

**FRAMEWORK SCHEDULE 4 (CALL OFF AGREEMENT)**

**FUEL CARDS AND ASSOCIATED SERVICES**

**REFERENCE NUMBER**

**RM1027**

**ATTACHMENT 4**

**FRAMEWORK SCHEDULE 4**  
**ORDER FORM AND CALL-OFF TERMS**

## Part 1 – Order Form

### SECTION A

This Order Form is issued in accordance with the provisions of the Fuel Cards and Associated Services Framework Agreement (Framework Ref RM1027). The Supplier agrees to supply the Services specified below on and subject to the terms of this Call Off Contract and for the avoidance of doubt this Call Off Contract consists of the terms set out in this Order Form and the Call Off Terms, together with the Call Off Schedules thereto.

**DATE: 27TH FEBRUARY 2017**

**ORDER NUMBER**



**FROM**

**Shropshire Council, Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND "Customer"**

**TO**



### SECTION B

#### 1. TERM

##### 1.1 Call Off Commencement Date:

01/04/2017

##### 1.2 Initial Call Off Period:

Two (2) years with the option to extend up to an additional twelve (12) months

#### 2. CUSTOMER CORE CONTRACTUAL REQUIREMENTS

##### 2.1 Services required

Fuel Cards and Associated Services provided to the Customer for vehicles specified by the Customer in accordance with their vehicles re-fuelling locations and the specific fuel card(s) required, to provide payment for fuel procured with the standard UK Fuels diesel price discount arrangement.

##### 2.2 Location/Premises of Delivery

Shropshire Council, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND

##### 2.3 Dates for completion of the Services

All required fuel cards to be delivered by 1<sup>st</sup> April 2017 for commencement of fuel card usage, to continue until the expiry of the Call Off Period as determined by clause 4.2 of these Call-Off Terms. Implementation and/or Transition requirements

NA

##### 2.4 BCDR Plan

Included as an addendum.

#### SUPPLIER'S INFORMATION

##### 2.5 [NOT USED]

##### 2.6 Supplier Software

Not required.

##### 2.7 Commercially Sensitive Information

Not applicable

#### 3. CUSTOMER RESPONSIBILITIES

##### 3.1 Customer's Responsibilities

**4. CALL OFF CONTRACT CHARGES, PAYMENT AND INVOICING**

**4.1 Additional Payment Information**

Not Applicable

**4.2 Invoices**

Invoices to be submitted weekly to include details of card number, card embossing, vehicle registration number, odometer, date/time of procurement, supplying garage, product, network, quantity/litres, net unit price, total net value, VAT value, gross value, total invoice value.

**4.3 Currencies**

GBP

**4.4 Payment Term**

**4.5 Receipt of the Rebate**

Not applicable

**SECTION C**

**5. CUSTOMER OTHER CONTRACTUAL REQUIREMENTS**

**5.1 Call Off Guarantor**

NA

**5.2 Relevant Convictions**

NA

**5.3 Staff Vetting Procedures**

N/A

**5.4 TUPE and Pensions**

NA

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

NA

**5.6 Protection of Customer Data**

Yes - Where appropriate and in accordance with these Call-Off Terms

**5.7 Testing**

NA

**5.8 Standards**

No additional standards required.

**5.9 Training**

No formal training required.

**5.10 Service Levels**

As per framework documentation.

**5.11 Critical Service Failure**

NA

**5.12 Business Continuity and Disaster Recovery**

NA

**5.13 Performance Monitoring**

As per Award Letter and Framework Documentation

**5.14 Liability**

As per call off document

**5.15 Insurance**

As per call off document

**5.16 Termination without cause**

AS PER CALL OFF DOCUMENT

**5.17 Form of User Agreement**

N/A – Part 2 Template Call-Off Terms shall apply

**6. ADDITIONAL AND/OR ALTERNATIVE CLAUSES**

**6.1 Supplemental requirements to the Call Off Terms**

NA

**6.2 Amendments to/refinements of the Call Off Terms**

NA

**6.3 Alternative and/or Additional Clauses (select from Call Off Schedule 10 and Schedule 11)**

Add in additional clauses as follows:

**5.5 Attendance at Committee Meetings**

The Supplier agrees that where requested in writing during the term of this Call-off Contract it will ensure that an appropriately authorised representative of the Supplier shall attend a Committee meeting of the Customer at its own cost upon being invited to do so by the Customer

**39 Equality and Diversity**

39.1 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).

