiry Date.

37.3 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause 37.1 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.

37.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause 37.1, 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.

37.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call Off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call Off Contract.

37.6 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours

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

J. REMEDIES AND RELIEF

38. CUSTOMER REMEDIES FOR DEFAULT

38.1 Remedies

38.1.1 Without prejudice to any other right or remedy of the Customer howsoever arising (including under Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses 12.5 (Service Levels and Service Credits) and 6.4.1(b) (Delay Payments), if the Supplier commits any Default of this Call Off Contract then the Customer may (whether or not any part of the Goods and/or Services have been Delivered) do any of the following:

- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Goods and/or 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;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Goods and/or Services comply with this Call Off Contract;
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Supplier to comply with the Rectification Plan Process;
 - (ii) suspend this Call Off Contract (whereupon the relevant provisions of Clause 44 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Goods and/or Services; or
 - (iii) without terminating or suspending the whole of this Call Off Contract, terminate or suspend this Call Off Contract in respect of part of the provision of the Goods and/or Services only (whereupon the relevant provisions of Clause 44 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Goods and/or Services;

38.1.2 Where the Customer exercises any of its step-in rights under Clauses 38.1.1(c)(ii) or 38.1.1(c)(iii), the Customer shall have the right to 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 Goods and/or Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Goods and/or Services.

38.2 Rectification Plan Process

- 38.2.1 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 38.1.1(c)(i):
- (a) the Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within 15 Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.
 - (b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Default; and
 - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 38.2.2 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Call Off Schedule 13 (Dispute Resolution Procedure).
- 38.2.3 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Default; and/or
 - (d) will rectify the Default but in a manner which is unacceptable to the Customer.
- 38.2.4 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.
- 38.2.5 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

39. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

39.1 If the Supplier has failed to:

- 39.1.1 Achieve a Milestone by its Milestone Date;
- 39.1.2 provide the Goods and/or Services in accordance with the Service Levels;
- 39.1.3 comply with its obligations under this Call Off Contract,
(each a Supplier Non-Performance),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 16 (Supplier Notification of Customer Cause)):

- 39.1.4 the Supplier shall not be treated as being in breach of this Call Off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- 39.1.5 the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call Off Contract pursuant to Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause);
- 39.1.6 where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
- (a) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
 - (b) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause;
 - (c) if failure to Achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or
- 39.1.7 where the Supplier Non-Performance constitutes a Service Level Failure:
- (a) the Supplier shall not be liable to accrue Service Credits;
 - (b) the Customer shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 13 (Critical Service Level Failure); and
 - (c) the Supplier shall be entitled to invoice for the Call Off Contract Charges for the provision of the relevant Goods and/or Services affected by the Customer Cause,
- in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.
- 39.2 In order to claim any of the rights and/or relief referred to in Clause 39.1, the Supplier shall:
- 39.2.1 comply with its obligations under Clause 16 (Notification of Customer Cause); and
- 39.2.2 within ten (10) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a **Relief Notice**) setting out details of:
- (a) the Supplier Non-Performance;
 - (b) the Customer Cause and its effect on the Supplier's ability to meet its obligations under this Call Off Contract; and
 - (c) the relief claimed by the Supplier.
- 39.3 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier where necessary.
- 39.4 Without prejudice to Clauses 7.7 (Continuing obligation to provide the Goods and/or Services) if a Dispute arises as to:
- 39.4.1 whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or

39.4.2 the nature and/or extent of the relief claimed by the Supplier,
either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

39.5 Any Variation that is required to the Implementation Plan or to the Call Off Contract Charges pursuant to this Clause 39 shall be implemented in accordance with the Variation Procedure.

40. FORCE MAJEURE

- 40.1 Subject to the remainder of this Clause 40 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause 14 (Business Continuity and Disaster Recovery)), a Party may claim relief under this Clause 40 from liability for failure to meet its obligations under this Call Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from a 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 by a Force Majeure Event from complying with an obligation to the Supplier.
- 40.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 40.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 40 to the extent that consequences of the relevant Force Majeure Event:
- 40.3.1 are capable of being mitigated by any of the provision of any Goods and/or Services including the BCDR Services, but the Supplier has failed to do so; and/or
- 40.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Goods and/or Services, operating to the standards required by this Call Off Contract.
- 40.4 Subject to Clause 40.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods and/or Services affected by the Force Majeure Event.
- 40.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 40.6 Where, as a result of a Force Majeure Event:
- 40.6.1 an Affected Party fails to perform its obligations in accordance with this Call Off Contract, then during the continuance of the Force Majeure Event:
- (a) the other Party shall not be entitled to exercise any rights to terminate this Call Off Contract in whole or in part as a result of such failure unless the provision of the Goods and/or Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
- (b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Cause arising as a result of such failure;
- 40.6.2 the Supplier fails to perform its obligations in accordance with this Call Off Contract:

- (a) the Customer shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 38.1.1(b) and 38.1.1(c) (Customer Remedies for Default) as a result of such failure;
 - (ii) to receive Delay Payments pursuant to Clause 6.4 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (iii) to receive Service Credits or withhold and retain any of the Call Off Contract Charges as Compensation for Critical Service Level Failure pursuant to Clause 13 (Critical Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; and
 - (b) the Supplier shall be entitled to receive payment of the Call Off Contract Charges (or a proportional payment of them) only to the extent that the Goods and/or Services (or part of the Goods and/or Services) continue to be provided in accordance with the terms of this Call Off Contract during the occurrence of the Force Majeure Event.
- 40.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract.
- 40.8 Relief from liability for the Affected Party under this Clause 40 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Call Off Contract and shall not be dependent on the serving of notice under Clause 40.7.

K. TERMINATION AND EXIT MANAGEMENT

41. CUSTOMER TERMINATION RIGHTS

41.1 Termination in Relation to Guarantee

41.1.1 Where the Supplier has procured a Call Off Guarantee pursuant to Clause 4 (Call Off Guarantee), the Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where:

- (a) the Call Off Guarantor withdraws the Call Off Guarantee for any reason whatsoever;
- (b) the Call Off Guarantor is in breach or anticipatory breach of the Call Off Guarantee;
- (c) an Insolvency Event occurs in respect of the Call Off Guarantor;
- (d) 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.

41.2 Termination on Material Default

41.2.1 The Customer may terminate this Call Off Contract for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier commits a Critical Service Level Failure;
- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading;
- (c) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual

liability limit for that Contract Year as set out in Clauses 36.2.1(b) and 36.2.1(c) (Liability);

- (d) the Customer expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: 6.2.3 (Implementation Plan), 7.4.2 (Provision of Services), **Error! Reference source not found.** (Provision of Goods), 13.1 (Critical Service Failure), 15.4 (Disruption), 20.5 (Records, Audit Access and Open Book Data), 34.4.9 (Confidentiality), 50.6.2 (Prevention of Fraud and Bribery);
- (e) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- (f) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process;

41.2.2 For the purpose of Clause 41.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

41.3 **Termination in Relation to Financial Standing**

41.3.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Customer there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Goods and/or Services under this Call Off Contract; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Call Off Contract.

41.3.2 The Customer shall not issue such a Termination Notice as specified in Clause 41.3.1 without first notifying the Supplier of the Customer's intentions and giving the Supplier five (5) Working Days to demonstrate to the reasonable satisfaction of the Customer that such change in the financial standing and/or the credit rating of the Supplier will not impact the Supplier's ability to perform the Call-Off Contract. The Customer's decision (following Supplier's representations) regarding change in the financial standing and/or the credit rating of the Supplier shall be the final decision

41.4 **Termination on Insolvency**

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

41.5 **Termination on Change of Control**

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

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

- (b) 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.

41.6 Termination Without Cause

41.6.1 The Customer shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving at least one hundred and twenty (120) Working Days written notice.

41.7 Termination in Relation to Framework Agreement

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

41.8 Termination In Relation to Benchmarking

41.8.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in paragraphs 3 and 4 of Framework Schedule 12 (Continuous Improvement and Benchmarking).

41.9 Termination in Relation to Variation

41.9.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier for failure of the Parties to agree or the Supplier to implement a Variation in accordance with the Variation Procedure.

41.10 Termination in relation to Promoting Tax Compliance

41.10.1 The Customer may terminate this Call Off Contract by issuing a Termination Notice to the Supplier in the event that:

- (a) the warranty given by the Supplier pursuant to Clause 3.2.5 is materially untrue; or
- (b) the Supplier commits a material breach of its obligation to notify the Customer of any Occasion of Tax Non-Compliance as required by Clause 23; or
- (c) the Supplier fails to provide details of proposed mitigating factors as required by Clause 23.1.2 (a) which in the reasonable opinion of the Customer, are acceptable.

42. SUPPLIER TERMINATION RIGHTS

42.1 Termination on Customer Cause for Failure to Pay

42.1.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call Off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call Off Contract which in aggregate exceeds £1,000 and such amount remains outstanding forty (40) Working Days (the **Undisputed Sums Time Period**) after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

- (a) the Customer's failure to pay; and
- (b) the correct overdue and undisputed sum; and
- (c) the reasons why the undisputed sum is due; and
- (d) the requirement on the Customer to remedy the failure to pay; and

this Call Off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of

termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call Off Contract including Clause 22.3 (Retention and Set off).

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

43. TERMINATION BY EITHER PARTY

43.1 Termination for continuing Force Majeure Event

43.1.1 Either Party may, by issuing a Termination Notice to the other Party terminate this Call Off Contract, in accordance with Clause 40.6.1(a) (Force Majeure).

44. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

44.1 Where the Customer has the right to terminate this Call Off Contract, the Customer shall be entitled to terminate or suspend all or part of this Call Off Contract provided always that, if the Customer elects to terminate or suspend this Call Off Contract in part, the parts of this 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.

44.2 Any suspension of this Call Off Contract under Clause 44.1 shall be for such period as the Customer may specify in writing and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

44.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Goods and Services and the Call Off Contract Charges, provided that the Supplier shall not be entitled to:

44.3.1 an increase in the Call Off Contract Charges in respect of the provision of the Goods and Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 41 (Customer Termination Rights) except Clause 41.6 (Termination Without Cause); and

44.3.2 reject the Variation.

45. CONSEQUENCES OF EXPIRY OR TERMINATION

45.1 **Consequences of termination under Clauses [41.1 (Termination in Relation to Guarantee),] 41.2 (Termination on Material Default), 41.3 (Termination in Relation to Financial Standing), 41.7 (Termination in Relation to Framework Agreement), 41.8 (Termination in Relation to Benchmarking) and 41.9 (Termination in Relation to Variation)**

45.1.1 Where the Customer:

- (a) terminates (in whole or in part) this Call Off Contract under any of the Clauses referred to in Clause 45.1; and
- (b) then makes other arrangements for the supply of the Goods and Services,

the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period provided that Customer shall take all reasonable steps to mitigate such additional expenditure. 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.

45.2 **Consequences of termination under Clauses 41.6 (Termination without Cause) and 42.1 (Termination on Customer Cause for Failure to Pay)**

45.2.1 Where:

- (a) the Customer terminates (in whole or in part) this Call Off Contract under Clause 41.6 (Termination without Cause); or
- (b) the Supplier terminates this Call Off Contract pursuant to Clause 42.1 (Termination on Customer Cause for Failure to Pay),

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. 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 41.6 (Termination without Cause).

45.2.2 The Customer shall not be liable under Clause 45.2.1 to pay any sum which:

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

Consequences of termination under Clause 43.1 (Termination for Continuing Force Majeure Event)

45.2.3 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 43.1 (Termination for Continuing Force Majeure Event).

45.3 Consequences of Termination for Any Reason

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

- (a) 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
- (b) termination of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 20 (Records, Audit Access & Open Book Data), 33 (Intellectual Property Rights), 34.4 (Confidentiality), 34.6 (Freedom of Information) 34.7 (Protection of Personal Data), 36 (Liability), 45 (Consequences of Expiry or Termination), 51 (Severance), 53 (Entire Agreement), 54 (Third Party Rights) 56 (Dispute Resolution) and 57 (Governing Law and Jurisdiction), and the provisions of Call Off Schedule 1 (Definitions), Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), Call Off Schedule 11 (Exit Management), Call Off Schedule 12 (Staff Transfer), Call Off Schedule 13 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Call Off Expiry Date.

45.4 Exit management

45.4.1 The Parties shall comply with the exit management provisions set out in Call Off Schedule 11 (Exit Management).

L. MISCELLANEOUS AND GOVERNING LAW

46. COMPLIANCE

46.1 Health and Safety

46.1.1 The Supplier shall perform its obligations under this Call Off Contract (including those in relation to the Goods and Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer Premises.

46.1.2 Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Call Off Contract

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

46.2 Equality and Diversity

46.2.1 The Supplier shall:

- (a) perform its obligations under this Call Off Contract (including those in relation to provision of the Goods and Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (ii) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law; and
- (b) take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

46.3 Official Secrets Act and Finance Act

46.3.1 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

46.4 Environmental Requirements

46.4.1 The Supplier shall, when working on the Sites, perform its obligations under this Call Off Contract in accordance with the Environmental Policy of the Customer.

46.4.2 The Customer shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

47. ASSIGNMENT AND NOVATION

47.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Call Off Contract or any part of it without Approval.

47.2 The Customer may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Call Off Contract or any part thereof to:

47.2.1 any other Contracting Body; or

47.2.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

47.2.3 any private sector body which substantially performs the functions of the Customer,

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 47.2.

A change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 0 affect the validity of this Call Off Contract and this Call Off Contract shall be binding on any successor body to the Customer.

If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call Off Contract to a body which is not a Contracting Body or if a body which is not a Contracting Body succeeds the Customer (both Transferee in the rest of this Clause) the right of termination of the Customer in Clause 41.4 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee (as if the references to Supplier in Clause 41.4 (Termination on Insolvency) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee).

48. WAIVER AND CUMULATIVE REMEDIES

48.1 The rights and remedies under this Call Off Contract may be waived only by notice in accordance with Clause 55 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Call Off Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of.

48.2 Unless otherwise provided in this Call Off Contract, rights and remedies under this Call Off Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

49. RELATIONSHIP OF THE PARTIES

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

50. PREVENTION OF FRAUD AND BRIBERY

50.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Call Off Commencement Date:

50.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

50.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

50.2 The Supplier shall not during the Call Off Contract Period:

50.2.1 commit a Prohibited Act; and/or

50.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

50.3 The Supplier shall during the Call Off Contract Period:

- 50.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 50.3.2 keep appropriate records of its compliance with its obligations under Clause 50.3.1 and make such records available to the Customer on request;
 - 50.3.3 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 Goods and Services in connection with this Call Off Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
 - 50.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 50.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 50.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 50.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 50.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 50.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Contract has committed or attempted to commit a Prohibited Act.
- 50.5 If the Supplier makes a notification to the Customer pursuant to Clause 50.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with Clause 20 (Records, Audit Access and Open Book Data).
- 50.6 If the Supplier breaches Clause 50.3, the Customer may by notice:
- 50.6.1 require the Supplier to remove from performance of this Call Off Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
 - 50.6.2 immediately terminate this Call Off Contract for material Default.
- Any notice served by the Customer under Clause 50.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

51. SEVERANCE

- 51.1 If any provision of this call off contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this call off contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this call off contract shall not be affected.
- 51.2 In the event that any deemed deletion under clause 51.1 is so fundamental as to prevent the accomplishment of the purpose of this call off contract or materially alters

the balance of risks and rewards in this call off contract, either party may give notice to the other party requiring the parties to commence good faith negotiations to amend this call off contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this call off contract and, to the extent that is reasonably practicable, achieves the parties' original commercial intention.

- 51.3 If the parties are unable to resolve the dispute arising under this clause 51 within twenty (20) working days of the date of the notice given pursuant to clause 51.2, this call off contract shall automatically terminate with immediate effect. The costs of termination incurred by the parties shall lie where they fall if this call off contract is terminated pursuant to this clause 51.

52. FURTHER ASSURANCES

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

53. ENTIRE AGREEMENT

- 53.1 This Call Off Contract constitutes the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 53.2 Neither Party has been given, nor entered into this Call Off Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call Off Contract.
- 53.3 Nothing in this Clause 53 shall exclude any liability in respect of misrepresentations made fraudulently.

54. THIRD PARTY RIGHTS

- 54.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Call Off Schedule 12 (Staff Transfer) and the provisions of paragraph **Error! Reference source not found.** of Schedule 11 (Exit Management) (together Third Party Provisions) confer benefits on persons named in such provisions other than the Parties (each such person a Third Party Beneficiary) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 54.2 Subject to Clause 54.1, a person who is not a Party to this Call Off Contract has no right under the CTRPA to enforce any term of this Call Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 54.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 54.4 Any amendments or modifications to this Call Off Contract may be made, and any rights created under Clause 54.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

55. NOTICES

- 55.1 Except as otherwise expressly provided within this Call Off Contract, any notices sent under this Call Off Contract must be in writing. For the purpose of this Clause 55, an e-mail is accepted as being in writing.
- 55.2 Subject to Clause 55.3, 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 Clauses 55.3 and 55.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail 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
Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day 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 same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

55.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 55.2:

55.3.1 any Termination Notice (Clause 41 (Customer Termination Rights)),

55.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 44 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 48 (Waiver and Cumulative Remedies))
- (c) Default or Customer Cause; and

55.3.3 any Dispute Notice.

55.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 55.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 55.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

55.5 This Clause 55 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 (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

55.6 For the purposes of this Clause 55, the address and email address of each Party shall be the address and email address set out in the Order Form.

56. DISPUTE RESOLUTION

56.1 The Parties shall resolve Disputes arising out of or in connection with this Call Off Contract in accordance with the Dispute Resolution Procedure.

- 56.2 The Supplier shall continue to provide the Goods and Services in accordance with the terms of this Call Off Contract until a Dispute has been resolved.