39.2. In addition, the Supplier and any Sub-Contractor or person(s) employed by or under the control of the Supplier in providing Services to the Customer will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it

**39.3 Anti-slavery and human trafficking**

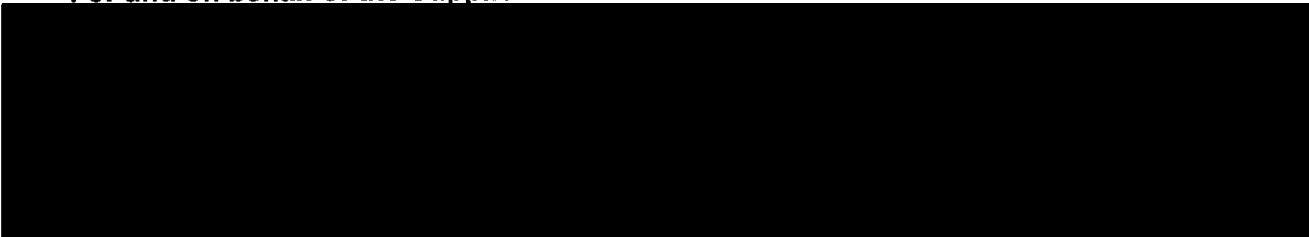
In performing his obligations under this Call-off Contract, the Supplier shall and shall ensure that each of its sub-contractors shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

personal info

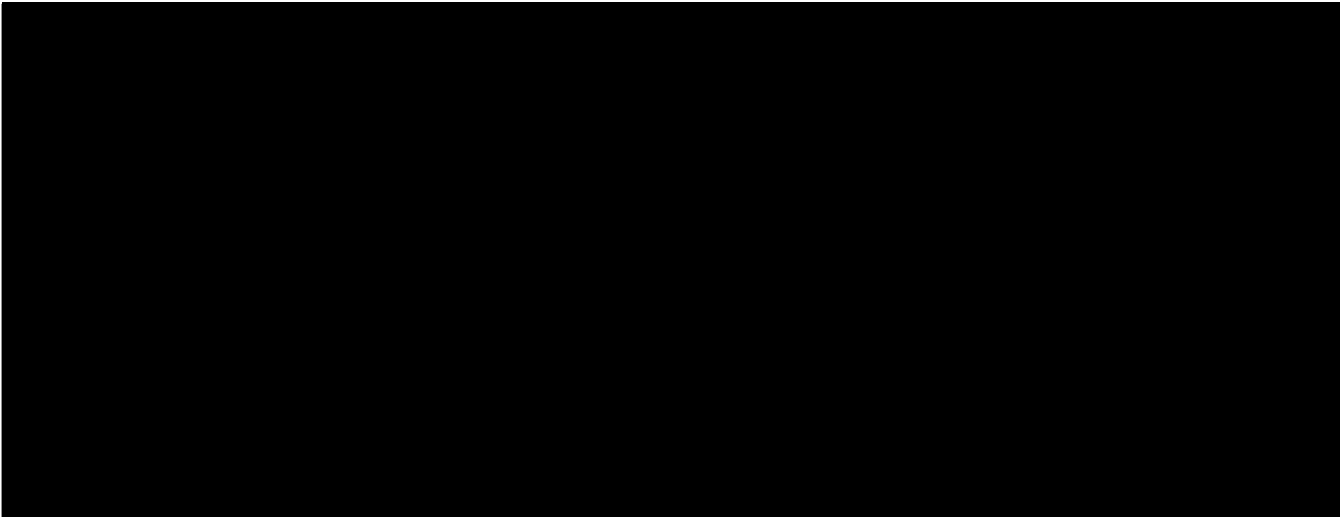
FORMATION OF CALL OFF CONTRACT

- 6.4 BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a Call Off Contract with the Customer to provide the Services.
- 6.5 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.
- 6.6 In accordance with paragraph 7 of Framework Schedule 5 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Contract shall be formed when the Customer acknowledges the receipt of the signed copy of the Order Form from the Supplier within two (2) Working Days from receipt (the "Call Off Execution Date") and shall take effect on the Call Off Commencement Date.

**For and on behalf of the Supplier:**



**For and on behalf of the Customer:**



**ANNEX A – FORM OF USER AGREEMENT**  
**N/A**

## Part 2 – Template Call Off Terms

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## **TERMS AND CONDITIONS**

### **A. GENERAL PROVISIONS**

#### **1. DEFINITIONS AND INTERPRETATION**

##### **1.1. Definitions**

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

##### **1.2. Interpretation**

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

- 1.2.1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2. words importing the masculine include the feminine and the neuter;
- 1.2.3. the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.4. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5. the Call Off Schedules form part of this Call Off Contract and shall have effect as if set out in full in the body of this Call Off Contract. Any reference to this Call Off Contract includes the Glossary to the Call Off Form and the Call Off Terms and the Call Off Schedules;
- 1.2.6. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.7. headings are included in this Call Off Contract for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract;
- 1.2.8. references to "Clauses" and "Schedules" are, unless otherwise provided, references to the Clauses of and Schedules (the "Call Off Schedules") to the Call Off Terms of this Call Off Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the Call Off Schedule in which the references are made. References to "Contract" are, unless otherwise provided, references to this Call Off Contract;
- 1.2.9. terms or expressions contained in this Call Off Contract which are capitalised but which do not have an interpretation in the Glossary to the Call Off Form and Call Off Terms or, if not that Glossary, in

the Glossary to the Framework Agreement shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning; and

1.2.10. reference to a Clause is a reference to the whole of that Clause unless stated otherwise.

1.3. Subject to Clause 1.3.7 and 1.4, in the event of and only to the extent of any conflict between the Order Form, the Call Off Terms, any User Agreements and the provisions of the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

1.3.1. the Framework Agreement, except Framework Schedule 17 (Tender);

1.3.2. the Order Form;

1.3.3. the Call Off Terms, except Call Off Schedule 3 (Supplier's Call Off Solution);

1.3.4. Call Off Schedule 3 (Supplier's Call Off Solution);

1.3.5. Framework Schedule 17 (Tender);

1.3.6. any User Agreements.

1.3.7. Award letter issued by the Customer dated 21 December 2016.

1.3.8. Any permitted changes by the Customer to the Template Call Off Terms and the Template Call Off Form under Clause 4 of the Framework Agreement and Framework Schedule 5 (Call Off Procedure) prior to the Parties entering this Call Off Contract shall prevail over the Framework Agreement.

1.4. Where the Tender or, following a Further Competition Procedure, the Call Off Solution contains provisions which are more favourable to the Customer in relation to the Call Off Contract, such provisions of the Tender or the Call off Solution (as applicable) shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Tender or the Call Off Solution is more favourable to it in relation to the Call Off Contract.

1.5. In consideration of the Supplier agreeing to enter into this Call Off Contract and to perform its obligations under it the Customer agrees to pay and the Supplier agrees to accept on the signing of this Call Off Contract the sum of one pound (£1.00) pounds sterling (receipt of which is hereby acknowledged by the Supplier).

## **2. DUE DILIGENCE**

2.1. The Supplier acknowledges that it:

2.1.1. has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;

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

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

- 2.1.4. has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Customer before the Execution Date) of all relevant details relating to the Customer's Premises.

### **3. CALL OFF GUARANTEE**

- 3.1. Where the Customer has specified 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:
  - 3.1.1. an executed Call Off Guarantee from a Call Off Guarantor; and
  - 3.1.2. 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. CALL OFF CONTRACT PERIOD**

- 4.1. This Call Off Contract shall take effect on the Call Off Contract Commencement Date and shall expire either:
  - 4.1.1. at the end of the Initial Call Off Period;
  - 4.1.2. where the Customer elects to extend the Initial Call Off Period in accordance with Clause 4.2 below, at the end of the final extension period; or
  - 4.1.3. at the end of the second anniversary of the expiry or earlier termination of the Framework Agreement,whichever is the earlier, unless otherwise terminated (or partially terminated in respect of the terminated part only) earlier by operation of Law or pursuant to Clause 31 (Termination Events).
- 4.2. At the end of the Initial Call Off Period, the Customer may extend the duration of this Call Off Contract for any period or periods up to the end of the second anniversary of the expiry or earlier termination of the Framework Agreement. If the Customer intends to extend this Call Off Contract for the first period, it shall give the first notice to the Supplier no later than three (3) Months prior to the end of the Initial Call Off Period and such notice shall include details of the duration of the relevant extension. If the Customer intends to exercise the option to extend the Call Off Contract for further periods, it shall give further notices to the Supplier no later than three (3) Months prior to the date upon which the current period of extension is due to expire, and shall include details of the duration of the relevant extension.

### **5. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

- 5.1. The Supplier warrants, represents and undertakes to the Customer that:
  - 5.1.1. it has full capacity and authority and all necessary consents, licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under this Call Off Contract;

- 5.1.2. this Call Off Contract is executed by a duly authorised representative of the Supplier;
- 5.1.3. in entering this Call Off Contract it has not committed any Fraud;
- 5.1.4. in entering this Call Off Contract it has not committed or agreed to commit a Prohibited Act including any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 5.1.5. in entering this Call Off Contract it has no knowledge, that:
  - (a) in connection with it, any money or other inducement has been, or will be, paid to any person working for or engaged by the Customer or other Contracting Body or any other public body or any person engaged or employed by or on behalf of the Customer in connection with this Call Off Contract; and
  - (b) an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Authority before execution of this Call Off Contract;
- 5.1.6. this Call Off Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
- 5.1.7. as at the Call Off Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Call Off Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the Tender shall be deemed repeated in this Call Off Contract;
- 5.1.8. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under this Call Off Contract;
- 5.1.9. it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under this Call Off Contract;
- 5.1.10. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 5.1.11. it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Call Off Contract and shall maintain the same in full force and effect.