57. GOVERNING LAW AND JURISDICTION

- 57.1 This Call Off Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 57.2 Subject to Clause 56 (Dispute Resolution) and Call Off Schedule 13 (Dispute Resolution Procedure) (including the Customer's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

CALL OFF SCHEDULE 1: DEFINITIONS

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

Achieve	means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and Achieved and Achievement shall be construed accordingly;
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;
Additional Clauses	means the additional Clauses in Call Off Schedule 15 (Alternative and/or Additional Clauses) and any other additional Clauses stipulated by the Customer during a Further Competition Procedure and set out in the Order Form or elsewhere in this Call Off Contract;
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 15 (Alternative and/or Additional Clauses) and any other alternative Clauses stipulated by the Customer during a Further Competition Procedure and set out in the Order Form or elsewhere in this Call Off Contract;
Approval	means the prior written consent of the Customer and Approve and Approved shall be construed accordingly;
Approved Sub-Licensee	means any of the following: a) a Central Government Body; b) any third party providing Goods and Services to a Central Government Body; and/or c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;
Auditor	means: a) the Customer's internal and external auditors; b) the Customer's statutory or regulatory auditors; c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office d) HM Treasury or the Cabinet Office e) any party formally appointed by the Customer to carry out audit or similar review functions; and f) successors or assignees of any of the above;

Authority	means THE MINISTER FOR THE CABINET OFFICE (Cabinet Office) as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at Rosebery Court, St Andrews Business Park, Norwich NR7 0HS;
BCDR Plan	means the plan prepared pursuant to paragraph 2 of Call Off Schedule 10 (Business Continuity and Disaster Recovery), as may be amended from time to time;
BCDR Services	means the Business Continuity Services and Disaster Recovery Services;
Business Continuity Services	has the meaning given to it in paragraph Error! Reference source not found. of Call Off Schedule 10 (Business Continuity and Disaster Recovery);
Call Off Commencement Date	means the date of commencement of this Call Off Contract set out in paragraph 1.1 of the Order Form;
Call Off Contract	means this legally binding agreement between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement Schedule 5 (Call Off Procedure) for the provision of the Goods and/or Services) consisting of the Order Form and the Call Off Terms;
Call Off Contract Charges	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Customer under this Call Off Contract, as set out in Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Call Off Contract less any Deductions;
Call Off Contract Period	means the term of this Call Off Contract from the Call Off Commencement Date until the Call Off Expiry Date, which shall in no event exceed a maximum duration of seven (7) years;
Call Off Contract Year	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
Call Off Expiry Date	means: a) the end date of the Call Off Initial Period or any Call Off Extension Period; or b) if this Call Off Contract is terminated before the date specified in (a) above, the earlier date of termination of this Call Off Contract;
Call Off Extension Period	means the extension term of this Call Off Contract from the end date of the Call Off Initial Period to the end date of the extension period stated in the Order Form;
Call Off Guarantee	Not used.
Call Off Guarantor	Not used.
Call Off Initial Period	means the initial term of this Call Off Contract from the Call Off Commencement Date to the end date of the initial term stated in the Order Form;

Call Off Schedule	means a schedule to this Call Off Contract;
Call Off Terms	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Goods and/or Services, together with the Call Off Schedules hereto;
Central Government Body	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
Change in Law	means any change in Law which impacts on the supply of the Goods and/or 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 Contract 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 Contract, which structure is set out in Framework Schedule 3 (Framework Prices and 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 Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;
Compensation for Critical Service Level Failure	has the meaning given to it in Clause 13.1.2 (Critical Service Level Failure);
Confidential Information	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
Continuous Improvement Plan	means a plan for improving the provision of the Goods and/or Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);
Contracting Body	means the Authority, the Customer and any other bodies listed in paragraph VI.3 of the OJEU Notice;

Control	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and Controls and Controlled shall be interpreted accordingly;
Conviction	Not used.
Costs	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Goods and/or Services:</p> <p>a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:</p> <ul style="list-style-type: none"> i) base salary paid to the Supplier Personnel; ii) employer's national insurance contributions; iii) pension contributions; iv) car allowances; v) any other contractual employment benefits; vi) staff training; vii) work place accommodation; viii) work place IT equipment and tools reasonably necessary to provide the Goods and/or Services (but not including items included within limb (b) below); and ix) reasonable recruitment costs, as agreed with the Customer; <p>b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Customer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Goods and/or Services;</p> <p>but excluding:</p> <ul style="list-style-type: none"> a) Overhead; b) financing or similar costs; c) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Call Off Contract Period whether in relation to Supplier Assets or otherwise; d) taxation; e) fines and penalties; f) amounts payable under Clause 24 (Benchmarking); and g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

Critical Service Level Failure	means any instance of critical service level failure specified in Annex 2 to Part A of Call Off Schedule 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;
Crown Body	means any department, office or executive agency of the Crown;
CRTPA	means the Contracts (Rights of Third Parties) Act 1999;
Customer	means the customer(s) identified in the Order Form;
Customer Assets	means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Goods and/or Services;
Customer Background IPR	means: a) IPRs owned by the Customer before the Call Off Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, processes and procedures; b) IPRs created by the Customer independently of this Call Off Contract; and/or c) Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract; but excluding IPRs owned by the Customer subsisting in the Customer Software;
Customer Cause	means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Customer is liable to the Supplier;
Customer Data	means: a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which: i) are supplied to the Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or b) any Personal Data for which the Customer is the Data Controller;
Customer Premises	means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for provision of the Goods and/or Services (or any of them);

Customer Property	means the property, other than real property and IPR, including the Customer System issued or made available to the Supplier by the Customer in connection with this Call Off Contract;
Customer Representative	means the representative appointed by the Customer from time to time in relation to this Call Off Contract;
Customer Responsibilities	means the responsibilities of the Customer set out in the Part B of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel) and any other responsibilities of the Customer in the Order Form or agreed in writing between the Parties from time to time in connection with this Call Off Contract;
Customer Software	means any software identified as such in the Order Form together with all other software which is not identified as such in the Order Form but which is owned by or licensed to the Customer and which is or will be used by the Supplier for the purposes of providing the Goods and/or Services;
Customer System	means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Call Off Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Goods and/or Services;
Customer's Confidential Information	means: <ul style="list-style-type: none"> a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Customer (including all Customer Background IPR and Project Specific IPR); b) any other information clearly designated as being confidential (whether or not it is marked confidential) or which ought reasonably be considered confidential which comes (or has come) to the Customer's attention or into the Customer's possession in connection with this Call Off Contract; and c) information derived from any of the above;
Data Controller	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
Data Processor	has the meaning given to it 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	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
Data Subject Access Request	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;

Deductions	means all Service Credits, Delay Payments or any other deduction which the Customer is paid or is payable under this Call Off Contract;
Default	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
Defect	means any of the following: a) any error, damage or defect in the manufacturing of a Deliverable; or b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract; or d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Customer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract;
Delay	means: a) a delay in the Achievement of a Milestone by its Milestone Date; or b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
Delay Payments	means the amounts payable by the Supplier to the Customer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
Deliverable	means an item or feature in the supply of the Goods and/or Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan (if any) or at any other stage during the performance of this Call Off Contract;
Delivery	means, the time at which the Goods and/or Services have been provided or performed by the Supplier as confirmed by the issue by the Customer of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Call Off Contract and accepted by the Customer and Deliver and Delivered shall be construed accordingly;
Disaster	means the occurrence of one or more events which, either separately or cumulatively, mean that the Goods and/or Services, or a material part thereof will be unavailable for a period of twenty four (24) hours or which is reasonably anticipated will mean that the provision of the Goods and/or

Disaster Recovery Services	means the services embodied in the processes and procedures for restoring the provision of Goods and/or Services following the occurrence of a Disaster, as detailed further in Call Off Schedule 10 (Business Continuity and Disaster Recovery);
Disclosing Party	has the meaning given to it in Clause 34.4.1 (Confidentiality);
Dispute	means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Goods and/or Services, failure to agree in accordance with the Variation Procedure or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
Dispute Notice	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
Dispute Resolution Procedure	means the dispute resolution procedure set out in Call Off Schedule 13 (Dispute Resolution Procedure);
Documentation	means all documentation as: <ul style="list-style-type: none"> a) is required to be supplied by the Supplier to the Customer under this Call Off Contract; b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Goods and/or Services; c) is required by the Supplier in order to provide the Goods and/or Services; and/or d) has been or shall be generated for the purpose of providing the Goods and/or Services;
DOTAS	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
Due Diligence Information	means any information supplied to the Supplier by or on behalf of the Customer prior to the Call Off Commencement Date;
Emergency Maintenance	Not used
Employee Liabilities	means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in

	<p>connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; b) unfair, wrongful or constructive dismissal compensation; c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; d) compensation for less favourable treatment of part-time workers or fixed term employees; e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date; f) claims whether in tort, contract or statute or otherwise; g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
Employment Regulations	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
Environmental Information Regulations or EIRs	means 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, including any written environmental policy of the Customer;
Environmental Policy	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;
Estimated Year 1 Call Off Contract Charges	means the sum of £[65,000] pounds estimated by the Customer to be payable by it to the Supplier as the total aggregate Call Off Contract Charges from the Call Off Commencement Date until the end of the first Call Off Contract Year;
Euro Compliant	<p>means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Customer's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):</p> <ul style="list-style-type: none"> a) be able to perform all such functions in any number of currencies and/or in Euros;

	<ul style="list-style-type: none"> b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations; c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro; d) incorporate protocols for dealing with rounding and currency conversion; e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and f) permit the input of data in euro and display an outcome in euro where such data, supporting the Customer's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;
Expedited Dispute Timetable	means the timetable set out in paragraph 5 of Schedule 13 (Dispute Resolution Procedure);
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
Force Majeure Event	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract; b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of the Crown, local government or Regulatory Bodies; d) fire, flood or any disaster; and e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
Force Majeure Notice	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
Former Supplier	means a supplier supplying the services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the

	Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
Framework Agreement	means the framework agreement between the Authority and the Supplier referred to in the Order Form;
Framework Commencement Date	means the date of commencement of the Framework Agreement as stated in the Call Off Schedule 1 (Definitions);
Framework Period	means the period from the Framework Commencement Date until the expiry or earlier termination of the Framework Agreement;
Framework Price(s)	means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);
Framework Schedule	means a schedule to the Framework Agreement;
Fraud	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
Further Competition Procedure	means the award procedure described in paragraph 3 of Framework Schedule 5 (Call Off Procedure);
General Anti-Abuse Rule	means the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
General Change in Law	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
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;
"Goods"	means the goods to be provided by the Supplier to the Customer as specified in Annex 2 of Call Off Schedule 2 (Goods and Services);
Government	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
Halifax Abuse Principle	means the principle explained in the CJEU Case C-255/02 Halifax and others;
HMRC	means Her Majesty's Revenue and Customs;
Holding Company	has the meaning given to it in section 1159 of the Companies Act 2006;
ICT Environment	means the Customer System and the Supplier System;

ICT Policy	means the Customer's ICT policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
Impact Assessment	has the meaning given to it in Clause 21.1.3 (Variation Procedure);
Implementation Plan	means the plan set out in paragraph 2.7 of the Order Form;
Information	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
Insolvency Event	<p>means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):</p> <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or g) being a small company within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or h) where the Supplier or Framework Guarantor or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;
Intellectual Property Rights or IPR	<p>means</p> <ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names,

	<p>designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
Interoperability	<p>means the capability to communicate, execute programs, or transfer data among various functional units in a manner that requires the user to have little or no knowledge of the unique characteristics of those units. (ISO/IEC 2382-01, Information Technology Vocabulary). This is applied to the context of software interoperability.</p>
IPR Claim	<p>means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations under this Call Off Contract;</p>
Key Performance Indicators or KPIs	<p>means the performance measurements and targets in respect of the Supplier's performance of the Framework Agreement set out in Part B of Framework Schedule 2 (Services and Key Performance Indicators);</p>
Key Personnel	<p>means the individuals (if any) identified as such in Part C of Call Off Schedule 4 (Implementation Plan, Customer Responsibilities and Key Personnel);</p>
Key Role(s)	<p>has the meaning given to it in Clause 25.1 (Key Personnel);</p>
Key Sub-Contract	<p>means each Sub-Contract with a Key Sub-Contractor;</p>
Key Sub-Contractor	<p>means any Sub-Contractor:</p> <p>a) listed in Framework Schedule 7 (Key Sub-Contractors);</p> <p>b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or</p> <p>c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Call Off Contract Charges forecast to be payable under this Call Off Contract;</p>
Know-How	<p>means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Call Off Commencement Date;</p>
Law	<p>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;</p>
Licensed Software	<p>means all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Customer for the purposes of or</p>

	pursuant to this Call Off Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;
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;
Maintenance Schedule	Not used.
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;
Man Day	means 8 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
Man Hours	means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
Milestone	means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;
Milestone Date	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
Milestone Payment	means a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;
Month	means a calendar month and Monthly shall be interpreted accordingly;
New Release	means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
Occasion of Tax Non Compliance	means: <ul style="list-style-type: none"> a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a

	<p>Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p> <p>b) the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a penalty for civil fraud or evasion;</p>
Open Book Data	<p>means complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Call Off Contract Charges already paid or payable and Call Off Contract Charges forecast to be paid during the remainder of this Call Off Contract, including details and all assumptions relating to:</p> <p>a) the Supplier's Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;</p> <p>b) operating expenditure relating to the provision of the Services including an analysis showing:</p> <p>i) the unit costs and quantity of any consumables and bought-in services;</p> <p>ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;</p> <p>iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and</p> <p>c) Overheads;</p> <p>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;</p> <p>e) the Supplier Profit achieved over the Call Off Contract Period and on an annual basis;</p> <p>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and</p> <p>h) the actual Costs profile for each Service Period.</p>
Open Source Software	<p>means computer software that has its source code made available subject to an open-source license under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;</p>
Open Standard	<p>means a standard for system or software Interoperability, data and document formats, which exhibit all of the criteria described in section 12 of the UK Government Open Standard Principles</p>

Open Standard Principles	means the UK Government Open Standard Principles https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles#open-standard---definition
Open System	means a system that is compatible with a set of Open Standards with an aim to promote Interoperability
Operating Environment	means the Customer System and the Sites;
Order	means the order for the provision of the Services placed by the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Call Off Contract;
Order Form	means the form, as completed and forming part of this Call Off Contract, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;
Other Supplier	means any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
Overhead	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of Costs;
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;
Performance Monitoring System	has the meaning given to it in paragraph 1.1.2 in Part B of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
Performance Monitoring Reports	has the meaning given to it in paragraph 3.1 of Part B of Schedule 6 (Service Level, Service Credit and Performance Monitoring);
Personal Data	has the meaning given to it in the Data Protection Act 1998;
Permitted Maintenance	has the meaning given to it in Clause 32.3 (Maintenance of the ICT Environment);
Processing	has the meaning given to it in 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 any of the following:

	<p>a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority or other Contracting Body or any other public body a financial or other advantage to:</p> <p>i) induce that person to perform improperly a relevant function or activity; or</p> <p>ii) reward that person for improper performance of a relevant function or activity;</p> <p>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>c) committing any offence:</p> <p>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)</p> <p>ii) under legislation or common law concerning fraudulent acts; or</p> <p>iii) defrauding, attempting to defraud or conspiring to defraud the Customer; or</p> <p>iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
Project Specific IPR	<p>means:</p> <p>a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>b) IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier Background IPR or the Specially Written Software;</p>
Quality Plans	shall have the meaning given in Clause 10.2 (Standards and Quality);
Recipient	has the meaning given to it in Clause 34.4.1 (Confidentiality);
Rectification Plan	means the rectification plan pursuant to the Rectification Plan Process;
Rectification Plan Process	means the process set out in Clause 38.2 (Rectification Plan Process);
Registers	has the meaning given to in Call Off Schedule 11 (Exit Management);
Regulations	means the Public Contracts Regulations 2006 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
Reimbursable Expenses	has the meaning given to it in Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);

Related Supplier	means any person who provides services to the Customer which are related to the Services from time to time;
Relevant Conviction	Not used.
Relevant Requirements	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
Relevant Tax Authority	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;
Relevant Transfer	means a transfer of employment to which the Employment Regulations applies;
Relevant Transfer Date	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
Relief Notice	has the meaning given to it in Clause 39.2.2 (Supplier Relief Due to Customer Cause);
Replacement Services	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the Call Off Expiry Date, whether those services are provided by the Customer internally and/or by any third party;
Replacement Sub-Contractor	means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
Replacement Supplier	means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
Request for Information	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
Restricted Countries	has the meaning given to it in Clause 34.7.3 (Protection of Personal Data);
Satisfaction Certificate	means the certificate materially in the form of the document contained in Annex 3 to Call Off Schedule 5 (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 8 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 3 of Call Off Schedule 8 (Security) and as updated from time to time;
Security Policy	means the Customer's security policy in force as at the Call Off Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
Service Credit Cap	means:

	<p>a) in the period from the Call Off Commencement Date to the end of the first Call Off Contract Year N/A% of the Estimated Year 1 Call Off Contract Charges; and</p> <p>b) during the remainder of the Call Off Contract Period, N/A% of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the period of twelve (12) Months immediately preceding the Month in respect of which Service Credits are accrued;</p>
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 Level Failure	means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
Service Level Performance Criteria	has the meaning given to it in paragraph 4.2 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
Service Level Performance Measure	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
Service Level Threshold	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
Service Levels	means any service levels applicable to the provision of the Services under this Call Off Contract specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
Service Period	has the meaning given to in paragraph 5.1 of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
Service Transfer	means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
Service Transfer Date	means the date of a Service Transfer;
Services	means the services to be provided by the Supplier to the Customer as referred to Annex A of Call Off Schedule 2 (Services);
Sites	<p>means:</p> <p>a) any premises (including the Customer Premises, the Supplier's premises or third party premises):</p> <p>i) from, to or at which:</p> <p>(1) the Services are (or are to be) provided; or</p>

	<p>(2) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>ii) where: any part of the Supplier System is situated; or</p> <p>b) any physical interface with the Customer System takes place;</p>
Software	means Specially Written Software, Supplier Software and Third Party Software;
Software Supporting Materials	has the meaning given to it in Clause 33.2.1(b) (Licenses granted by the Supplier: Specially Written Software and Project Specific IPR);
Source Code	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
Specially Written Software	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Call Off Contract;
Specific Change in Law	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
Staffing Information	has the meaning give to it in Call Off Schedule 12 (Staff Transfer);
Standards	<p>means any:</p> <p>a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</p> <p>b) standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators);</p> <p>c) standards detailed by the Customer in Call Off Schedule 7 (Standards) following a Further Competition Procedure or agreed between the Parties from time to time;</p> <p>d) relevant Government codes of practice and guidance applicable from time to time.</p>
Sub-Contract	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the provision of the Services or any part thereof;

Sub-Contractor	means any third party engaged by the Supplier, including any Key Sub-Contractor, from time to time under a Sub-Contract permitted pursuant to the Framework Agreement and this Call Off Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;
Supplier	means the person, firm or company with whom the Customer enters into this Call Off Contract as identified in the Order Form;
Supplier Assets	means all assets and rights used by the Supplier to provide the Services in accordance with this Call Off Contract but excluding the Customer Assets;
Supplier Background IPR	means a) Intellectual Property Rights owned by the Supplier before the Call Off Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or b) Intellectual Property Rights created by the Supplier independently of this Call Off Contract, but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;
Supplier Personnel	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Call Off Contract;
Supplier Equipment	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Call Off Contract;
Supplier Non-Performance	has the meaning given to it in Clause 39.1 (Supplier Relief Due to Customer Cause);
Supplier Profit	means, in relation to a period or a Milestone (as the context requires), the difference between the total Call Off Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
Supplier Profit Margin	means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Call Off Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
Supplier Representative	means the representative appointed by the Supplier named in the Order Form;
Supplier Software	means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) and identified as such in the Order Form together with all other such software which is not identified 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 (according to the terms in Call Off

	Schedule 16) in order for the Customer to receive the benefit of and/or make use of the Services;
Supplier System	means the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System);
Supplier's Confidential Information	means <ul style="list-style-type: none"> a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier; b) any other information clearly designated as being confidential (whether or not it is marked as confidential) or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Call Off Contract; c) information derived from any of the above.
Template Call Off Terms	means the template terms and conditions in Annex 2 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
Template Order Form	means the template order form in Annex 1 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
Tender	means the tender submitted by the Supplier to the Authority and annexed to Framework Schedule 20 (Tender);
Test and Testing	means any tests required to be carried out pursuant to this Call Off Contract as set out in the Test Strategy Plan or elsewhere in this Call Off Contract and Tested shall be construed accordingly;
Test Issue	means any variance or non-conformity of the Services or Deliverables from their requirements as set out in this Call Off Contract;
Testing Strategy Plan	means a plan: <ul style="list-style-type: none"> a) for the Testing of Deliverables; and b) setting out other agreed criteria related to the achievement of Milestones, as described further in paragraph 6 of this Call Off Schedule;
Termination Notice	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;
Third Party IPR	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
Third Party Software	means any software identified as such in the Order Form together with all other software which is not listed in the Order Form which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source

	Software which is or will be used by the Supplier for the purposes of providing the Services);
Transferring Supplier Employees	means those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.
Undelivered Services	has the meaning given to it in Clause 7.4.1 (Supply of Services);
Undisputed Sums Time Period	has the meaning given to it Clause 42.1.1 (Termination of Customer Cause for Failure to Pay);
Update	means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
Upgrade	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Call Off Contract Period;
Valid Invoice	means an invoice issued by the Supplier to the Customer that complies with the invoicing procedure in paragraph 7 (Invoicing Procedure) of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing);
Variation	has the meaning given to it in Clause 21.1 (Variation Procedure);
Variation Form	means the form set out in Call Off Schedule 14 (Variation Form);
Variation Procedure	means the procedure set out in Clause 21.1 (Variation Procedure);
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
Working Day	means any Day other than a Saturday or Sunday or public holiday in England and Wales.