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

5.2.1. in the three (3) years prior to the Call Off Commencement Date (or from when the Supplier was formed if in existence for less than three (3) years prior to the Call Off Commencement Date):

- (a) it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and
- (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (c) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Call Off Contract;
- (d) for the Call Off Contract Period that all Staff will be vetted in accordance with the Staff Vetting Procedures and Good Industry Practice; and
- (e) as at the Call Off Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;

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

5.3. For the avoidance of doubt, the fact that any provision within this Call Off Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a Material Breach.

5.4. The Supplier acknowledges and agrees that:

5.4.1. the warranties, representations and undertakings contained in this Call Off Contract are material and are designed to induce the Customer into entering into it; and

5.4.2. the Customer has been induced into entering into this Call Off Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

## **6. SUPPLY OF SERVICES**

### **6.1. Provision of the Services**

6.1.1. The Supplier shall provide the Services in accordance with the Order, Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in the Order Form and obligations of the Supplier in this Call Off Contract.

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

6.1.3. The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the

Services and the performance of its obligations under this Call Off Contract.

**6.2. Time of Delivery of the Services**

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

**7. USER AGREEMENT**

- 7.1. The Supplier may require the Customer to procure that an End User enters into a User Agreement prior to the relevant Services being supplied to that End User.
- 7.2. The Supplier shall not vary the terms of the form of the User Agreement attached to this Call Off Contract without the Approval of the Customer.

**8. INSTALLATION WORKS**

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



- 8.4. Throughout the Call Off Contract Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Staff to carry out the Installation Works.

**B. CALL OFF CONTRACT PERFORMANCE**

**9. PROVISION AND REMOVAL OF EQUIPMENT**

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

**10. CUSTOMER'S PREMISES**

**10.1. NOT USED**

**10.2. Access to Customer's Premises**

- 10.2.1. The Supplier may only access the Customer's Premises at such times and on such dates and with such Staff as have been agreed by the Supplier with the Customer in advance of such access being required.
- 10.2.2. The Supplier shall (and shall ensure that the Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

**10.3. Security of Premises**

- 10.3.1. The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with the Security Policy. The Supplier shall comply and shall ensure that all Staff comply with the Security Policy and any other reasonable security requirements of the Customer while on the Customer's Premises.
- 10.3.2. The Customer shall provide the Supplier upon written request with a copy of its Security Policy and any other written security requirements.

**11. ISSUANCE, CANCELLATION, USE AND ACCEPTANCE OF CARDS**

- 11.1. The Supplier shall be responsible for the embossing and printing of Fuel Cards at its own expense, except where the Customer (with the prior written consent of the Authority) requires a bespoke Fuel Card design.
- 11.2. The Supplier shall issue Fuel Cards and renewal and replacement Fuel Cards at its own expense (including payment of delivery charges) to End Users. The Supplier shall dispatch (or procure the dispatch of) all Fuel Cards to such address or addresses as required by the Customer.
- 11.3. The method of dispatch of newly issued and replacement Fuel Cards shall be as set out in the Order Form. The Supplier shall dispatch Fuel Cards at

its own risk. A Fuel Card shall not be deemed to be properly issued until its safe arrival at the address agreed under Clause 11.2. All Fuel Cards shall be and shall remain the property of the Supplier.