CALL OFF SCHEDULE 2: GOODS AND SERVICES

1. INTRODUCTION

- 1.1 This Call Off Schedule specifies the Goods and/or Services to be provided under this Call Off Contract, in Annex 1.
- 1.2 The Goods and/or Services will be within scope of the Lots described within Schedule 2 of the Framework Agreement, listed below as capable of being provided by the Supplier.
- 1.3 **Goods and/or Services**
 - 1.3.1 The Goods and/or Services covered are divided into the following Lots:
 - 1.3.2 11: GIS

Lot title	Functional requirements
1 - Revenues & Benefits systems	<p>Systems and/ or software to enable eligible customers to carry out at least one of the following business areas, completing ALL of the tasks/functions listed under that business area.</p> <p>Business area: Revenues and Benefits</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Council tax calculation and billing • Support for self-service enquiries and payments • Manage council tax discounts and exemptions • Benefit claims processing and payments • Revenues and Benefits workflow • Integration with EDRM • Integration with DWP • Integration with VOA • Integration with Finance/BACS <p>and/or</p> <p>Business area: Business Rates (NNDR)</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • NNDR calculation and billing, • Self-service enquiries and payments • Manage discounts and exemptions • Integration with Finance/BACS • Integration with VOA • Integration with EDRM
2 - Payment Processing & Cash Receipting systems	Systems/software to enable eligible customers to collect and process payments from the public through completion of ALL the following tasks/functions;

	<ul style="list-style-type: none"> • Agent-mediated, online and automated payment processing • Payment tracking, classification, reporting and reconciliation • Interfaces to major UK merchant service platforms • Interfaces to customer's Customer Relationship Management (CRM), tax and financial accounting systems • Complies with (Payment Card Industry Data Security Standard) (PCI DSS) standards
<p>3 -Environmental, Planning, Building Control, Trading Standards and Licencing systems</p>	<p>Systems and/ or software to enable eligible customers to carry out at least one of the following business areas, completing ALL of the tasks/functions listed under that business area</p> <p>Business Area: Environmental Health</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Case administration from initial report, • Hazard assessment and prioritization, • Officer task management; • Modular support for: <ul style="list-style-type: none"> ○ Animal welfare, ○ Food safety, ○ Noise and pest control ○ Street works. <p>And/or</p> <p>Business area: Planning</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Administer all stages of planning application • Search and enquiries • Application of planning policy • Calculate charges and Community Infrastructure Levy • Process appeals • Planning enforcement • Flood defence <p>And/or</p> <p>Business area: Building Control</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Administer applications and payments • Application tracking • Manage site inspections • Support for dangerous, special and temporary structures and demolition works

	<p>And/or</p> <p>Business area: Local Land Charges</p> <p>Tasks/functions to include ALL of;</p> <ul style="list-style-type: none"> • Land charges register management • Searches <p>And/or</p> <p>Business area: Trading Standards</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Database of Traders and past track record/behaviours • Manage and programme inspections / staff • Risk Assessment • Generation of forms/outputs required by statute <p>And/or</p> <p>Business area: Licencing</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Licence administration and enforcement systems for; <ul style="list-style-type: none"> o Personal Alcohol Licences o Premises Licences o Club Premises Certificates o Temporary Event Notices o Hackney Carriage and Private Hire vehicles and drivers o Other licences
<p>4 – Libraries systems</p>	<p>Systems and/or Software to enable eligible customers to complete ALL of the following tasks/functions;</p> <ul style="list-style-type: none"> • Catalogue search • Self-service reservation and renewal • Kiosk support • Procurement / acquisition • Digital library provision • Membership management • Records archiving
<p>5 - Housing and Property systems</p>	<p>Systems and/ or software to enable eligible customers to carry out at least one of the following business areas, completing ALL of the tasks/functions listed under that business area</p> <p>Business area: Property or Housing Management</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Application and waiting list with status enquiry

	<ul style="list-style-type: none"> • Property or housing stock management • Tenancy management • Rent accounting and default management <p>And/or</p> <p>Business area: Property or Housing Repairs</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Self-service and agent-mediated case initiation • Incident tracking; procurement and commissioning • Time and materials planning, job allocation and work recording. <p>And/or</p> <p>Business area: E-Marketplaces for materials or services relating to maintenance</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Catalogues for a range of services; <ul style="list-style-type: none"> o Materials, o Labour costs, o Planned maintenance programmes • Reporting tools • Integration with Finance/BACS
6 - Social Care systems	<p>Systems and/ or software to enable eligible customers to carry out at least one of the following business areas, completing ALL of the tasks/functions listed under that business area.</p> <p>Business area: Social care case management (Adult or children's)</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Case management, • Online client services, • Workforce planning and prioritization, • Care commissioning <p>And/or</p> <p>Business area: Social Care Finance</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Personal budget management • Spend analysis • Financial assessment • Contract management <p>And/or</p> <p>Business area: Social Care e-Marketplaces</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Catalogues for a range of services;

	<ul style="list-style-type: none"> o Home care, o Holistic therapeutic days out, o Residential home places o Assistive equipment • Reporting tools • Integration with Finance/BACS
7 - Public Health systems	<p>Systems and/ or software to enable eligible customers to complete ALL of the following tasks/functions;</p> <ul style="list-style-type: none"> • Public Health Planning and Improvement • Public Health Protection • Public Health reporting and commissioning systems
8 - Civil Enforcement systems	<p>Systems or software to enable eligible customers to do ALL of the following;</p> <ul style="list-style-type: none"> • Application for parking permits, • Administration of penalty notices, • Challenges and appeals, • Collection of payments and collections
9 - Open Government Systems, Interoperability and Integration Services	<p>Systems and services to create and improve openness , interoperability and data sharing between systems, citizens and staff and improve the experiences of system users and reduce costs of transactions/interactions.</p> <p>This includes systems and services aimed at providing the necessary capability to enable and/or build new solutions and / or added value solutions based upon the services provided by the different Line Of Business systems provided through Lots 1 to 8, 10 and 11.</p> <p>Suppliers should be able to provide services, platforms and capabilities to allow sharing of information based on open standards;</p> <p>These could be;</p> <ul style="list-style-type: none"> • Interfaces • Brokered/managed workflow • Single front end • Commodity online services • Automated services across systems • Master Data Management • Mobile enablement of existing applications • Information search across structured and unstructured data sources • Identity Management
10 - Democratic and Citizen Engagement Systems	<p>Systems or software to enable eligible customers to do at least one of the following;</p> <p>Business area: Electoral Management -- Systems/software that can complete ALL the following tasks/functions:</p>

	<ul style="list-style-type: none"> • Voter registration and validation, • Election management, • Proxy voting, • Postal voting administration, • Moving constituencies <p>And/or</p> <p>Business area: Citizen information provision and consultation — systems/software that can complete ANY the following tasks/functions:</p> <ul style="list-style-type: none"> • Committee Paper Systems • Citizen consultation or survey systems • Social media management and monitoring tools
<p>11- Other Local Authority business systems</p>	<p>Systems and/ or Software to enable eligible customers to complete the following tasks/functions for at least one of the following business areas, completing ALL of the tasks/functions listed under that business area</p> <p>Business area: Waste Management Systems that can complete ALL the following tasks/functions:</p> <ul style="list-style-type: none"> • Domestic and Trade Waste collection planning and scheduling • Special collection booking and planning • Street Cleansing scheduling • Waste dataflow management including collection of data from weighbridges and posting directly to DEFRA • Cesspool management and collections • Minerals and waste planning and management <p>And/or</p> <p>Business area: Museums systems that can complete ANY the following tasks/functions:</p> <ul style="list-style-type: none"> • Collection management systems • Booking and ticketing systems <p>And/or</p> <p>Business area: Sports and Recreation systems that can complete ANY the following tasks/functions:</p> <ul style="list-style-type: none"> • Asset Management Systems • Parks and Countryside Management • Facilities booking systems • Ticketing systems <p>And/or</p> <p>Business area: Registrar systems that can complete ALL the following tasks/functions:</p> <ul style="list-style-type: none"> • Manage appointments for Birth, Marriage and Death registration

	<ul style="list-style-type: none"> • Staff / event allocation and management <p>And/or</p> <p>Business area: Burial and Crematorium systems</p> <p>Tasks/functions to include:</p> <ul style="list-style-type: none"> • Cemetery or crematoria administration/ management <p>And/or</p> <p>Business area: GIS</p> <p>Tasks/functions to include ALL of:</p> <ul style="list-style-type: none"> • Geospatial Systems • Meet Open Geospatial Consortium Standards • services relating to INSPIRE compliance
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SERVICE DESK

Available under all Lots if required by Customers

The Service Desk acts as the primary user interface between the Customer's IT users and the Information System function. The role of the Service Desk is to take ownership of all calls made to it, and to ensure that the Customers are provided with incident resolutions.

The Service Desk must be ITIL compliant and may include, but will not be limited to, the provision of the following services:

- A logical 'Single Point of Contact' for all user contacts
- Contacts can be by telephone, email, and fax.
- Contact answering
- Accurate recording of all contacts
- Timely updating of contact data
- Contact categorisation including contact type and severity levels
- Contact prioritisation
- Instigation of escalation procedures as appropriate
- Direct and prompt resolution of contacts
- Providing timely and accurate information to users
- Obtaining Customer's agreement or signoff prior to the closure of any contact
- Active ownership, tracking and management of all contacts within scope – to ensure contacts are resolved
- To keep the caller updated of the status of any contact where they are unlikely to be resolved or completed within the agreed time
- To update appropriate IT and user management of the status of all high priority and service affecting contacts

- Where necessary provide on-site support to the repair process
- Provide visibility via a web browser of the appropriate section of the incident management system
- Provide a first line analytical service for the video conferencing facilities.
- Incident management and reporting

MAINTENANCE SERVICES

Available under all Lots if required by Customers.

The provision of maintenance services for software applications within the scope of the Lot (inclusive of any customisation) including but not limited to:

- Break-fix support
- Advisory services on the implementation of pre-built patches that the customer has rights to deploy/is licensed to use by the relevant Software Owner
- Development, testing and implementation of bug fixes (or such bug fixes where available from the relevant software owner, advisory services in the implementation thereof)
- Development, testing and implementation of workarounds where bug fix is not possible (or such bug fixes where available from the relevant software owner advisory services in the implementation thereof)
- Development, testing and implementation of all necessary updates to ensure that the software undertakes all processing to include changes to the taxation regime applied by HMRC, changes to law by legislators and changes in regulation by regulatory bodies (or such bug fixes where available from the relevant software owner advisory services in the implementation thereof)
- Monitoring of the operation of the software in order to assure application and information availability and integrity
- Provision of a knowledge-base of known issues and solutions in respect of the software
- Provision of release notes to customers
- Assistance with upgrading, replacing, or otherwise changing the software

User Support

Available under all Lots if required by Customers.

User Support may include but will not be limited to the provision of the following services;

- Access to user documentation pertaining to the solution, including system manuals, user guides, on-line help, FAQs;
- Updating of documentation to reflect new versions of the Supplier Solution;
- Provision of operational support as part of their application management service;
- Provision of second line operational support and help desk services to the Customers users in respect of the solution and its associated activities Investigation and resolution of all technical issues arising from reported problems;
- Resolution in line with the resolution service levels, as defined in the Call Off Contract;
- Provision of a single service management system for incident management, problem resolution and change management, with a designated account manager as a single point of contact for user support.

In addition to the above, the Supplier will be able to offer the following, as long as they can provide all of the above core requirements;

- Provide business process services related to the Lots which they are appointed to.
- Application Hosting,
- Managed Application Services
- Database Administration Services
- Disaster Recover and Backup Services

Hosting Services

Available under all Lots if required by Customers.

Hosting Services may include but will not be limited to the provision of the following services:

- Management of the hosting of the solution and making it available to users, via a secure website having a unique web address;
- Development, test and live access environments;
- Management of the Supplier system infrastructure, including performance and management of the central server configuration, encryption management, firewall management, data filter management and WAN management;
- Proactive monitoring of the Supplier system servers and related network for traffic and capacity, and shall report on traffic volumes, disk utilisation and percentage capacity free on disk, performance data, workload analysis, peaks and failures for each reporting period; and
- Hosting of the Supplier system flexibly for the Supplier to host the system initially but with the ability for the Customer to choose a different hosting environment of its own choice if required.

Data Handling and Validation

Available under all Lots if required by Customers.

Data Handling and Validation may include but will not be limited to the provision of the following services:

- Development of the specification of data extracts;
- Physical, secure transfer of extract data from source systems in multiple organisations to the location where the validation and loading process is to be undertaken;
- Regular refreshing of extract data, to support a refresh schedule throughout the lifetime of this Call Off Contract;
- Processing capability for checking the quality and completeness of source data and to facilitate the ability to correct data errors within the source data prior to loading into the solution;
- Management of continuous improvement of data quality, through an iterative cleansing and mapping process;
- Building, operating, hosting and maintaining an analysis database ensuring that it is appropriately structured and optimised and has sufficient hardware resources to operate efficiently and effectively;

- Loading all extract data into this analysis database.

Solution Review Process

Available under all Lots if required by Customers.

Solution review process may include but will not be limited to the provision of the following services:

- The provision of a designated account manager to act as a single point of contact on all matters relating to the solution implemented;
- Regular solution performance review meetings with the Customer (frequency and format to be agreed), to review the solution matters such as Service Levels, software upgrades, risks and issues, resource utilisation, implementation progress and to agree future requirements and developments, including innovation and continuous improvement plans;
- Provision of a Monthly report to support review meetings covering the items described above; and
- Maintenance of records and provide monthly performance reports to demonstrate the levels of service provided, enabling the Customer to determine the Supplier's overall performance in providing the solution.

ANNEX 1: THE SERVICES

Support for products as set out in the Esri UK Letter Agreement at Schedule 16.

ANNEX 2: THE GOODS

Not applicable.

CALL OFF SCHEDULE 3: CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING

1. DEFINITIONS

1.1 The following terms used in this Call Off Schedule shall have the following meaning:

Review Adjustment Date	has the meaning given to it in paragraph 10.1.2 of this Call Off Schedule;
Reimbursable Expenses	a) means the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Customer's expenses policy current from time to time, but not including: b) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Customer otherwise agrees in advance in writing; and c) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed; and
Supporting Documentation	means sufficient information in writing to enable the Customer to reasonably to assess whether the Call Off contract Charges, and other sums due from the Customer under this Call Off Contract detailed in the information are properly payable.

2. GENERAL PROVISIONS

2.1 This Call Off Schedule details:

- 2.1.1 the Call Off Contract Charges for the Services under this Call Off Contract; and
- 2.1.2 the payment terms/profile for the Call Off Contract Charges;
- 2.1.3 the invoicing procedure; and
- 2.1.4 the procedure applicable to any adjustments of the Call Off Contract Charges.

3. CALL OFF CONTRACT CHARGES

- 3.1 The Call Off Contract Charges which are applicable to this Call Off Contract are set out in Annex 1 of this Call Off Schedule.
- 3.2 The Supplier acknowledges and agrees that:
 - 3.2.1 In accordance with paragraph 2 (General Provisions) of Framework Schedule 3 (Framework Prices and Charging Structure), the Call Off Contract Charges can in no event exceed the Framework Prices set out in Annex 3 to Framework Schedule 3 (Framework Prices and Charging Structure); and
 - 3.2.2 subject to paragraph 8 of this Call Off Schedule (Adjustment of Call Off Contract Charges), the Call Off Contract Charges cannot be increased during the Call Off Contract Period.

4. COSTS AND EXPENSES

- 4.1 Except as expressly set out in paragraph 5 of this Call Off Schedule (Reimbursable Expenses), the Call Off Contract Charges include all costs and expenses relating to the

Services and/or the Supplier's performance of its obligations under this Call Off Contract and no further amounts shall be payable by the Customer to the Supplier in respect of such performance, including in respect of matters such as:

- 4.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
- 4.1.2 any amount for any services provided or costs incurred by the Supplier prior to the Call Off Commencement Date.

5. REIMBURSEABLE EXPENSES

- 5.1 The Supplier shall be entitled to be reimbursed by the Customer for Reimbursable Expenses (in addition to being paid the relevant Call Off Contract Charges under this Call Off Contract), provided that such Reimbursable Expenses are supported by Supporting Documentation. The Customer shall provide a copy of their current expenses policy to the Supplier upon request.

6. PAYMENT TERMS/PAYMENT PROFILE

- 6.1 The payment terms/profile which are applicable to this Call Off Contract are set out in Annex 2 of this Call Off Schedule.

7. INVOICING PROCEDURE

- 7.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Customer in paragraph 7.5 of this Call Off Schedule and in accordance with the provisions of this Call Off Contract.
- 7.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Customer may specify):
 - 7.2.1 contains:
 - (a) all appropriate references, including the unique Order reference number; and
 - (b) a detailed breakdown of the Delivered Services, including the Milestone(s) (if any) and Deliverable(s) within this Call Off Contract to which the Delivered Services relate, against the applicable due and payable Call Off Contract Charges; and
 - 7.2.2 shows separately:
 - (a) any Service Credits due to the Customer; and
 - (b) the VAT added to the due and payable Call Off Contract Charges in accordance with Clause 22.2.1 of this Call Off Contract (VAT) and the tax point date relating to the rate of VAT shown; and
 - 7.2.3 is exclusive of any Management Charge (and the Supplier shall not attempt to increase the Call Off Contract Charges or otherwise recover from the Customer as a surcharge the Management Charge levied on it by the Authority); and
 - 7.2.4 it is supported by any other documentation reasonably required by the Customer to substantiate that the invoice is a Valid Invoice.
- 7.3 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.
- 7.4 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a valid undisputed invoice unless otherwise specified in this Call Off Contract,

in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

7.5 The Supplier shall submit invoices directly to:

[REDACTED]

8. ADJUSTMENT OF CALL OFF CONTRACT CHARGES

8.1 The Call Off Contract Charges shall only be varied:

8.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Call Off Contract Charges in accordance with Clause 21.2 of this Call Off Contract (Legislative Change);

8.1.2 in accordance with Clause 22.1.4 of this Call Off Contract (Call Off Contract Charges and Payment) where all or part of the Call Off Contract Charges are reduced as a result of a reduction in the Framework Prices;

8.1.3 where all or part of the Call Off Contract Charges are reduced as a result of a review of the Call Off Contract Charges in accordance with Clause 17 of this Call Off Contract (Continuous Improvement);

8.1.4 where all or part of the Call Off Contract Charges are reduced as a result of a review of Call Off Contract Charges in accordance with Clause 24 of this Call Off Contract (Benchmarking);

8.1.5 where all or part of the Call Off Contract Charges are reviewed and reduced in accordance with paragraph 9 of this Call Off Schedule;

8.1.6 where a review and increase of Call Off Contract Charges is requested by the Supplier and Approved, in accordance with the provisions of paragraph 10 of this Call Off Schedule; or

8.1.7 where Call Off Contract Charges or any component amounts or sums thereof are expressed in this Call Off Schedule as subject to increase by way of Indexation, in accordance with the provisions in paragraph 11 of this Call Off Schedule.

8.2 Subject to paragraphs 8.1.1 to 8.1.5 of this Call Off Schedule, the Call Off Contract Charges will remain fixed for the first two (2) Contract Years.

9. SUPPLIER PERIODIC ASSESSMENT OF CALL OFF CONTRACT CHARGES

9.1 Every six (6) Months during the Call Off Contract Period, the Supplier shall assess the level of the Call Off Contract Charges to consider whether it is able to reduce them.

9.2 Such assessments by the Supplier under paragraph 9 of this Call Off Schedule shall be carried out on 1 April and 1 November in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Call Off Contract Charges it shall promptly notify the Customer in writing and such reduction shall be implemented in accordance with paragraph 12.1.5 of this Call Off Schedule below.

10. SUPPLIER REQUEST FOR INCREASE OF THE CALL OFF CONTRACT CHARGES

10.1 The Supplier may request an increase in all or part of the Call Off Contract Charges in accordance with the remaining provisions of this paragraph 10 subject always to:

10.1.1 paragraph 3.2 of this Call Off Schedule;

10.1.2 the Supplier's request being submitted in writing at least three (3) Months before the effective date for the proposed increase in the relevant Call Off Contract Charges (**Review Adjustment Date**) which shall be subject to paragraph 10.2 of this Call Off Schedule; and

- 10.1.3 the Approval of the Customer which shall be granted in the Customer's sole discretion.
- 10.2 The earliest Review Adjustment Date will be the first (1st) Working Day following the [second (2nd)] anniversary of the Call Off Commencement Date. Thereafter any subsequent increase to any of the Call Off Contract Charges in accordance with this paragraph 10 of this Call Off Schedule shall not occur before the anniversary of the previous Review Adjustment Date during the Call Off Contract Period.
- 10.3 To make a request for an increase of some or all of the Call Off Contract Charges in accordance with this paragraph 10, the Supplier shall provide the Customer with:
- 10.3.1 a list of the Call Off Contract Charges it wishes to review;
- 10.3.2 for each of the Call Off Contract Charges under review, written evidence of the justification for the requested increase including:
- (a) a breakdown of the profit and cost components that comprise the relevant Call Off Contract Charge;
 - (b) details of the movement in the different identified cost components of the relevant Call Off Contract Charge;
 - (c) reasons for the movement in the different identified cost components of the relevant Call Off Contract Charge;
 - (d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and
 - (e) evidence that the Supplier's profit component of the relevant Call Off Contract Charge is no greater than that applying to Call Off Contract Charges using the same pricing mechanism as at the Call Off Commencement Date.
 - (f) where the increase is related to a legislative change or other major event that is impacting multiple customers, evidence that the Authority is aware of the request for a charge increase and has consented to this.

11. INDEXATION

NOT USED

- 11.1 No variation in relation CPI, RPI or any other index shall be permitted.

12. IMPLEMENTATION OF ADJUSTED CALL OFF CONTRACT CHARGES

- 12.1 Variations in accordance with the provisions of this Call Off Schedule to all or part the Call Off Contract Charges (as the case may be) shall be made by the Customer to take effect:
- 12.1.1 in accordance with Clause 21.2 of this Call Off Contract (Legislative Change) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.1 of this Call Off Schedule;
- 12.1.2 in accordance with Clause 22.1.4 of this Call Off Contract (Call Off Contract Charges and Payment) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.2 of this Call Off Schedule;
- 12.1.3 in accordance with Clause 17 of this Call Off Contract (Continuous Improvement) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.3 of this Call Off Schedule;
- 12.1.4 in accordance with Clause 24 of this Call Off Contract (Benchmarking) where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.4 of this Call Off Schedule [or]
- 12.1.5 on [1 May] for assessments made on [1 April] and on [1 December] for assessments made on [1 November] where an adjustment to the Call Off

Contract Charges is made in accordance with paragraph 8.1.5 of this Call Off Schedule[.] [; or]

12.1.6 [on the Review Adjustment Date where an adjustment to the Call Off Contract Charges is made in accordance with paragraph 8.1.6 of this Call Off Schedule;]

and the Parties shall amend the Call Off Contract Charges shown in Annex 1 to this Call Off Schedule to reflect such variations.

ANNEX 1: CALL OFF CONTRACT CHARGES

As detailed in the Esri Inc Enterprise License Agreement as amended

ANNEX 2: PAYMENT TERMS/PROFILE

Payment terms: 30 days of invoice.

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

1. INTRODUCTION

- 1.1 This Call Off Schedule specifies:
 - 1.1.1 In Part A, the Implementation Plan in accordance with which the Supplier shall provide the Services;
 - 1.1.2 In Part B, the Customer Responsibilities in respect of facilitating the Supplier's achievement of the Implementation Plan; and
 - 1.1.3 In Part C, the Key Personnel and their Key Roles assigned by the Supplier to this Call Off Contract in accordance with Clause 25.1 of this Call Off Contract (Key Personnel).

PART A: IMPLEMENTATION PLAN

2. GENERAL

2.1 The Implementation Plan is set out below:

2.1.1 The Milestones to be Achieved are Identified below:

Milestone	Deliverables	Duration	Milestone Date	Customer Responsibilities	Milestone Payments	Delay Payments
[]	[]	[]	[]	[]	[]	[]

2.2 N/A.

PART B: CUSTOMER RESPONSIBILITIES

3. GENERAL

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

PART C: KEY PERSONNEL

4. GENERAL

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

N/A

CALL OFF SCHEDULE 5: TESTING

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Component	means any constituent parts of the Services, bespoke or COTS, hardware or software;
COTS	means commercially available off the shelf software, being software that is commonly used and is provided in a standard form and on standard license terms which are not typically negotiated by the licensor;
Material Test Issue	means a Test Issue of Severity Level 1 or Severity Level 2;
Severity Level	means the level of severity of a Test Issue, the criteria for which are described in Annex 1;
Test Certificate	means a certificate materially in the form of the document contained in Annex 2 issued by the Customer when a Deliverable has satisfied its relevant Test Success Criteria;
Test Issue Threshold	means, in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Testing Strategy Plan ;
Test Issue Management Log	means a log for the recording of Test Issues as described further in paragraph 10.1 of this Call Off Schedule;
Testing Procedures	means the applicable testing procedures and Test Success Criteria set out in this Schedule;
Test Reports	means the reports to be produced by the Supplier setting out the results of Tests;
Test Specification	means the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in paragraph 7 of this Call Off Schedule;
Test Strategy	means a strategy for the conduct of Testing as described further in paragraph 5 of this Call Off Schedule;
Test Success Criteria	means, in relation to a Test, the test success criteria for that Test as referred to in paragraph 7 of this Call Off Schedule; and
Test Witness	means any person appointed by the Customer pursuant to paragraph 11 of this Call Off Schedule.

2. INTRODUCTION

2.1 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 Testing Strategy Plans.

3. RISK

3.1 The issue of a Test Certificate, a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:

- 3.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Customer's requirements for that Deliverable or Milestone; or
- 3.1.2 affect the Customer's right subsequently to reject:
 - (a) all or any element of the Deliverables to which a Test Certificate relates; or
 - (b) any Milestone to which the Satisfaction Certificate relates.
- 3.2 Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that:
 - 3.2.1 the Services are implemented in accordance with this Call Off Contract; and
 - 3.2.2 each Service Level is met.

4. TESTING OVERVIEW

- 4.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Testing Strategy Plans.
- 4.2 The Supplier shall not submit any Deliverable for Testing:
 - 4.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - 4.2.2 until the Customer has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
 - 4.2.3 until the Parties have agreed the Testing Strategy Plan and the Test Specification relating to the relevant Deliverable(s).
- 4.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 4.4 Prior to the issue of a Test Certificate, the Customer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 4.5 Any Disputes between the Supplier and the Customer regarding this Testing shall be referred to the Dispute Resolution Procedure.

5. TEST STRATEGY

- 5.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Call Off Commencement Date but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree) after the Call Off Commencement Date.
- 5.2 The final Test Strategy shall include:
 - 5.2.1 an overview of how Testing will be conducted in accordance with the Implementation Plan;
 - 5.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 5.2.3 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
 - 5.2.4 the procedure to be followed to sign off each Test;
 - 5.2.5 the process for the production and maintenance of Test Reports, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues
 - 5.2.6 the names and contact details of the Customer's and the Supplier's Test representatives;

- 5.2.7 a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Customer and/or third party involvement in the conduct of the Tests;
- 5.2.8 the technical environments required to support the Tests; and
- 5.2.9 the procedure for managing the configuration of the Test environments.

6. TESTING STRATEGY PLANS

- 6.1 The Supplier shall develop Testing Strategy Plans and submit these for Approval as soon as practicable but in any case no later than twenty (20) 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.
- 6.2 Each Testing Strategy Plan shall include as a minimum:
 - 6.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied;
 - 6.2.2 a detailed procedure for the Tests to be carried out, including:
 - (a) the relevant Test Issue Thresholds;
 - (b) the timetable for the Tests including start and end dates;
 - (c) the Testing mechanism;
 - (d) dates and methods by which the Customer can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - (e) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (f) the format and an example of Test progress reports and the process with which the Customer accesses daily Test schedules;
 - (g) the process which the Customer will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
 - (h) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
 - (i) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.
- 6.3 The Customer shall not unreasonably withhold or delay its Approval of the Testing Strategy Plans provided that the Supplier shall implement any reasonable requirements of the Customer in the Testing Strategy Plans.

7. TEST SUCCESS CRITERIA

- 7.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Testing Strategy Plan pursuant to paragraph 6 of this Call Off Schedule.

8. TEST SPECIFICATION

- 8.1 Following approval of a Testing Strategy Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 8.2 Each Test Specification shall include as a minimum:
 - 8.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Customer and the extent to which it is equivalent to live operational data;

- 8.2.2 a plan to make the resources available for Testing;
- 8.2.3 Test scripts;
- 8.2.4 Test pre-requisites and the mechanism for measuring them; and
- 8.2.5 expected Test results, including:
 - (a) a mechanism to be used to capture and record Test results; and
 - (b) a method to process the Test results to establish their content.

9. TESTING

- 9.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 9.2 The Supplier shall manage the progress of Testing in accordance with the relevant Testing Strategy Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with paragraph 11 of this Call Off Schedule.
- 9.3 The Supplier shall notify the Customer at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Customer shall ensure that the Test Witnesses attend the Tests, except where the Customer has specified in writing that such attendance is not necessary.
- 9.4 The Customer may raise and close Test Issues during the Test witnessing process.
- 9.5 The Supplier shall provide to the Customer in relation to each Test:
 - 9.5.1 a draft Test Report not less than 2 Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
 - 9.5.2 the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 9.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - 9.6.1 an overview of the Testing conducted;
 - 9.6.2 identification of the relevant Test Success Criteria that have been satisfied;
 - 9.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
 - 9.6.4 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - 9.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with paragraph 10.1 of this Call Off Schedule; and
 - 9.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 9.7 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 9.8 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.
- 9.9 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 provided in accordance with this Call Off Contract.

10. TEST ISSUES

- 10.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 10.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Customer upon request.
- 10.3 The Customer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

11. TEST WITNESSING

- 11.1 The Customer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Customer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 11.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 11.3 The Test Witnesses:
 - 11.3.1 shall actively review the Test documentation;
 - 11.3.2 will attend and engage in the performance of the Tests on behalf of the Customer so as to enable the Customer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
 - 11.3.3 shall not be involved in the execution of any Test;
 - 11.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Testing Strategy Plan and Test Specification;
 - 11.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Customer to assess whether the Tests have been Achieved;
 - 11.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
 - 11.3.7 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

12. TEST QUALITY AUDIT

- 12.1 Without prejudice to its rights pursuant to Clause 20 of this Call Off Contract (Records, Audit Access and Open Book Data), 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 (each a **Testing Quality Audit**) subject to the provisions set out in the agreed Quality Plan.
- 12.2 The focus of the Testing Quality Audits shall be on:
 - 12.2.1 adherence to an agreed methodology;
 - 12.2.2 adherence to the agreed Testing process;
 - 12.2.3 adherence to the Quality Plan;

- 12.2.4 review of status and key development issues; and
- 12.2.5 identification of key risk areas.
- 12.3 The Supplier shall allow sufficient time in the Testing Strategy Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 12.4 The Customer will give the Supplier at least 5 Working Days' written notice of the Customer's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Customer will materially and adversely impact the Implementation Plan.
- 12.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Customer witnessing Tests and demonstrations of the Deliverables to the Customer. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Customer on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Customer to enable it to carry out the Testing Quality Audit.
- 12.6 If the Testing Quality Audit gives the Customer concern in respect of the Testing Procedures or any Test, the Customer shall:
 - 12.6.1 discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
 - 12.6.2 subsequently prepare a written report for the Supplier detailing its concerns, and the Supplier shall, within a reasonable timeframe, respond in writing to the Customer's report.
- 12.7 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Satisfaction Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

13. OUTCOME OF TESTING

- 13.1 The Customer will issue a Test Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 13.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Customer shall notify the Supplier and:
 - 13.2.1 the Customer may issue a Test Certificate conditional upon the remediation of the Test Issues;
 - 13.2.2 where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Customer may extend the Testing Strategy Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
 - 13.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Customer's other rights and remedies, such failure shall constitute a material Default.
- 13.3 The Customer shall be entitled, without prejudice to any other rights and remedies that it has under this Call Off Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

14. ISSUE OF SATISFACTION CERTIFICATE

- 14.1 The Customer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:
 - 14.1.1 the issuing by the Customer of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - 14.1.2 performance by the Supplier to the reasonable satisfaction of the Customer of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 14.2 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Schedule 3 (Call Off Contract Charging, Payment and Invoicing).
- 14.3 If a Milestone is not Achieved, the Customer shall promptly issue a report to the Supplier setting out:
 - 14.3.1 the applicable Test Issues; and
 - 14.3.2 any other reasons for the relevant Milestone not being Achieved.
- 14.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Customer shall issue a Satisfaction Certificate.
- 14.5 If there is one or more Material Test Issue(s), the Customer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Customer's other rights and remedies, such failure shall constitute a material Default.
- 14.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Customer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
 - 14.6.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Customer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Customer within 10 Working Days of receipt of the Customer's report pursuant to paragraph 13.3 of this Call Off Schedule); and
 - 14.6.2 where the Customer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

1. SEVERITY 1 ERROR

- 1.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss.

2. SEVERITY 2 ERROR

- 2.1 This is an error for which, as reasonably determined by the Customer, there is no practicable workaround available, and which:
 - 2.1.1 causes a Component to become unusable;
 - 2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - 2.1.3 has an adverse impact on any other Component(s) or any other area of the Services;

3. SEVERITY 3 ERROR

- 3.1 This is an error which:
 - 3.1.1 causes a Component to become unusable;
 - 3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 3.1.3 has an impact on any other Component(s) or any other area of the Services; but for which, as reasonably determined by the Customer, there is a practicable workaround available;

4. SEVERITY 4 ERROR

- 4.1 This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and

5. SEVERITY 5 ERROR

- 5.1 This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

ANNEX 2: TEST CERTIFICATE

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

Dear Sirs,

TEST CERTIFICATE

Deliverables:

[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 this Call Off Contract.

[We confirm that all of Deliverables listed above have been tested successfully in accordance with the Testing Strategy Plan relevant to those Deliverables.]

[OR]

[This Test Certificate is issued pursuant to paragraph 13.1 of Call Off Schedule 5 (Testing) of this Call Off Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

ANNEX 3: SATISFACTION CERTIFICATE

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

Dear Sirs,

SATISFACTION CERTIFICATE

Milestone:

[Guidance Note to Customer: Insert description of the relevant 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 this Call Off Contract.

[We confirm that all the Deliverables relating to Milestone [number] have been tested successfully in accordance with the Testing Strategy Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

[OR]

[This Satisfaction Certificate is granted pursuant to paragraph 13.1 of Call Off Schedule 5 (Testing) of this Call Off Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)]*

[*Guidance Note: delete as appropriate]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

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

1. SCOPE

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

PART A: SERVICE LEVELS AND SERVICE CREDITS

2. GENERAL PROVISIONS

- 2.1 The Supplier shall provide a proactive Call Off Contract manager to ensure that all Service Levels in this Call Off Contract and Key Performance Indicators in the Framework Agreement are achieved to the highest standard throughout, respectively, the Call Off Contract Period and the Framework Period.
- 2.2 The Supplier shall provide a managed service through the provision of a dedicated Call Off Contract manager where required on matters relating to:
- 2.2.1 N/A;
 - 2.2.2 N/A;
 - 2.2.3 N/A;
 - 2.2.4 N/A; and
 - 2.2.5 N/A.
- 2.3 The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Call Off Schedule will result in Service Credits being issued to Customers.