- 11.4. The Supplier shall issue a renewal or replacement Fuel Card for a current Fuel Card in accordance with the Service Levels and before that current Fuel Card is due to expire, or when the Supplier becomes aware that the current Fuel Card has been lost, damaged or mutilated, unless:
  - 11.4.1. otherwise instructed by the Customer; or
  - 11.4.2. the current Fuel Card has been cancelled.
- 11.5. The Supplier shall not authorise any use of a Fuel Card if the Supplier is aware or should be aware that such use would be an Unauthorised Use.
- 11.6. The Customer shall instruct all staff to whom Fuel Cards are issued that any Unauthorised Use shall be regarded as a breach of contract and (in the case of a contractor or other agent) termination for cause of the contract under which that contractor or agent was appointed.
- 11.7. The Supplier shall ensure that any authorisation request for the issue of cash using the Fuel Card is declined.
- 11.8. The Supplier shall not authorise any payment on the Fuel Card that is in breach of any credit or usage limits or any blocking control set out in the Framework Agreement and/or this Call Off Contract.
- 11.9. The Customer's authorised personnel (as nominated by the Customer from time-to-time) shall be entitled on behalf of the Customer to instruct the Supplier to cancel any Fuel Card issued by the Supplier at any time with or without cause and on receipt of such instructions the Supplier shall promptly cancel the relevant Fuel Card at its own expense.
- 11.10. The Supplier may cancel a Fuel Card only in the following circumstances:
  - 11.10.1. where it is aware or suspects that such Fuel Card has been stolen or is being used without authority;
  - 11.10.2. where the relevant End User commits a persistent misuse of or repeatedly fails to observe the terms of use of the Fuel Card;
  - 11.10.3. when instructed to do so by the Customer; or
  - 11.10.4. as permitted elsewhere in this Call Off Contract.

## **12. STANDARDS AND QUALITY**

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

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

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

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

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

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

12.4.1. it performs its obligations under this Call Off Contract in a timely manner and in accordance with the date(s) and the Milestone Dates (if any) specified in the Implementation Plan and/or Order Form;

12.4.2. it supplies the Services in conformity with the specification in Framework Schedule 1 (Services and Key Performance Indicators), the Order Form and in accordance with all applicable Laws including but not limited to, as applicable, any obligation under sections 12, 13 and 14 of the Sale of Goods Act 1979 (in respect of any Goods) and section 2 of the Supply of Goods and Services Act 1982 (in respect of any Services);

12.4.3. it supplies the Services in accordance with the Tender or, where the Customer has entered into this Call Off Contract following a Further Competition Procedure, in accordance with the Supplier Call Off Solution.

### **13. TESTING**

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

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

13.3. In the case of any additional and/or alternative testing requirements of the Customer, the provisions relating to Testing shall apply as stipulated by the Customer in the Order Form.

### **14. SERVICE LEVELS AND SERVICE CREDITS**

14.1. 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).

14.2. The Supplier shall at all times during the Call Off Contract Period provide the Services to meet or exceed the performance measures of any Service Levels set out in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring).

- 14.3. Service Credits shall be the Customer's exclusive financial remedy for a Service Level Failure except where:
  - 14.3.1. the Service Level Failure:
    - 14.3.1.1. has arisen due to the fraud or wilful default by the Supplier or any Staff; and;
    - 14.3.1.2. results in:
      - (a) the corruption or loss of any Customer Data (in which case the remedies under Clause 28.3.7 (Protection of Customer Data) shall also be available); and/or
      - (b) the Customer being required to make a compensation payment to one or more third parties; and/or
  - 14.3.2. the Customer is otherwise entitled to or does terminate the relevant Services or this Call Off Contract pursuant to Clause 31 (Termination Events).
- 14.4. The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels. The Supplier shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.
- 14.5. The Customer shall be entitled to review the Service Levels annually (or otherwise as required) and make such adjustments to them as the Customer deems appropriate, including adjustments and improvements resulting from improved performance capabilities, and the Parties acknowledge and agree that:
  - 14.5.1. the Service Levels and the measurement and monitoring tools and procedures referred to in Clause 14.4 will be improved over time (including improvements and adjustments to reflect improved performance capabilities) at no extra cost to the Customer; and
  - 14.5.2. such adjustments or improvements shall not be deemed to be subject to the Variation Procedure.

## **15. MONITORING OF IMPLEMENTATION AND PERFORMANCE**

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

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

- 16.1. Subject to Clause 14.3 and without prejudice to any other right or remedy which the Customer may have under this Call Off Contract or at Law, if any Services are not supplied in accordance with this Call Off Contract then the

Customer may (whether or not any part of the Services have been Delivered) do any of the following:

- 16.1.1. at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the supply of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Customer's instructions;
  - 16.1.2. reject the Services (in whole or in part);
  - 16.1.3. refuse to accept any further Services to be Delivered without any liability to the Customer as a result of any Loss to the Supplier arising from such refusal;
  - 16.1.4. carry out, at the Supplier's expense, any work necessary to make the supply of the Services comply with this Call Off Contract;
  - 16.1.5. without terminating this Call Off Contract, itself supply or procure a third party to supply all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with this Call Off Contract; and/or
  - 16.1.6. without terminating the whole of this Call off Contract, terminate this Call Off Contract in respect of part of the Services only and thereafter itself supply or procure a third party to supply such part of the Services.
- 16.2. Subject to Clause 14.3, in addition to the exercise of any of its rights in Clauses 16.1.5 or 16.1.6, 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 Services by the Customer or a third party provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