3. PRINCIPAL POINTS

- 3.1 The objectives of the Service Levels and Service Credits are to:
- 3.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
 - 3.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of service for which it has contracted to deliver; and
 - 3.1.3 incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.

4. SERVICE LEVELS

- 4.1 Annex 1 to this Part A of this Call Off Schedule sets out the Service Levels the performance of which the Parties have agreed to measure.
- 4.2 The Supplier shall monitor its performance of this Call Off Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Call Off Schedule (the **Service Level Performance Criteria**) and shall send the Customer a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Call Off Schedule.
- 4.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.
- 4.4 If the level of performance of the Supplier of any element of the provision by it of the Services during the Call Off Contract Period:
- 4.4.1 is likely to or fails to meet any Service Level Performance Measure or
 - 4.4.2 is likely to cause or causes a Critical Service Failure to occur,
 - 4.4.3 the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause 12 of this Call Off Contract (Service Levels and Service Credits), may:
 - (a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or

prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and

- (b) if the action taken under paragraph (a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Customer shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or
 - (c) if a Service Level Failure has occurred, deduct from the Call Off Contract Charges the applicable Service Level Credits payable by the Supplier to the Customer in accordance with the calculation formula set out in Annex 1 of this Part A of this Call Off Schedule; or
 - (d) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause 13 of this Call Off Contract (Critical Service Level Failure) (including subject, for the avoidance of doubt, the proviso in Clause 13.1.2 of this Call Off Contract in relation to Material Breach).
- 4.5 Approval and implementation by the Customer of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Customer.

5. SERVICE CREDITS

- 5.1 Annex 1 to this Part A of this Call Off Schedule sets out the formula used to calculate a Service Credit payable to the Customer as a result of a Service Level Failure in a given service period which, for the purpose of this Call Off Schedule, shall be a recurrent period of **N/A** during the Call Off Contract Period (the **Service Period**).
- 5.2 Annex 1 to this Part A of this Call Off Schedule includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Supplier.
- 5.3 The Customer shall use the Performance Monitoring Reports supplied by the Supplier under Part B (Performance Monitoring) of this Call Off Schedule to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 5.4 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in Annex 1 of Part A of this Call Off Schedule.

6. NATURE OF SERVICE CREDITS

- 6.1 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 Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
N/A	N/A	N/A	N/A	N/A

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

ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE

N/A

PART B: PERFORMANCE MONITORING

1. PRINCIPAL POINTS

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

2. REPORTING OF SERVICE FAILURES

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

3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 3.1 The Supplier shall provide the Customer with performance monitoring reports (**Performance Monitoring Reports**) in accordance with the process and timescales agreed pursuant to paragraph 1.2 of Part B of this Call Off Schedule above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
 - 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 3.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 3.1.3 any Critical Service Level Failures and details in relation thereto;
 - 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 3.1.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 3.1.6 such other details as the Customer may reasonably require from time to time.
- 3.2 The Parties shall attend meetings to discuss Performance Monitoring Reports (**Performance Review Meetings**) on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
 - 3.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
 - 3.2.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
 - 3.2.3 be attended by the Supplier's Representative and the Customer's Representative; and
 - 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Customer's Representative at each meeting.

- 3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 3.4 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

4. SATISFACTION SURVEYS

- 4.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Call Off Contract.
- 4.3 All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 17 of this Call Off Contract (Continuous Improvement).

ANNEX 1 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS

Not used

ANNEX 2 TO PART B: TECHNICAL BOARD

Not used

CALL OFF SCHEDULE 7: STANDARDS

1. STANDARDS

- 1.1 The Supplier shall at all times during the Call Off Contract comply with the Standards including but not limited to the following:
- (a) Service Management Standards
 - (i) BS EN ISO 9001 “Quality Management System” standard or equivalent.
 - (ii) ITIL v3 2011 “IT Service Management”.
 - (iii) ISO/IEC 20000-1 2011 “ITSM Specification for Service Management”.
 - (iv) ISO/IEC 20000-2 2012 “ITSM Code of Practice for Service Management”.
 - (v) ISO 10007 “Quality management systems – Guidelines for configuration management”.
 - (vi) BS25999-1:2006 “Code of Practice for Business Continuity Management” and, ISO/IEC 27031:2011, ISO 22301 and ISO/IEC 24762:2008 in the provision ITSC/DR plans
 - (b) Environmental Standards
 - (i) BS EN ISO 14001 Environmental Management System standard or equivalent.
 - (ii) Directive 2002/96/EC on Waste Electrical and Electronic Equipment (or equivalent) and Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (or equivalent).
 - (c) Portfolio, Programme and Project Management Standards
 - (i) PRINCE2 and MSP methodologies or equivalent methodology
 - (d) Risk Management Standards
 - (i) ISO 31000:2009, Risk management – Principles and guidelines
 - (ii) ISO/IEC 31010:2009, Risk management – Risk assessment techniques
 - (e) Infrastructure Safety Standards
 - (i) BS EN 60950-1:2006+A12:2011 or subsequent replacements for hardware.
 - (ii) BS EN 60065:2002+A12:20011 or subsequent replacements for audio, video and similar electronic apparatus.
 - (iii) BS EN 60825-1:2007 or subsequent replacement for laser printers or scanners using lasers.
 - (iv) BS EN 41003:2009 or subsequent or subsequent replacements for apparatus for connection to any telecommunications network.
 - (f) Accessible IT Standards
 - (i) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0 Conformance Level AA.
 - (ii) ISO/IEC 13066-1:2011 Information Technology - Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

- (iii) BS 8878:2010 Web Accessibility Code of Practice.
- (g) Information Technology Standards
 - (i) e-GIF as documented at <http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/govtalk/schemasstandards/e-gif.aspx>.
 - (ii) e-Government Interoperability Framework (e-GIF v6.1, 18/31/2005)
 - (iii) e-GIF Technical Standards Catalogue (v6.2, 2/9/2005)
 - (iv) e-Government Metadata Standard (e-GMS v3.1, 29/8/2008)
 - (v) <https://www.gov.uk/government/publications/open-standards-principles>
 - (vi) <https://www.gov.uk/public-services-network#psn-standards>
 - (vii) <https://www.gov.uk/government/publications/greening-government-ict-strategy>
 - (viii) <https://www.gov.uk/government/publications/open-source-open-standards-and-re-use-government-action-plan>
 - (ix) Digital by Default – Government Service Design Manual
<https://www.gov.uk/service-manual/digital-by-default>
- (h) Architecture Standards
 - (i) COBIT and TOGAF 9.1 Architecture Framework and Standards.
- (i) External Connectivity Standards
 - (i) GSi v4.1 (although no new connections are being accepted by GSi after 12/12).
 - (ii) PCI DSS V2.0 2010 (Card payment network)
 - (iii) <https://www.gov.uk/public-services-network#psn-standards>
- (j) Information Security Management Standards
 - (i) ISO 27001 Information Security Management standard or equivalent.
- (k) Manual of Protective Security Standards
 - (i) Manual of Protective Security (MPS) or equivalent
- (l) Information Age Government Security Standards
 - (i) Information Age Government Security Framework or equivalent.
- (m) Occupational Health and Safety Management System Standards
 - (i) OHSAS 18001 Occupational Health and Safety Management System or equivalent;

CALL OFF SCHEDULE 8: SECURITY

1. DEFINITIONS

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

Breach of Security	means the occurrence of: a) any unauthorised access to or use of the Services, the Sites and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Call Off Contract; and/or b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Call Off Contract, in either case as more particularly set out in the Security requirements in Annex 1 (Security) to this Call Off Schedule 8 and the Security Policy;
ISMS	the information security management system developed by the Supplier in accordance with paragraph 2 (ISMS) as updated from time to time in accordance with this Schedule 8;
Security Policy Framework	the HMG Security Policy Framework (available from the Cabinet Office); and
Security Tests	has the meaning given in paragraph 5.1 of this Call Off Schedule (Testing of the ISMS).

2. ISMS

2.1 By the date specified in the Implementation Plan the Supplier shall develop and submit to the Customer for the Customer’s Approval an information security management system for the purposes of this Call Off Contract, which:

- 2.1.1 if required by the Implementation Plan, shall have been tested in accordance with Call Off Schedule 5 (Testing); and
- 2.1.2 shall comply with the requirements of paragraphs 2.3 to 2.5 of this Call Off Schedule 8 (Security).

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

2.3 The ISMS shall:

- 2.3.1 unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, the Supplier System and any ICT, information and data (including the Customer’s Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract;
- 2.3.2 meet the relevant standards in ISO/IEC 27001;and
- 2.3.3 at all times provide a level of security which:
 - (a) is in accordance with Good Industry Practice, Law and this Call Off Contract;
 - (b) complies with the Security Policy;

- (c) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4);
 - (d) meets any specific security threats to the ISMS;
 - (e) complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 6 (Compliance of the ISMS With ISO/IEC 27001);
 - (f) complies with the security requirements as set out in Annex 1 (Security) to this Call Off Schedule 8; and
 - (g) complies with the Customer's ICT policies.
- 2.4 Subject to Clause 34 of this call Off Contract (Security And Protection of Information) the references to standards, guidance and policies set out in paragraph 2.3 of this Call Off Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 2.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 2.3 of this Call Off Schedule, the Supplier shall immediately notify the Customer Representative of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
- 2.6 If the ISMS submitted to the Customer pursuant to paragraph 2.1 of this Call Off Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule. If the ISMS is not Approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Customer. If the Customer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph 2 of this Call Off Schedule may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 2.3 to 2.5 of this Call Off Schedule shall be deemed to be reasonable.
- 2.7 Approval by the Customer of the ISMS pursuant to paragraph 2.6 of this Call Off Schedule or of any change or amendment to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

3. SECURITY MANAGEMENT PLAN

- 3.1 Within twenty (20) Working Days after the Call Off Commencement Date, the Supplier shall prepare and submit to the Customer for Approval in accordance with paragraph 3 of this Call Off Schedule a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 3.2 of this Call Off Schedule.
- 3.2 The Security Management Plan shall:
- 3.2.1 be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);
 - 3.2.2 comply with the Security Policy;
 - 3.2.3 unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Supplier System and any ICT, information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract;

- 3.2.4 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Call Off Schedule 8 (including the requirements set out in paragraph 2.3 of this Call Off Schedule);
 - 3.2.5 set out the plans for transiting all security arrangements and responsibilities from those in place at the Call Off Commencement Date to those incorporated in the Supplier's ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in Schedule Annex 1 (Security) to this Schedule 8.
 - 3.2.6 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
 - 3.2.7 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall reference only documents which are in the possession of the Customer or whose location is otherwise specified in this Call Off Schedule 8.
- 3.3 If the Security Management Plan submitted to the Customer pursuant to paragraph 3.1 of this Call Off Schedule is Approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Call Off Schedule. If the Security Management Plan is not approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Customer of the Security Management Plan. If the Customer does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Customer pursuant to this paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.2 of this Call Off Schedule shall be deemed to be reasonable.
- 3.4 Approval by the Customer of the Security Management Plan pursuant to paragraph 3.3 of this Call Off Schedule or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Call Off Schedule.

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

- 4.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier from time to time and at least annually to reflect:
 - 4.1.1 emerging changes in Good Industry Practice;
 - 4.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;
 - 4.1.3 any new perceived or changed security threats; and
 - 4.1.4 any reasonable request by the Customer.
- 4.2 The Supplier shall provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review shall include, without limitation:
 - 4.2.1 suggested improvements to the effectiveness of the ISMS;
 - 4.2.2 updates to the risk assessments;

- 4.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
- 4.2.4 suggested improvements in measuring the effectiveness of controls.
- 4.3 Subject to paragraph 4.4 of this Call Off Schedule, any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 4.1 of this Call Off Schedule, a Customer request, change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Customer.
- 4.4 The Customer may, where it is reasonable to do so, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Call Off Contract.

5. TESTING OF THE ISMS

- 5.1 The Supplier shall conduct tests of the ISMS (**Security Tests**) from time to time and at least annually and additionally after any change or amendment to the ISMS or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Service Level Performance Measures, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 5.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such Security Tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 5.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Call Off Contract, the Customer and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Customer may notify the Supplier of the results of such tests after completion of each such test.
- 5.4 Where any Security Test carried out pursuant to paragraphs 5.2 or 5.3 of this Call Off Schedule reveals any actual or potential breach of security, the Supplier shall promptly notify the Customer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Call Off Schedule) or the requirements of this Call Off Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Customer.
- 5.5 If any repeat Security Test carried out pursuant to paragraph 5.4 of this Call Off Schedule reveals an actual or potential breach of security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Call Off Contract.

6. COMPLIANCE OF THE ISMS WITH ISO/IEC 27001

- 6.1 The Customer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.
- 6.2 If, on the basis of evidence provided by such security audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Customer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Customer shall have the right to obtain an independent audit against these standards in whole or in part.
- 6.3 If, as a result of any such independent audit as described in paragraph 6.2 of this Call Off Schedule the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

7. BREACH OF SECURITY

- 7.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted breach of security.
- 7.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 7.1 of this Call Off Schedule, the Supplier shall:
 - 7.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Customer) necessary to:
 - (a) remedy such breach of security or any potential or attempted breach of security or protect the integrity of the ISMS against any such breach of security or any potential or attempted breach of security; and
 - (b) prevent a further breach of security or any potential or attempted breach of security in the future exploiting the same root cause failure; and
 - 7.2.2 as soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as defined by the ISMS) of the breach of security or the potential or attempted breach of security, including a root cause analysis where required by the Customer.
- 7.3 In the event that such action is taken in response to a breach of security or potential or attempted breach of security that demonstrates non-compliance of the ISMS with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Call Off Schedule) or the requirements of this Call Off Schedule, then any required change to the ISMS shall be at no cost to the Customer.

ANNEX 1: SECURITY POLICY

N/A

ANNEX 2: SECURITY MANAGEMENT PLAN

N/A

CALL OFF SCHEDULE 9: SUPPLIER SOFTWARE, CUSTOMER SOFTWARE AND THIRD PARTY SOFTWARE

1. SUPPLIER SOFTWARE

Esri UK software, as detailed in the Schedule 16

2. THIRD PARTY SOFTWARE

Esri Inc software, as detailed in Schedule 16

3. CUSTOMER SOFTWARE

N/A

CALL OFF SCHEDULE 10: BUSINESS CONTINUITY AND DISASTER RECOVERY

Not used.

CALL OFF SCHEDULE 11: EXIT MANAGEMENT

N/A.

CALL OFF SCHEDULE 12: STAFF TRANSFER

1. DEFINITIONS

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

Notified Sub-Contractor	means a Sub-Contractor identified in Annex 2 of this Call Off Schedule to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
New Employee	means any employee employed by the Supplier following the Call Off Commencement Date;
Principles of Good Employment Practice	means the guidance published by the Cabinet Office and found at www.gov.uk/government/publications/principles-of-good-employment-practice
Staffing Information	<p>means, in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"> a) their ages, dates of commencement of employment or engagement and gender; b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; c) the identity of the employer or relevant contracting party; d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; e) their wages, salaries and profit sharing arrangements as applicable; f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and j) any other employee liability information as such term is defined in regulation 11 of the Employment Regulations;
Supplier's Final Personnel List	means a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

Supplier's Provisional Personnel List	means a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
Transferring Customer Employees	means those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;
Transferring Former Supplier Employees	means, in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

2. INTERPRETATION

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

PART A

TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

1. RELEVANT TRANSFERS

- 1.1 The Customer and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Customer Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring Customer Employee.
- 1.2 The Customer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Customer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Customer; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

2. CUSTOMER INDEMNITIES

- 2.1 Subject to paragraph 2.2 of Part A of this Call Off Schedule, the Customer shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.1.1 any act or omission by the Customer occurring before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Customer before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;
 - 2.1.3 any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
 - 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Customer Employee and in respect of whom it is later alleged or determined that

the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

- 2.1.5 a failure of the Customer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees arising before the Relevant Transfer Date;
 - 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.7 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in paragraph 2.1 of Part A of this Call Off Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date); or
 - 2.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer; and
 - 2.3.2 the Customer may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such other reasonable steps as the Customer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in paragraph 2.3.2 of Part A of this Call Off Schedule is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in paragraph 2.3.2 of Part A of this Call Off Schedule:
- 2.5.1 no such offer of employment has been made;

- 2.5.2 such offer has been made but not accepted; or
 - 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part A of this Call Off Schedule and in accordance with all applicable proper employment procedures set out in applicable Law, the Customer shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part A of this Call Off Schedule provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
 - 2.7 The indemnity in paragraph 2.6 of Part A of this Call Off Schedule:
 - 2.7.1 shall not apply to:
 - (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 - in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
 - 2.7.2 any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
 - 2.7.3 shall apply only where the notification referred to in paragraph 2.3.1 of Part A of this Call Off Schedule is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer within six (6) months of the Call Off Commencement Date.
 - 2.8 If any such person as is referred to in paragraph 2.3 of Part A of this Call Off Schedule is neither re-employed by the Customer nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in paragraph 2.5 of Part A of this Call Off Schedule such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to paragraph 3.2 of Part A of this Call Off Schedule, the Supplier shall indemnify the Customer against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
 - 3.1.1 any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
 - 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

- 3.1.3 any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Sub-Contractor made before the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Customer Employees on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Customer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring Customer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring 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
 - (b) in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 3.1.8 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in paragraph 3 of Part A of this Call Off Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of

all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Customer and the Supplier.

4. INFORMATION

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

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the principles set out in the Principles of Good Employment Practice apply to the treatment of New Employees by the Supplier. The Supplier undertakes to treat each New Employee in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 5.2.2 HM Treasury's guidance Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; and/or
 - 5.2.3 HM Treasury's guidance: Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues of June 2004,
- or any statement of practice, paper or other guidance that replaces any of the foregoing.

6. PENSIONS

- 6.1 The Supplier shall, and shall procure that each of its Sub-Contractors shall, comply with the pensions provisions set out in Annex 1.