## **17. CONTINUOUS IMPROVEMENT**

- 17.1. The Supplier shall have an ongoing obligation throughout the Call Off Contract Period to identify new or potential improvements to the Services and their provision to the Customer, including but not limited to identifying efficiencies by utilising technology, increasing the number of available sales outlets, and the identification of further efficiencies through Contracting Body Management Information analysis.
- 17.2. Pursuant to its obligation under Clause 17.1, the Supplier shall regularly review with the Customer the Services, including the manner in which it is providing the Services and performing against the Customer's requirements (including the Implementation Plan and the Service Levels), with a view to reducing Spend and Fees and/or improving the quality and efficiency of the Services and their supply to the Customer. Any amendments to the Services and/or their supply to the Customer, required by the Customer to implement or effect such improvements identified as a result of the Supplier's compliance with Clause 17.1, shall be implemented by the Supplier (subject

to compliance with the Law and the Framework Agreement) and the Supplier shall implement such variation, amendment or improvement at no additional cost to the Customer.

- 17.3. The Supplier shall ensure that the information that it provides to the Customer in accordance with Clause 17.1 shall be sufficient for the Customer to decide whether any improvement to the Services and/or their provision to the Customer should be implemented. The Supplier shall provide any further information that the Customer requests in connection with any improvements to the Services and/or their provision to the Customer identified by the Supplier.
- 17.4. The benefit of any work carried out by the Supplier at any time during the Call Off Contract Period to update, improve or provide the Services, facilitate their delivery to any other Contracting Body and/or any alterations or variations to the provision of the Services, which are identified in the Continuous Improvement Plan produced by the Supplier shall be implemented by the Supplier at no additional cost to the Customer.

## **18. BUSINESS CONTINUITY AND DISASTER RECOVERY**

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

## **19. DISRUPTION**

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



- 19.2. The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Staff or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call Off Contract.
- 19.3. In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Call Off Contract.
- 19.4. If the Supplier's proposals referred to in Clause 19.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call Off Contract for Material Breach.
- 19.5. If the Supplier is temporarily unable to fulfil the requirements of this Call Off Contract owing to disruption of normal business solely caused by the Customer, an appropriate allowance by way of an extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **20. CONTRACTING BODY MANAGEMENT INFORMATION**

- 20.1. The Supplier shall, at no charge to the Customer, submit to the Customer complete and accurate Contracting Body Management Information in accordance with the provisions of Framework Schedule 1 (Services and Key Performance Indicators).
- 20.2. The Supplier grants the Customer a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:
  - 20.2.1. use and to share with any Relevant Person; and/or
  - 20.2.2. publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations being redacted),any Contracting Body Management Information supplied to the Customer for the Customer's normal operational activities including but not limited to administering this Call Off Contract, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.
- 20.3. The Customer shall in its absolute and sole discretion determine whether any Contracting Body Management Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.
- 20.4. Subject to 28.7.3, the Customer may consult with the Supplier to help with its decision regarding any exemptions under the provisions of the FOIA or the Environmental Information Regulations under Clause 20.2 but the Customer shall have the final decision in its absolute and sole discretion.

## **21. ASSISTANCE ON EXPIRY OR TERMINATION**

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

Customer to migrate the provision of the Services to a Replacement Supplier.

## **22. CALL OFF CONTRACT PAYMENTS**

### **22.1. Call Off Contract Charges**

22.1.1. In consideration of the Supplier's performance of its obligations under this Call Off Contract, including the provision of the Services, the Customer shall pay the Call Off Contract Charges in accordance with the pricing and payment profile agreed in the Order Form and the procedure in Clause 22.3 (Payment and VAT).

22.1.2. Where the Supplier enters into a Sub-Contract it shall comply with Clause 41.2.4(f).

### **22.2. Reduction in Fees**

22.2.1. If at any time during this Call Off Contract Period the Supplier reduces the Fees in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Fees applicable under this Call Off Contract by the same amount and the reduced Fee shall take effect from the first Monthly Invoice due following the variation.

### **22.3. Customer Invoices, Payment and VAT**

22.3.1. Unless specified otherwise in the Order Form, the Supplier shall ensure that:

- (a) it submits an electronic Monthly Invoice to the Customer on each Monthly Billing Date;
- (b) each Monthly Invoice shows the following amounts:
  - (i) all Spend (inclusive of VAT) incurred in any Month prior to the Monthly Billing Date which remains unpaid; and
  - (ii) all Fees which are due and payable. Fees shall be stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice; and
- (c) it provides sufficient information to the Customer, as may be described further in the Order form, to enable the Customer to reasonably assess whether the Call Off Contract Charges and other sums due from the Customer detailed in the information are properly payable, including copies of any receipts.