PART B

TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

1. RELEVANT TRANSFERS

- 1.1 The Customer and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.
- 1.2 The Customer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Customer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2. FORMER SUPPLIER INDEMNITIES

- 2.1 Subject to paragraph 2.2 of Part B of this Call Off Schedule, the Customer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.1.1 any act or omission by the Former Supplier arising before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
 - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial

obligations in respect of the period to (but excluding) the Relevant Transfer Date;

- 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in paragraph 2.1 of Part B of this Call Off Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date); or
 - 2.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations).
- 2.3 If any person who is not identified by the Customer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, to the Former Supplier; and
 - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in paragraph 2.3.2 of Part B of this Call Off Schedule is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in paragraph 2.3.2 of Part B of this Call Off Schedule:
- 2.5.1 no such offer of employment has been made;
 - 2.5.2 such offer has been made but not accepted; or

2.5.3 the situation has not otherwise been resolved;

the Supplier and/or any notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part B of this Call Off Schedule and in accordance with all applicable proper employment procedures set out in Law, the Customer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part B of this Call Off Schedule provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in paragraph 2.6 of Part B of this Call Off Schedule:

2.7.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

(b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

2.7.2 shall apply only where the notification referred to in paragraph 2.3.1 of Part B of this Call Off Schedule is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer and, if applicable, the Former Supplier, within six (6) months of the Call Off Commencement Date.

2.8 If any such person as is described in paragraph 2.3 of Part B of this Call Off Schedule is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in paragraph 2.5 of Part B of this Call Off Schedule, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to paragraph 3.2 of Part B of this Call Off Schedule, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

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

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

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

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

- 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes; and
- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Supplier in writing.
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in paragraph 3.1 of Part B of this Call Off Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment

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

4. INFORMATION

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

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

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

6. PROCUREMENT OBLIGATIONS

- 6.1 Notwithstanding any other provisions of this Part B of this Call Off Schedule, where in this Part B the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7. PENSIONS

- 7.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in Annex 1 where any Transferring Former Supplier Employee is a Pension Member as such term is defined in Annex 1 of this Call Off Schedule.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Customer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.
- 1.2 If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - 1.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and
 - 1.2.2 the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in paragraph 1.2.2 of Part C of this Call Off Schedule is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in paragraph 1.2.2:
 - 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of paragraphs 1.2 to 1.4 of Part C of this Call Off Schedule and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 2.4 of Part C of this Call Off Schedule, the Customer shall:
 - 2.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in paragraph 1.2 of Part C of this Call Off Schedule made pursuant to the provisions of paragraph 1.4 of Part C of this Call Off Schedule provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - 2.1.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of paragraph 1.4 of Part C of this Call Off Schedule provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.2 If any such person as is described in paragraph 1.2 of Part C of this Call Off Schedule is neither re employed by the Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in paragraph 1.4 of Part C of this Call Off Schedule such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to paragraph 2.2 of Part C of this Call Off Schedule, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.
- 2.4 The indemnities in paragraph 2.1 of Part C of this Call Off Schedule:
- 2.4.1 shall not apply to:
- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
 - (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall apply only where the notification referred to in paragraph 1.2 of Part C of this Call Off Schedule is made by the Supplier and/or any Sub-Contractor to the Customer and, if applicable, Former Supplier within six (6) months of the Call Off Commencement Date.

3. PROCUREMENT OBLIGATIONS

- 3.1 Where in this of Part C of this Call Off Schedule the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D

EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any partial termination of this Call Off Contract;
 - 1.1.3 the date which is twenty four (24) months before the end of the Call Off Contract Period; and
 - 1.1.4 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 in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Personnel List and it shall provide an updated Supplier's Provisional Personnel List at such intervals as are reasonably requested by the Customer.
- 1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-Contractor:
- 1.2.1 the Supplier's Final Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Personnel List (insofar as such information has not previously been provided).
- 1.3 The Customer shall be permitted to use and disclose information provided by the Supplier under paragraphs 1.1 and 1.2 of Part D of this Call Off Schedule for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 1.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to paragraphs 1.1 and 1.2 of Part D of this Call Off Schedule shall be true and accurate in all material respects.
- 1.5 From the date of the earliest event referred to in paragraph 1.1 of Part D of this Call Off Schedule, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
 - 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Personnel List save by due disciplinary process,

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

- 1.6 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 shall procure that each Sub-Contractor shall provide, the Customer or, at the direction of the Customer to a Replacement Supplier and/or any Replacement Sub-Contractor 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 at the Customer's direction, the Replacement Supplier and/or any Replacement Sub-Contractor to have copies of any such documents.
- 1.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Personnel List who is a Transferring Supplier Employee:
 - 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; and
 - 1.7.6 bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this Call Off Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract

terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.

- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3 Subject to paragraph 2.6 of Part D of this Call Off Schedule, the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
- (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
- (b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);

- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in paragraphs 2.3 of Part D of this Call Off Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 2.5.2 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 Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in paragraph 2.5.2 of Part D of this Call Off Schedule has elapsed:
- 2.7.1 no such offer of employment has been made;
 - 2.7.2 such offer has been made but not accepted; or
 - 2.7.3 the situation has not otherwise been resolved
- the Customer shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of paragraphs 2.5 to 2.7 of Part D of this Call Off Schedule and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.7 of Part D of this Call Off Schedule provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in paragraph 2.8 of Part D of this Call Off Schedule:
- 2.9.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in paragraph 2.5.1 of Part D of this Call Off Schedule is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in paragraph 2.5 of Part D of this Call Off Schedule is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in paragraphs 2.5 to 2.7 of Part D of this Call Off Schedule, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-Contractor; and
- 2.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to

enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

- 2.13 Subject to paragraph 2.14 of Part D of this Call Off Schedule, the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor;
 - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
 - 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
 - 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
 - 2.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits

and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and

- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in paragraph 2.13 of Part D of this Call Off Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX 1: PENSIONS

The provisions of this Annex shall apply in respect of the Transferring Employees who transfer from the Customer to the Supplier.

1. DEFINITIONS

1.1 In this Annex the following definitions shall apply:

Fair Deal Employee	means those Transferring Former Supplier Employees whose period of continuous employment commenced with, and who originally transferred from employment with, central or local government or a public sector employer pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), and who remain in employment relating to the provision of services to which that Relevant Transfer applied;
PCSPS	means the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament;
PCSPS Admission Agreement	means an admission agreement by which the Supplier agrees to participate in the PCSPS as amended from time to time;
Pension Member	means each Transferring Customer Employee who remains or becomes a member of the PCSPS under paragraph 3.1 of this Annex and who has not subsequently ceased to be an active member of the PCSPS; and
Transferring Employee	means each Transferring Customer Employee and each Fair Deal Employee.

2. PARTICIPATION

2.1 The Supplier and the Customer undertake to do all such things and execute any documents (including the PCSPS Admission Agreement) as may be required to enable the Supplier to participate in the PCSPS in respect of the Pension Members.

2.2 All costs that the Parties reasonably incur in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the PCSPS shall be borne by the Supplier.

3. FUTURE SERVICE BENEFITS

3.1 Subject to compliance by the Customer with paragraph 2.1 of this Annex, the Supplier shall procure that the Transferring Employees who are members or eligible to be members of the PCSPS shall be either automatically enrolled in or offered continued membership of the relevant section of the PCSPS that they currently contribute to or would have become eligible to join immediately prior to the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of PCSPS for service from (and including) the Relevant Transfer Date.

3.2 The Supplier shall procure that there shall be provided for each Transferring Employee, as far as practicable, on termination of employment by the Supplier on or after the Relevant Transfer Date, continued rights under, or rights which replicate those to which such Transferring Employee would have been entitled under, the Civil Service Compensation Scheme (pursuant to section 1 of the Superannuation Act 1972) had he remained in the employment of the Customer or, if any such Transferring Employee cannot be given in any respect such equivalent rights to which he would have been entitled under the Civil Service Compensation Scheme, he shall be provided with

compensation by the Supplier that is broadly comparable or of equal value to the lost entitlement.

4. FUNDING

- 4.1 The Supplier undertakes to pay to the PCSPS such employer contributions as are provided for in the PCSPS Admission Agreement and shall deduct and pay to the PCSPS such employee contributions as are required by the PCSPS.
- 4.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by or payment to the PCSPS in respect of the non-payment or the late payment of any sum payable by the Supplier to or in respect of the PCSPS.

5. PROVISION OF INFORMATION

- 5.1 The Supplier and the Customer respectively undertake to each other:
 - 5.1.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and the information shall be supplied as expeditiously as possible; and
 - 5.1.2 not to issue any announcements to the Transferring Employees concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

6. INDEMNITIES

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

7. EMPLOYER OBLIGATION

- 7.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005 in relation to all relevant employees.

8. SUBSEQUENT TRANSFERS

- 8.1 The Supplier shall:
 - 8.1.1 not adversely affect pension rights accrued by any Pension Member in the period ending on the date of the relevant future transfer; and
 - 8.1.2 provide all such co-operation and assistance as the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the PCSPS in respect of the Pension Members.

ANNEX 2: LIST OF NOTIFIED SUB-CONTRACTORS

Environmental Systems Research Institute, Inc.

CALL OFF SCHEDULE 13: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this Call Off Schedule 13, the following definitions shall apply:

CEDR	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
Counter Notice	has the meaning given to it in paragraph 6.2 of this Call Off Schedule;
Exception	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Call Off Contract or in the supply of the Services;
Expert	the person appointed by the Parties in accordance with paragraph 5.2 of this Call Off Schedule 13; and
Mediation Notice	has the meaning given to it in paragraph 0 of this Call Off Schedule;
Mediator	the independent third party appointed in accordance with paragraph 4.2 of this Call Off Schedule 13.

2. INTRODUCTION

2.1 If a Dispute arises then:

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

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

2.2 The Dispute Notice shall set out:

2.2.1 the material particulars of the Dispute;

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

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

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

2.4 Subject to paragraph 3.1 of this Call Off Schedule, the Parties shall seek to resolve Disputes:

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

2.4.2 then by mediation (as prescribed in paragraph 4 of this Call Off Schedule); and

2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Call Off Schedule) or litigation (in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Call Off Schedule) where specified under the provisions of this Call Off Contract

and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Call Off Schedule.

- 2.6 In exceptional circumstances where the use of the times in this Call Off Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 in paragraph 3.1.3, ten (10) Working Days;
 - 2.7.2 in paragraph 4.2, ten (10) Working Days;
 - 2.7.3 in paragraph 5.2, five (5) Working Days; and
 - 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Customer and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Customer's Contract Manager and the Supplier's Customer Success Manager.
- If:
- 3.1.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
 - 3.1.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Call Off Schedule; or
 - 3.1.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Call Off Schedule within thirty (30) Working Days of service of the Dispute Notice,
- either Party may serve a written notice to proceed to mediation (a **Mediation Notice**) in accordance with paragraph 4 of this Call Off Schedule.

4. MEDIATION

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

- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

5. EXPERT DETERMINATION

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

6. ARBITRATION

- 6.1 The Customer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Call Off Schedule.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a Counter Notice) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Call Off Schedule shall apply;
 - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 61 of this Call Off Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;

- 6.3.3 the Customer does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Call Off Schedule or commence court proceedings in the courts in accordance with Clause 57 of this Call Off Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Call Off Schedule, the Parties hereby confirm that:
- 6.4.1 all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (**LCIA**) (subject to paragraphs 6.4.5 to 6.4.7 of this Call Off Schedule);
- 6.4.2 the arbitration shall be administered by the LCIA;
- 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 6.4.5 the chair of the arbitral tribunal shall be British;
- 6.4.6 the arbitration proceedings shall take place in London and in the English language; and
- 6.4.7 the seat of the arbitration shall be London.

7. URGENT RELIEF

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

CALL OFF SCHEDULE 14: VARIATION FORM

No of Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Customer] (the Customer)

and

[insert name of Supplier] (the Supplier)

1. This Call Off Contract is varied as follows and shall take effect on the date signed by both Parties:
[Guidance Note: Insert details of the Variation]
2. Words and expressions in this Variation shall have the meanings given to them in this Call Off Contract.
3. This Call Off Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Customer

Signature

.....

Date

.....

Name (in Capitals)

.....

Address

.....

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

.....

Date

.....

Name (in Capitals)

.....

Address

.....

CALL OFF SCHEDULE 15: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

- 1.1 This Call Off Schedule 15 specifies the range of Alternative Clauses and Additional Clauses that may be requested in the Order Form and, if requested in the Order Form, shall apply to this Call Off Contract.

2. CLAUSES SELECTED

- 2.1 The Customer may, in the Order Form, request the following Alternative Clauses:
- 2.1.1 Scots Law (see paragraph 4.1 of this Call Off Schedule);
 - 2.1.2 Northern Ireland Law (see paragraph 4.2 of this Call Off Schedule)
 - 2.1.3 Non-Crown Bodies (see paragraph 4.3 of this Call Off Schedule); or
 - 2.1.4 Non-FOIA Public Bodies (see paragraph 4.4 of this Call Off Schedule).
- 2.2 The Customer may, in the Order Form, request the following Additional Clauses should apply:
- 2.2.1 Security Measures (see paragraph 5 of this Call Off Schedule);
- 2.3 The Customer may, in the Order Form, request the following MOD (**Ministry of Defence**) Additional or Alternative Clauses should apply:
- 2.3.1 [MOD Additional Clauses] (see paragraph 6 of this Call Off Schedule);

3. IMPLEMENTATION

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

4. ALTERNATIVE CLAUSES

4.1 SCOTS LAW

Law and Jurisdiction (Clause 57)

References to England and Wales in the original Clause 57 of this Call Off Contract (Law and Jurisdiction) shall be replaced with Scotland.

Reference to England and Wales in Working Day definition within Schedule 1 shall be replaced with Scotland

References to the Contracts (Rights of Third Parties) Act 1999 shall be removed in Schedule 1 – Definitions, Clause 28.2.3.b, Clause 54.1 and Clause 54.2

Reference to the Freedom of Information Act 2000 within definition for FOIA in Schedule 1 – Definitions to be replaced with Freedom of Information (Scotland) Act 2002

Reference to the Supply of Goods and Services Act 1982 shall be removed in 36.1.1.c

References to “tort” shall be replaced with “delict” throughout

4.2 NORTHERN IRELAND LAW

Law and Jurisdiction (Clause 57)

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

Insolvency Event

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

4.3 **NON-CROWN BODIES**

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

4.4 **NON-FOIA PUBLIC BODIES**

Replace Clause 34.6 of this Call Off Contract (Freedom of Information) with The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA and EIR.

5. ADDITIONAL CLAUSES: GENERAL

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

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

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

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

5.2 The following new Clause [58] shall apply:

58. [SECURITY MEASURES]

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

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

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

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

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

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

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

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

- 58.2.3. that no photograph of any item to be supplied under this Call Off Contract or any portions of the Services shall be taken except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;
- 58.2.4. that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Call Off Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
- 58.2.5. that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in Clause 58.2.3, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 58.3. The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 57 shall be final and conclusive.
- 58.4. If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 58.5. If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Call Off Contract.
- 58.6. If, at any time either before or after the expiry or termination of this Call Off Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Call Off Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.
- 58.7. The Supplier shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by Clauses 58.1 and 58.2 and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause 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.
- 58.8. The Supplier shall, if directed by the Customer, include in the Sub-Contract provisions in such terms as the Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Clause 57, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:

- 58.8.1. give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Clause 57 into operation in such cases and to such extent as the Customer may direct;
 - 58.8.2. if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause 57, notify such breach forthwith to the Customer; and
 - 58.8.3. if and when so required by the Customer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause 58.11.
- 58.9. The Supplier shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or under the foregoing provisions of this Clause 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.
- 58.10. 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.
- 58.11. If the Customer shall consider that any of the following events has occurred:
- 58.11.1. that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 57; or
 - 58.11.2. that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Customer, or with any department or person acting on behalf of the Crown; or
 - 58.11.3. that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in 58.11.2, information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information;
- and shall also decide that the interests of the State require the termination of this Call Off Contract, the Customer may by notice in writing terminate this Call Off Contract forthwith.
- 58.12. A decision of the Customer to terminate this Call Off Contract in accordance with the provisions of Clause 58.11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Customer's decision is based.
- 58.13. Supplier's notice
- 58.13.1. The Supplier may within five (5) Working Days of the termination of this Call Off Contract in accordance with the provisions of Clause 58.11, give the Customer notice in writing requesting the Customer to state whether the event upon which the Customer's decision to terminate was based is an event mentioned in Clauses 58.11, 58.11.1 or 58.11.2 and to give particulars of that event; and
 - 58.13.2. the Customer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Supplier containing such a statement and particulars as are required by the request.

58.14. Matters pursuant to termination

- 58.14.1. The termination of this Call Off Contract pursuant to Clause 58.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;
- 58.14.2. The Supplier shall be entitled to be paid for any work or thing done under this Call Off Contract and accepted but not paid for by the Customer at the date of such termination either at the price which would have been payable under this Call Off Contract if this Call Off Contract had not been terminated, or at a reasonable price;
- 58.14.3. The Customer may take over any work or thing done or made under this Call Off Contract (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of this Clause 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, 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; and
- 58.14.4. Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination of this Call Off Contract

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

- 58.15.1. the Customer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Clause 58.13.1; or
- 58.15.2. the Customer shall state in the statement and particulars detailed in Clause 58.13.2. that the event upon which the Customer's decision to terminate this Call Off Contract was based is an event mentioned in Clause 58.11.3,

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

- 58.15.3. the Customer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Call Off Contract under the provisions of Clause 58.11 and properly provided by or supplied to the Supplier for the performance of this Call Off Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;
- 58.15.4. the Supplier shall prepare and deliver to the Customer within an agreed period or in default of agreement within such period as the Customer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;
- 58.15.5. the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Call Off Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract;

- 58.15.6. if hardship to the Supplier should arise from the operation of this Clause 58.15 it shall be open to the Supplier to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this Clause shall be final and conclusive; and
- subject to the operation of Clauses 58.15.3, 58.15.4, 58.15.5 and 58.15.6 termination of this Call Off Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

6. MOD ADDITIONAL CLAUSES

- 6.1 The definition of Call Off Contract in Call Off Schedule 1 (Definitions) to the Call Off Terms shall be replaced with the following:
- Call Off Contract** means this written agreement between the Customer and the Supplier consisting of the Order Form and the Call Off Terms and the MoD Terms and Conditions.
- 6.2 The following definitions shall be inserted into in Call Off Schedule 1 (Definitions) to the Call Off Terms:
- MoD Terms and Conditions** means the contractual terms and conditions listed in Schedule [...] which form part of the Call Off Terms
- Site** shall include any of Her Majesty's Ships or Vessels and Service Stations.
- Officer in charge** shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.
- 6.3 The following clauses shall be inserted into Clause 2 of this Call Off Contract (Due Diligence):
- The Supplier confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relation to those documents with the Customer prior to the Commencement Date.
- Where required by the Customer, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier.
- 6.4 The following new Clause [59] shall apply:

59. [ACCESS TO MOD SITES]

- 59.1. In this Clause 59:
- 59.1.1. The Customer shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Customer and shall be surrendered on demand or on completion of the supply of the Services.
- 59.1.2. The Supplier's representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.
- 59.1.3. The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Customer wherever possible, at the discretion of the Officer in charge,

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

- 59.1.4. Where the Supplier's representatives are required by this Call Off Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in this Call Off Contract. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Customer shall reimburse the Supplier's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Call Off Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.
- 59.1.5. Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
- 59.1.6. Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 59.1.7. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 59.1.8. The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Customer shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Customer shall be recovered from the Supplier.

6.5 The following new Call Off Schedule [17] shall apply:

CALL OFF SCHEDULE [17]: MOD DEFCONS AND DEFFORMS

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

DEFCONS

DEFCON No	Version	Description

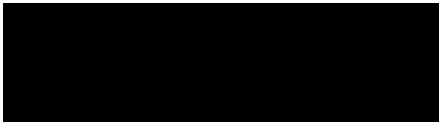
DEFFORMs (Ministry of Defence Forms)

DEFFORM No	Version	Description

CALL OFF SCHEDULE 16: LICENSE TERMS FOR SUPPLIER SOFTWARE AND THIRD PARTY SOFTWARE

Third Party Software (products proprietary to Environmental Systems Research Institute, Inc. ("Esri" or "Esri Inc") (Esri UK's permitted subcontractor) shall be solely and exclusively governed by the terms of the Esri Inc Enterprise License Agreement and Amendment No 1 to such agreement, both of which are attached hereto.

Supplier Software (products proprietary to Esri UK) shall be solely and exclusively governed by the terms of the Esri UK Letter Agreement attached hereto.



**AMENDMENT NO. 1
TO
LICENSE AGREEMENT**
Esri Contract Number: 2009MLA6899

This Amendment modifies the Master License Agreement ("License Agreement") between **Shropshire Council** ("Licensee"), **Environmental Systems Research Institute, Inc. ("Esri")**, and **ESRI (UK) Ltd. ("Distributor")**. The License Agreement includes (i) signature page (E101), (ii) the General License Terms and Conditions (E201), and (iii) Exhibit 1 (E300). The parties agree that the modifications and additional rights granted in this Amendment to the License Agreement shall apply only to the Enterprise License Software authorized to be Deployed under the Enterprise License Agreement ("ELA") between Distributor and Licensee.

ADDITIONAL TERMS AND CONDITIONS

SECTION 1—ADDITIONAL DEFINITIONS

"Deploy," "Deployment," or "Deployed" means to redistribute or the redistribution of the Enterprise License Software and its related keycodes/registration files, or its having been redistributed by Licensee for installation and use on Licensee's hardware in accordance with the terms of this Amendment.

"Enterprise License Software" means the Software identified in Table A-1 and Table A-2 of Appendix A of the ELA. Enterprise License Software does not include Unit-Priced Separately Orderable Item(s) or Esri technology that may be embedded in third-party products purchased by Licensee.

"Rolled-In Software" means Software of the same type as Enterprise License Software that Licensee acquired for use prior to the Effective Date of the ELA that is current on paid maintenance (as shown in Esri's customer service records) and that receives ELA Maintenance during the term of the ELA.

"Unit-Priced Separately Orderable Item(s)" means Software, Data, Online Services, or maintenance that is/are available subject to a per-unit license fee, subscription fee, or maintenance fee.

SECTION 2—ADDITIONAL GRANT OF LICENSE

Licensee's use of the Enterprise License Software is subject to the terms and conditions of the License Agreement as amended by this Amendment. Unit-Priced Separately Orderable Items, if acquired, and Rolled-In Software shall be licensed in accordance with the License Agreement.

SECTION 3—GRANT OF LICENSE, BETA LICENSE, AND CONSULTANT ACCESS

3.1 Grant of License. The following additional Permitted Use is hereby granted for the Enterprise License Software:

For the term of the ELA, Licensee may copy and Deploy the Enterprise License Software up to the quantities of licenses listed in Table A-1 and Table A-2 of Appendix A of the ELA.

3.2 Beta License. Beta licenses are not available under the ELA.

3.3 Consultant or Contractor Access. Consultant or Contractor Access, in E201 of the License Agreement is modified such that use of any Enterprise License Software is restricted to use by consultants and contractors for the sole benefit of Licensee while (i) working on-site at Licensee's facilities or (ii) remotely using/accessing Enterprise License Software from Licensee's on-site computers or machines.

SECTION 4—ADDITIONAL RESTRICTIONS ON USE

In addition to the restrictions on use in the License Agreement, the following Uses Not Permitted apply to the Enterprise License Software:

- a. Licensee shall not use, transfer, redistribute, or Deploy the Enterprise License Software outside of the United Kingdom without the prior written permission of Esri and Distributor and agreement on additional fees, if any. Any such export shall be subject to US Export Control Regulation requirements of the License Agreement.
- b. Hard-copy Documentation may not be copied.

SECTION 5—ELA TERM AND TERMINATION

The term of this Amendment shall be for the duration of the term of the ELA unless this Amendment or the ELA is terminated earlier as provided herein.

Upon termination of the ELA by Distributor or Esri for a material breach, all licenses Deployed shall also terminate and Licensee shall uninstall, remove, and destroy all Enterprise License Software, training materials, and any whole or partial copies, modifications, or merged portions in any form. Licensee shall execute and deliver evidence of such destruction to Distributor or Esri, which evidence shall be in a form acceptable to Distributor and Esri. Notwithstanding, except for termination for Licensee's material breach of the License Agreement, Licensee may continue to use Rolled-In Software provided Licensee complies with the terms and conditions of the License Agreement. Further, Esri agrees that Licensee is not required to pay a maintenance reinstatement fee for lapsed maintenance for Rolled-In Software if Licensee orders maintenance at time of ELA termination.

Upon expiration of the ELA, Licensee may continue to use the Deployed Enterprise License Software and Rolled-In Software in accordance with the terms and conditions set forth in the License Agreement. Licensee may order maintenance upon expiration for Rolled-In Software without paying a maintenance reinstatement fee for lapsed maintenance. Licensee shall notify Distributor of the quantity and type of licenses for which Licensee elects to purchase standard maintenance. If Licensee elects not to order maintenance upon expiration and maintenance lapses, Licensee must pay back maintenance fees to reinstate maintenance. Licensee shall not Deploy additional copies of the Enterprise License Software beyond the quantities in use upon termination or as of the date of expiration.

SECTION 6—ADMINISTRATIVE REQUIREMENTS

6.1 OEM Licenses. If Licensee obtains Software, Data, Online Services, or any component thereof as part of an original equipment manufacturer (OEM) software program or product developed and licensed by an OEM business partner of Esri, Licensee shall not be entitled to or seek any discount from the OEM business partner or Esri, directly or indirectly, as a result of or based on the availability of such Software, Data, or Online Services as Enterprise License Software under the ELA. In addition, such Software, Data, Online Services, or any component thereof included in the OEM software program or product will be licensed through the license agreement provided by the OEM business partner and not through the ELA.

6.2 Royalty-Bearing Software. Newer or updated Enterprise License Software may contain or be developed with (i) newly acquired technology obtained through a significant investment or (ii) third-party intellectual property that requires a unit-based royalty fee or prohibits Deployment under a site license. Esri reserves the right to require the Distributor to remove such newer or updated versions of the Enterprise License Software from the list of Enterprise License Software in the ELA. Such items can be made available to Licensee on a limited-quantity basis or as unit-priced items that are separately orderable. In such event, Licensee may continue to use the older (previous) version Deployed.

6.3 Product Obsolescence. During the term of the ELA, some of the products listed in Appendix A of the ELA may become obsolete or no longer be commercially offered or may no longer be available for Deployment. Licensee may continue to use a product that has been Deployed, but support and upgrades for older products may not be available. ELA Maintenance and maintenance and availability of products identified in Appendix A of the ELA shall be subject to each item's Product Life Cycle Support Status, which can be found at <http://support.esri.com/index.cfm?fa=software.gateway> by selecting the product type and clicking the Product Life Cycle link for specific product plans. The Esri Product Life Cycle Support Policy, available at <http://help.arcgis.com/en/shared/product-life-cycle/ProductLifeCycle.pdf>, defines the support phases and overall support plans.

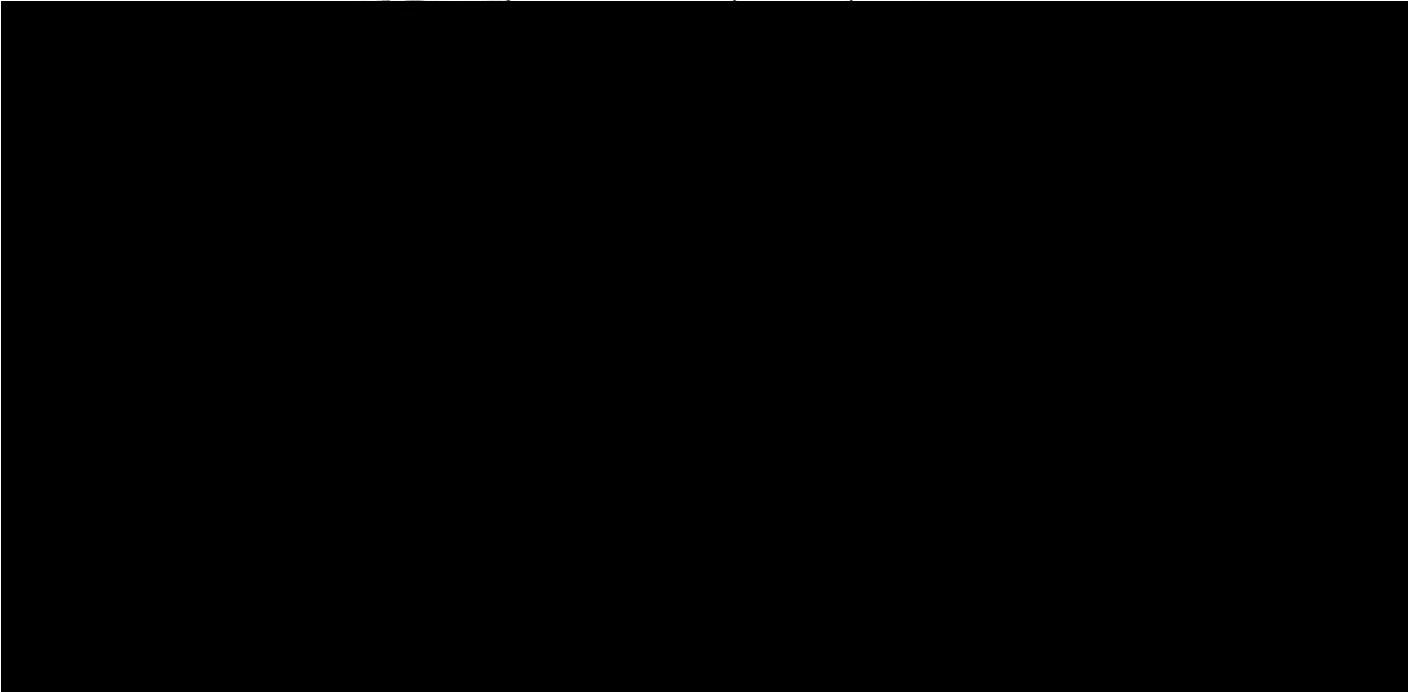
personal info

This Amendment to the License Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating to such subject matter and any terms on a purchase order. Any modifications or amendments to this License Agreement must be in writing and signed by an authorized representative of each party.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and effective as of the last date written below.

SHROPSHIRE COUNCIL
(Licensee)

ESRI (UK) LTD.
(Distributor)



Country: _____

Telephone: _____

Fax: _____

E-mail: _____

ENTERPRISE LICENSE AGREEMENT

This Enterprise License Agreement, including the documents listed below (collectively, "Agreement" or "ELA"), is between **Shropshire Council** ("Government") and **ESRI (UK) Ltd.** ("Distributor") and is effective on the date of the last signature below ("Effective Date"). This Agreement entitles Government to license Esri Products and procure maintenance over a limited, fixed period of time from the Effective Date subject to a payment of fees and the terms of this Agreement as specified herein.

This Agreement is composed of the following documents, which are attached to this Agreement and incorporated herein by reference:

Enterprise License Agreement Terms and Conditions, including

- Appendix A, Software and Deployment Schedule
- Appendix B, ELA Fee and Schedule
- Appendix C, Government Annual Deployment Report
- Appendix D, ELA Points of Contact
- Appendix E, Tier 1 Help Desk Authorized Individuals

The ELA License Agreement is composed of the following documents, which are incorporated into this Agreement by reference and are not attached to this Agreement:

- Amendment No. 1 to License Agreement, G576, and
- License Agreement:
 - Master License Agreement Signature page, E101
 - General License Terms and Conditions, E201
 - Esri Exhibit 1, Scope of Use, E300

The parties acknowledge that they have read and understand this Agreement and agree to be bound by the terms and conditions contained herein.

This Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to such subject matter. Any modifications or amendments to this Agreement must be in writing and signed by an authorized representative of each party.

ACCEPTED AND AGREED:

SHROPSHIRE COUNCIL
(Government)

ESRI (UK) LTD.
(Distributor)



ENTERPRISE LICENSE AGREEMENT TERMS AND CONDITIONS

ARTICLE 1—DEFINITIONS

All definitions in other parts of the ELA shall have the same meaning in this Enterprise License Agreement Terms and Conditions. In addition, the following definitions apply to the ELA:

- "Deploy," "Deployment," or "Deployed" means to redistribute, or the redistribution of, the Enterprise License Software (and its related keycodes/registration files), or its having been redistributed, by Government for installation and use on Government's hardware.
- "ELA Fee" means the fee set forth in Appendix B.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by Distributor for the Enterprise License Software and Rolled-In Software.
- "Enterprise License Software" means the Software identified in Table A-1 and Table A-2 of Appendix A. Enterprise License Software does not include Unit-Priced Separately Orderable Item(s) or Esri technology that may be embedded in third-party products purchased by Government.
- "Esri" means Environmental Systems Research Institute, Inc., who is the licensor of the Esri Enterprise License Software.
- "Incident" means a failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "ELA License Agreement" means License Agreement and Amendment No. 1 to License Agreement.
- "License Agreement" means Master License Agreement signature page (E101), the General License Terms and Conditions (E201), Exhibit 1, Scope of Use (E300).
- "Rolled-In Software" means Software of the same type as Enterprise License Software that Government acquired for use prior to the Effective Date that is current on paid maintenance (as shown in Esri's customer service records) and that receives ELA Maintenance during the term of the ELA.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Software, Data, or Documentation corrections or modifications specified in the most current applicable Distributor software maintenance policy as modified by Section 4.
- "Tier 1 Help Desk" means Government point of contact from which all Tier 1 Support will be given.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact in attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by Distributor to the Tier 1 Help Desk when the Incident cannot be resolved through the Tier 1 Support.
- "Unit-Priced Separately Orderable Item(s)" means Software, Data, Online Services, or maintenance that is available subject to a per-unit license fee, subscription fee, or maintenance fee.

ARTICLE 2—GRANT OF LICENSE

2.1 Grant of License. Government's use of the Enterprise License Software is subject to the ELA License Agreement. Unit-Priced Separately Orderable Item(s), if acquired, and Rolled-In Software shall be licensed in accordance with the License Agreement.

2.2 Beta License. Beta licenses are not available under this ELA.

2.3 Consultant or Contractor Access. Consultant or Contractor Access, in the License Agreement is modified such that use of any Enterprise License Software is restricted to use by consultants and contractors for the sole benefit of Government while (i) working on-site at Government's facilities or (ii) remotely using/accessing Enterprise License Software from Government's on-site computers or machines.

ARTICLE 3—SCOPE OF USE

The Uses Permitted and Uses Not Permitted section of the License Agreement are modified as follows:

3.1 Additional Uses Permitted. The following additional Permitted Uses are hereby granted for the Enterprise License Software:

For the term of the ELA, Government's right to Deploy the Enterprise License Software, up to the quantities of licenses listed in Appendix A, is granted by Esri to Government in the Amendment No. 1 to the License Agreement.

3.2 Uses Not Permitted. In addition to the restrictions set forth in the License Agreement, the following Uses Not Permitted apply to the Enterprise License Software:

- a. Government shall not use, transfer, redistribute, or Deploy the Enterprise License Software outside of the country listed in Appendix B without the prior written permission of Distributor and Esri and agreement on additional fees, if any. Any such export shall be subject to US Export Control Regulation requirements of the License Agreement.
- b. Hard-copy Documentation may not be copied.

ARTICLE 4—MAINTENANCE

4.1 ELA Maintenance. ELA Maintenance is included in the ELA Fee. Each Rolled-In Software and Enterprise License Software item will receive ELA Maintenance, provided that standard maintenance is available. ELA Maintenance includes benefits specified in the most current applicable Distributor software maintenance policy as modified by this Section 4. ELA Maintenance does not include Technical Support for Online Services.

a. Tier 1 Support Provided by Government

- (1) Government shall provide Tier 1 Support through the Tier 1 Help Desk.
- (2) The Tier 1 Help Desk shall use analysts fully trained in the Software they are supporting.
- (3) At a minimum, Tier 1 Support shall include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
- (4) Tier 1 Support analysts shall be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration. This may include obtaining any customizations, code samples, or Data involved, if applicable to the Incident. The analyst may also use any other information and databases they may develop to satisfactorily resolve Incidents.
- (5) If the Tier 1 Help Desk cannot resolve the Incident, an authorized Tier 1 Help Desk individual may contact Distributor for Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available.
- (6) Government may assign up to the number of Tier 1 Help Desk individuals listed in Appendix B. Said individuals shall be fully identified in Appendix E and will be the only individuals authorized to contact Distributor directly for Tier 2 Support.

b. Tier 2 Support Provided by Distributor

- (1) Distributor shall log the calls received from the Tier 1 Help Desk individuals.
- (2) Distributor shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
- (3) Distributor may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
- (4) Distributor shall attempt to resolve the Incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals.
- (5) When the Incident is resolved, Distributor shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution.
- (6) Esri may, at Esri's sole discretion, make patches, hot fixes, or updates available for downloading from the Distributor or Esri's website or deliver them on media.

4.2 Maintenance for Unit-Priced Separately Orderable Item(s). Annual maintenance fees for Unit-Priced Separately Orderable Item(s) are not included in the ELA Fee, and if ordered, additional fees shall apply.