22.3.2. All amounts shown on the relevant Monthly Invoice as being due to the Supplier from the Customer shall be paid in full within the number of days specified in the Order Form. If the Customer fails to pay any 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.

- 22.3.3. All amounts shall be invoiced and paid in Sterling (unless otherwise specified in the Order Form).
- 22.3.4. The Customer shall make payment of the Call Off Contract Charges to the Supplier by way of:
  - (a) BACS settlement;
  - (b) CHAPs;
  - (c) Direct debit; or
  - (d) such other method as may be agreed between the Parties from time to time.

**22.4. Payment of Rebate**

- 22.4.1. The Supplier shall pay the Customer the Rebate in respect of the Customer's Spend in accordance with the Order Form.
- 22.4.2. The Rebate is exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Supplier.
- 22.4.3. If at any time during this Call Off Contract Period the Supplier increases the Rebate Rate(s) in accordance with the terms of the Framework Agreement, the Supplier shall immediately increase the Rebate Rates(s) applicable under this Call Off Contract by the same amount.

**22.5. Recovery of Sums Due**

- 22.5.1. Any overpayment by either Party, whether of the Call Off Contract Charges, the Rebate or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 22.5.2. The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 22.5.3. All payments due shall be made within the time period set out in Clause 22.3.2 or 22.4.1 (as applicable) unless otherwise specified in this Call Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

**22.6. Euro**

- 22.6.1. Any requirement of Law to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 22.6.2. The Customer shall provide all reasonable assistance to facilitate compliance with Clause 22.6.1 by the Supplier.

**23. NOT USED**

**24. STAFF AND STAFFING SECURITY**

**24.1. Staff**

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

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff,

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

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

**25. TRAINING**

25.1. This Clause 25 shall apply if the Customer has so stipulated in the Order Form.

25.2. The Supplier shall provide training to the Customer's personnel in respect of the use and maintenance of the Services as set out in Framework Schedule 1 (Services and Key Performance Indicators) and/or the Order Form at no cost to the Customer.

25.3. The Supplier shall ensure that any training provided by the Supplier to the Customer is comprehensive, accurate and prepared in accordance with Good Industry Practice.

**26. NOT USED**

**C. PROTECTION OF INFORMATION**

**27. INTELLECTUAL PROPERTY RIGHTS**

27.1. Save as expressly granted elsewhere under this Call Off Contract:

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

- (a) the Supplier Background IPRs;
- (b) the Project Specific IPRs; and
- (c) in the Supplier Software.

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

- (a) the Customer Background IPRs;
- (b) in the Customer Data; and

(c) in the Customer Software.

- 27.2. Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 27.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 27.3. The Supplier shall not, and shall procure that the Staff shall not, (except when necessary for the performance of this Call Off Contract) without Approval (which the Customer shall have the sole and absolute right to grant or deny) use or disclose any of the Customer Background IPR, Customer Data or Customer Software to or for the benefit of any third party.
- 27.4. The Supplier hereby grants, or shall procure the direct grant, to the Customer (and to any Replacement Supplier) of a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use the Supplier Background IPRs, the Project Specific IPRs and the Supplier Software for any purpose connected with the receipt of the Services that is incidental to the exercise of the rights granted to the Customer under this Call Off Contract and to enable the Customer:
  - 27.4.1. to receive the Services; and
  - 27.4.2. to make use of the services provided by the Replacement Supplier.
- 27.5. The Customer hereby grants to the Supplier a non-exclusive, non-assignable royalty-free licence to use the Customer Background IPRs, Customer Data and the Customer Software during the Call Off Contract Period for the sole purpose of enabling the Supplier to perform its obligations under this Call Off Contract and provide the Services. The Customer gives no warranty as to the suitability for the Supplier's purpose of any IPRs licensed to the Supplier hereunder. Such licence:
  - 27.5.1. includes the right to grant sub-licences to Sub-Contractors engaged in providing or delivering any of the Services (or part thereof) provided that any such Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 28.5 (Confidentiality) and that any such Sub-contracts shall be non-transferable and personal to the relevant Sub-contractor; and
  - 27.5.2. is granted solely to the extent necessary for the provision of the Services in accordance with this Call Off Contract. The Supplier shall not, and shall procure that the Sub-Contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 27.6. On the expiry or earlier termination (for whatever reason) of this Call Off Contract, the licence referred to in Clause 27.5 and any sub-licence granted in accordance with Clause 27.5.1 shall terminate automatically, and the Supplier shall immediately deliver to the Customer (or destroy and confirm receipt of such destruction to the Customer) all material licensed to the Supplier pursuant to Clause 27.5 in the Supplier's possession or control in accordance with Clause 33.3 (Consequences of expiry or termination of the Call Off Contract for any reason).