ARTICLE 5—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT REPORT

5.1 Purchase Orders, Delivery, and Deployment

- a. Government shall issue a purchase order upon execution of the ELA and annually thereafter in accordance with the fee schedule in Appendix B. These fees shall be due and payable within thirty (30) days of the anniversary date of the ELA, with the initial payment due within thirty (30) days of execution of the ELA.
- b. Upon receipt of the initial purchase order from Government, Distributor shall deliver the number of sets of media, listed in Appendix B, containing the Enterprise License Software to Government for Deployment. Distributor shall ship the media to the ship-to address identified in Appendix D. Government may purchase additional media sets at the prices in effect at the time of purchase.
- c. Distributor shall provide Government with up to the number listed in Appendix B of hardware keys ordered on an as-required basis. Additional hardware keys may be ordered at the prices in effect at the time of purchase.
- d. Distributor shall provide registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Software to operate.
- e. Government shall Deploy, install, configure, and track the Enterprise License Software.
- f. Purchase orders for Unit-Priced Separately Orderable Item(s) may be issued by Government during the term of this ELA and shall be shipped to the ship-to address identified in Appendix D.
- g. Government shall pay all value-added, sales, use, or other taxes; duties, customs, shipping, insurance, or other fees; or withholding currently or subsequently imposed on all receipt and use of the Products under this ELA. Such taxes, duties, fees, withholding, or other charges shall be paid by Government, or Government shall provide Distributor with evidence of exemption from such taxes, duties, fees, withholding, or other charges. If Distributor is required to pay any such tax, duty, fee, or charge or to withhold any amount from monies due to Distributor from Government pursuant to this ELA, Government shall promptly reimburse Distributor any such amounts.

5.2 Purchase Order Requirements

- a. Any purchase orders issued by Government shall reference and be subject to the terms and conditions of this ELA. No additional or different term contained in a purchase order or ordering document shall be binding. All orders and deliveries pertaining to this ELA shall be processed through Government's centralized point of contact.
- b. The following information shall be included in each purchase order:
 - (1) Government's name, Esri customer number, and the ship-to address as identified in Appendix D.
 - (2) Purchase order number.
 - (3) Applicable annual payment due, or for Unit-Priced Separately Orderable Item(s), the quantity, description, price, and name of Government.
 - (4) On the face of the purchase order, print the following statement: "Subject to Enterprise License Agreement."

5.3 Annual Report of Deployments. At each anniversary date and ninety (90) days prior to the expiration date of this ELA, Government shall provide a written report, as set forth in Appendix C, to Distributor detailing all Deployments made. The report shall be subject to audit by an authorized representative of Distributor or Esri.

5.4 Esri International User Conference Registration. Government shall receive Esri International User Conference registrations annually for the term of this ELA in the quantities set forth in Appendix B. Government is responsible for distributing the registrations. Third parties may not represent Government at any Esri International User Conferences.

ARTICLE 6—POINTS OF CONTACT; NOTICES

6.1 Points of Contact. Each party shall identify points of contact for administrative and technical issues in Appendix D.

6.2 Notices. Except as set forth in Section 6.1, any notice, report, demand, or other communication shall be properly given when made in writing in English and sent by courier, registered or certified airmail, facsimile, or other electronic transmission and confirmed by courier or by registered or certified airmail, properly addressed to the appropriate party at the

address set forth above, until changed by notice in writing by either party hereto. If sent by courier or airmail, notice shall be effective seven (7) days from the date of deposit with the courier service or post office. If sent by electronic transmission, notice shall be effective upon receipt, provided confirmation is given as specified herein. Notices shall be given at the following addresses:

To: Distributor

Millennium House, 65 Walton Street _____
Aylesbury, Bucks _____
HP21 7QG _____
Att: Legal Department _____

To: Government

Shropshire Council, Shirehall _____
Abbey Foregate, Shrewsbury, Shropshire _____
SY2 6ND _____
Attn: Legal Department _____

ARTICLE 7—TERM, TERMINATION, AND EXPIRATION

7.1 Term. The term of the ELA shall be for the number of years listed in Appendix B from the Effective Date unless this ELA is terminated earlier as provided herein.

7.2 Termination for a Material Breach. Either party may terminate this ELA for a material breach by the other party. The breaching party shall be given a period of ten (10) days from date of written notice to cure any material breach. Upon termination of this ELA by Distributor or Esri for a material breach, all licenses Deployed shall also terminate, and the full amount of unpaid ELA Fees will be due and payable by Government within thirty (30) days from the date of termination. Government shall uninstall, remove, and destroy all Enterprise License Software, training materials, and any whole or partial copies, modifications, or merged portions in any form. Government shall execute and deliver evidence of such destruction to Distributor, which evidence shall be in a form acceptable to Distributor. Notwithstanding, except for termination for Government's material breach of the License Agreement, Government may continue to use Rolled-In Software provided Government complies with the terms and conditions of the License Agreement. Further, Esri agrees that Government is not required to pay a maintenance reinstatement fee for lapsed maintenance for Rolled-In Software if Government orders maintenance at time of ELA termination.

7.3 License Term and Use Upon Expiration of ELA Term. Upon expiration of this ELA, the License Agreement shall survive and Government may continue to use the Deployed Enterprise License Software and Rolled-In Software, in accordance with the terms and conditions set forth in the License Agreement. Government may order maintenance upon expiration for Rolled-In Software without paying a maintenance reinstatement fee for lapsed maintenance. Government shall notify Distributor of the quantity and type of licenses for which Government elects to purchase standard maintenance. If Government elects not to order maintenance upon expiration and maintenance lapses, Government must pay back maintenance fees to reinstate maintenance. Government shall not Deploy additional copies of the Enterprise License Software beyond the quantities in use upon termination or as of the date of expiration.

ARTICLE 8—CONFIDENTIALITY

The terms and conditions of this ELA are confidential and proprietary information of Distributor and Esri. Government shall not publish or disclose to third parties, in hard copy or electronically, Appendix A and Appendix B, including the ELA Fee, without Distributor's and Esri's prior written consent. Disclosure may be made only to those employees and advisors of Government who have a need to know to perform their duties and have an obligation of confidentiality. To the extent any such disclosures may be required by law, Government shall inform Distributor of the requested disclosure, with a reasonable description of the requested disclosure and identification of the requester, in sufficient time for Distributor to assert any objection Distributor may have to such disclosure with the appropriate administrative or judicial body.

ARTICLE 9—RELATIONSHIP OF THE PARTIES

The ELA does not constitute a partnership, joint venture, or agency between Distributor and Government. Neither Distributor nor Government shall hold itself out as such, nor shall Distributor or Government be bound or become liable because of any representation, action, or omission of the other.

ARTICLE 10—FORCE MAJEURE

If the performance of any obligation under this ELA is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, threat of or actual terrorist act, cyberattack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any government agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention, interference, or restriction.

ARTICLE 11—GIS STANDARD

Government shall officially name Esri as its GIS standard and act as a reference for other Distributor and Esri customers and potential customers as long as the ELA remains in effect. This ELA shall not be construed or interpreted as an exclusive dealings agreement, and Government reserves the right to purchase from third parties any of their requirements for GIS software.

Government agrees that Distributor and Esri may publicize the existence of the ELA.

ARTICLE 12—ADMINISTRATIVE REQUIREMENTS

12.1 OEM Licenses. If Government obtains Software, Data, Online Services, or any component thereof as part of an original equipment manufacturer (OEM) software program or product developed and licensed by an OEM business partner of Esri, Government shall not be entitled to or seek any discount from the OEM business partner or Esri, directly or indirectly, as a result of or based upon the availability of such Software, Data, or Online Services, as Enterprise License Software under this ELA. In addition, such Software, Data, Online Services, or any component thereof included in the OEM software program or product will be licensed through the license agreement provided by the OEM business partner and not through this ELA.

12.2 Conversion to Enterprise License Software—Limited Quantity or Unit-Priced Separately Orderable Item. Newer or updated Enterprise License Software may contain or be developed with (i) newly acquired technology obtained through a significant investment or (ii) third-party intellectual property that requires a unit-based royalty fee or prohibits Deployment under a site license. In the event Esri directs Distributor to exclude newer or updated versions of Esri Software from site licenses, Distributor reserves the right to exclude such newer or updated versions of the Enterprise License Software from the tables in Appendix A as required by Esri. Such items can be made available to Government on a limited quantity basis or as Unit-Priced Separately Orderable Item(s). In such event, Government may continue to use the older (previous) version Deployed and Distributor will provide Technical Support in accordance with the Esri Product Life Cycle Support Policy.

12.3 Product Obsolescence. During the term of this Agreement, some of the products listed in Appendix A may become obsolete or will no longer be commercially offered or may no longer be available for Deployment. Government may continue to use a product that has been Deployed, but support and upgrades for older products may not be available. ELA Maintenance and maintenance and availability of products identified in Appendix A shall be subject to each item's Product Life Cycle Support Status, which can be found at <http://support.esri.com/index.cfm?fa=software.gateway> by selecting the product type and then clicking the Product Life Cycle link for specific product plans. Esri Product Life Cycle Support Policy, available at <http://help.arcgis.com/en/shared/product-life-cycle/ProductLifeCycle.pdf>, defines the support phases and overall support plans.

ARTICLE 13—GENERAL PROVISIONS

13.1 The General Provisions and Limitations of Liability of the License Agreement shall apply to the entire ELA. If there is a conflict among any of the other terms and conditions in the various documents, the order of descending precedence shall be as follows: (1) E512 ELA Terms and Conditions, (2) E300 Scope of Use, (3) Amendment No. 1 to License Agreement, and (4) E201 General License Terms and Conditions. Except as otherwise expressly provided herein, any amendment or Addendum to this ELA must be in writing and signed by an authorized representative of each party.

13.2 Survival of Certain ELA Clauses. The provisions of Articles 7.3, 8, 9, and 10 of this Enterprise License Terms and Conditions document (E512) shall survive the expiration or termination of this ELA.

**APPENDIX A
SOFTWARE AND DEPLOYMENT SCHEDULE**

Government may Deploy the Software, Data, and Documentation and access Online Services up to the total quantity of licenses indicated below. The quantities identified are the cumulative quantities available in any given year for the term of this ELA.

**Table A-1
Enterprise License Software—Unlimited Quantities**

Product	Total Qty./Seats to Be Deployed
ArcGIS for Desktop Products (Single and Concurrent Use)	
ArcGIS for Desktop Advanced	Unlimited
ArcGIS for Desktop Standard	Unlimited
ArcGIS for Desktop Basic	Unlimited
ArcGIS for Desktop Extensions (Single and Concurrent Use)	
ArcGIS 3D Analyst	Unlimited
ArcGIS Spatial Analyst	Unlimited
ArcGIS Network Analyst	Unlimited
ArcGIS Geostatistical Analyst	Unlimited
ArcGIS Publisher	Unlimited
ArcGIS Schematics	Unlimited
ArcGIS Data Reviewer	Unlimited
ArcGIS Workflow Manager	Unlimited
ArcGIS for Server	
ArcGIS for Server Enterprise and Workgroup (Advanced, Standard and Basic)	Unlimited
ArcGIS for Server Extensions	
ArcGIS 3D Analyst	Unlimited
ArcGIS Network Analyst	Unlimited
ArcGIS Spatial Analyst	Unlimited
ArcGIS Geostatistical Analyst	Unlimited
ArcGIS Workflow Manager	Unlimited
ArcGIS Schematics	Unlimited
ArcGIS Image Extension	Unlimited
ArcGIS Engine (Single and Concurrent Use)	Unlimited
ArcGIS Engine Extensions (Single and Concurrent Use)	
3D Analyst	Unlimited
Spatial Analyst	Unlimited
Network Analyst	Unlimited
Geodatabase Update	Unlimited
Schematics	Unlimited
ArcGIS Runtime - Standard	Unlimited
ArcGIS Runtime Extensions	
3D Analyst	Unlimited
Network Analyst	Unlimited
Spatial Analyst	Unlimited

**Table A-2
Enterprise License Software—Limited Quantities**

Item	Existing Qty. (if applicable)	Qty./Seats to Be Deployed	Total
Esri Developer Network (EDN) Annual Subscription			2
ArcPad	8	0	8

Product	Level	Named Users	Annual Credits
ArcGIS Online Subscription	2	50	10,000

Table A-3
Unit-Priced Separately Orderable Items

Unit-Priced Separately Orderable Item licenses and maintenance are available at Distributor's list prices and are not included in the ELA Fee.

commercial info

**APPENDIX B
ELA FEE AND SCHEDULE**



Country	United Kingdom
Number of Tier 1 Help Desk Individuals	5
Number of Sets of Media	2
Number of Esri International User Conference Registrations	3
Number of Years for Term of ELA	3

**APPENDIX D
ELA POINTS OF CONTACT**

Either party may change its point of contact by written notice to the other party.

1. Distributor point of contact for order processing issues:

Name: Order Processing Department
Address: Millennium House, 65 Walton Street, Aylesbury,
Buckinghamshire, HP21 7QG.
E-mail: orders@esriuk.com
Phone: 01296 745 611
Fax: 01296 745 544

2. Distributor contact for Technical Support issues:

Name: Technical Support Department
E-mail: uksupport@esriuk.com
Phone: 01296 745 555
Fax: 01296 745 585
Web: www.esriuk.com/services/support

3. Government centralized point of contact for order release and administrative issues:

Name: [REDACTED]
Address: Shropshire Council, Shirehall, Abbey Foregate,
Shrewsbury, Shropshire. SY2 6ND
E-mail: [REDACTED]
Phone: 01743 281229
Fax: 01743 252151

4. All deliverables to Government shall be shipped to the address listed below:

Name: [REDACTED]
Address: Shropshire Council, Shirehall, Abbey Foregate,
Shrewsbury, Shropshire. SY2 6ND
E-mail: [REDACTED]
Phone: 01743 281229
Fax: 01743 252151

**APPENDIX E
TIER 1 HELP DESK AUTHORIZED INDIVIDUALS**

Substitutes/Changes to Tier 1 Help Desk authorized individuals may be made by written notice to Distributor.

1. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

2. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

3. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

4. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

5. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

INTERNAL USE ONLY
Esri UK & Shropshire Council

[Redacted]

Shropshire Council
Shirehall
Abbey Foregate
Shrewsbury
Shropshire
SY2 6ND

12th January 2017

Dear [Redacted]

Esri UK Software

Further to the letter agreement between Esri UK and Shropshire Council ("SC") dated 6th March 2013, this letter confirms that, effective 14th February 2017:

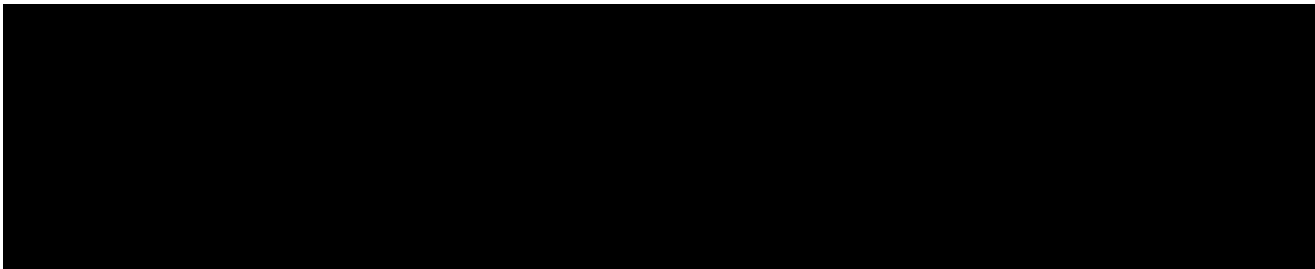
[Redacted]

[Redacted]



INTERNAL USE ONLY
Esri UK & Shropshire Council

Fees:

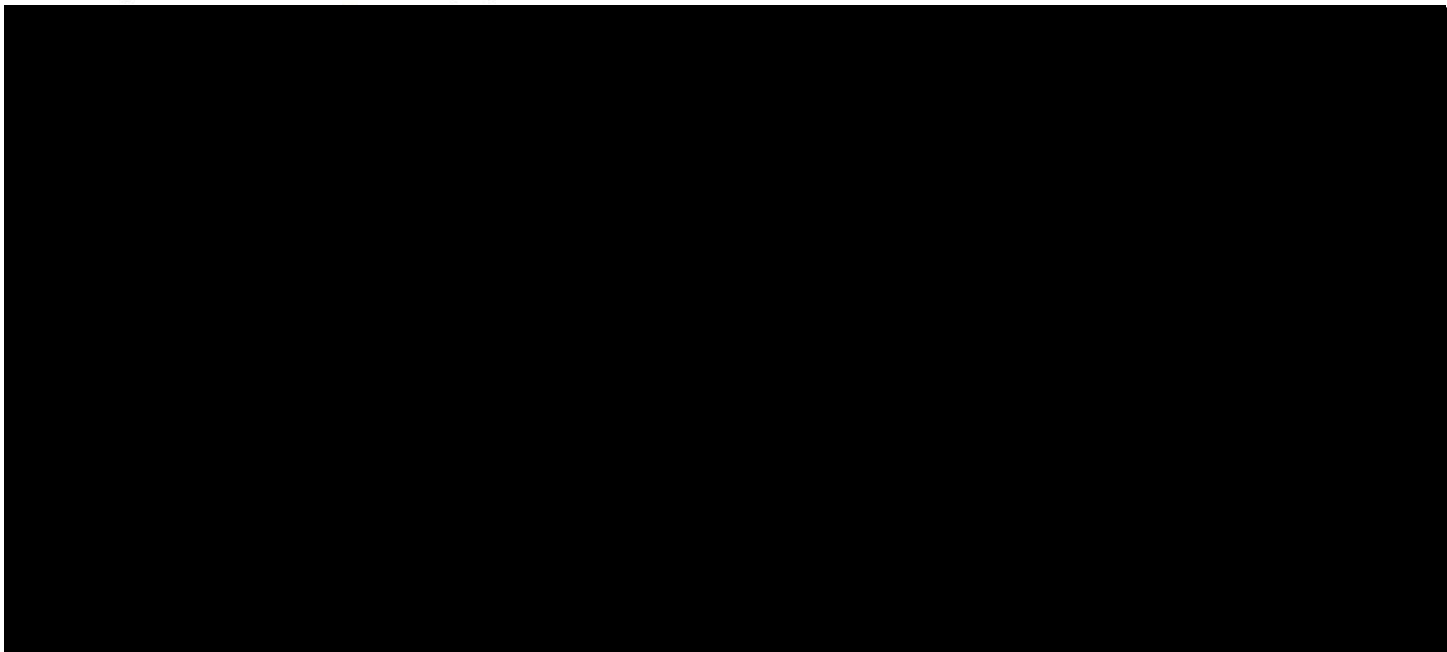


Yours sincerely

ESRI (UK) Limited

Acceptance:

Signed for and on Behalf of ESRI (UK) Limited



Page 2 of 2
Esri UK & Shropshire Council
INTERNAL USE ONLY

ESRI (UK) Ltd Millennium House 65 Walton Street Aylesbury Buckinghamshire HP21 7QG
T 01296 745500 F 01296 745544 E info@esriuk.com www.esriuk.com