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

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

- (a) the provisions herein shall apply with any necessary changes to such modified services and/or deliverables or to the substitute services and/or deliverables; and
- (b) such substitution shall not increase the burden on the Customer; and
- (c) the replaced or modified service and/or deliverable does not have an adverse effect on any other Services and/or Deliverables; and
- (d) there is no additional cost to the Customer; and
- (e) such modified or substituted services and/or deliverables shall be acceptable to the Customer (such decision to accept or not shall not be unreasonably withheld); or

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

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

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

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

27.13. In the event that a modification or substitution in accordance with Clause 27.11.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 27.11.2, the Customer, without prejudice to any other rights of remedies under this Call Off Contract or at Law, shall be entitled to delete the relevant Service and/or Deliverable from this Call Off Contract.

27.14. If the Supplier elects to modify or replace the Service and/or Deliverable pursuant to Clause 27.11.1 or to procure a licence in accordance with Clause 27.11.2, but this has not avoided or resolved the Claim, then the Customer may terminate this Call Off Contract for Material Breach and, without prejudice to the indemnity set out in Clause 27.9, the Supplier shall, be liable for all reasonable and unavoidable costs of the substitute services and/or deliverables including the additional costs of procuring and implementing the substitute services.

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

## **28. SECURITY AND PROTECTION OF INFORMATION**

### **28.1. Security Requirements**

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

### **28.2. Malicious Software**

- 28.2.1. The Supplier shall, as an enduring obligation throughout the Call Off Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).
- 28.2.2. Notwithstanding Clause 28.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.
- 28.2.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 28.2.1 shall be borne by the Parties as follows:
- (a) by the Supplier, where the Malicious Software originates from the Supplier Software or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
  - (b) by the Customer if the Malicious Software originates from the Customer Software or the Customer Data (whilst the Customer Data was under the control of the Customer).

### **28.3. Protection of Customer Data**

- 28.3.1. The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 28.3.2. The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of



its obligations under this Call Off Contract or as otherwise Approved by the Customer.

- 28.3.3. To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Call Off Contract and in any event as specified by the Customer from time to time in writing.
- 28.3.4. To the extent that Customer Data is held and/or Processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 28.3.5. The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 28.3.6. The Supplier shall ensure that any system on which the Supplier holds any Customer Data which is protectively marked shall be accredited using such accreditation policy or system as specified by the Customer (such as the HMG Security Policy Framework and Information Assurance Policy, taking into account guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems, and/or relevant HMG Information Assurance Standard(s), as in force from time to time) and, where the Call Off Contract Period exceeds one year, the Supplier shall review such accreditation status at least once in each year to assess whether material changes have occurred which could alter the original accreditation decision. If any such changes have occurred then the Supplier shall resubmit such system for accreditation.
- 28.3.7. If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Supplier's Default so as to be unusable, the Customer may:
  - (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Customer Data as required by the Customer and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
  - (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 by the Customer.
- 28.3.8. If at any time the Supplier suspects or has reason to believe that the Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 28.3.9. The Supplier shall, at all times during and after the Call Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against

or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under this Clause 28.3 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

**28.4. Protection of Personal Data**

28.4.1. Where any Personal Data are Processed with respect to the Parties' rights and obligations under this Call Off Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor.

28.4.2. The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Call Off Contract or as otherwise notified by the Customer to the Supplier during the Call Off Contract Period);
- (b) Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law;
- (c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (d) take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
- (e) obtain Approval in order to transfer the Personal Data to any Sub-Contractors or Affiliates for the provision of the Services;
- (f) ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 28.4;
- (g) ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;
- (h) notify the Customer within five (5) Working Days if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data; or
  - (ii) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;

- (i) provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
  - (i) providing the Customer with full details of the complaint or request;
  - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
  - (iii) providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
  - (iv) providing the Customer with any information requested by the Customer;
- (j) permit the Customer or the Customer Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Call Off Contract;
- (k) provide a written description of the technical and organisational methods employed by the Supplier for Processing Personal Data (within the timescales required by the Customer); and
- (l) not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Call Off Commencement Date, the Supplier (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:
  - (i) the Supplier shall submit a request for Variation to the Customer which shall be dealt with in accordance with the Variation Procedure and paragraphs (A) to (D) below;
  - (ii) the Supplier shall set out in its request for a Variation details of the following:
    - (A) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
    - (B) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data

will be transferred outside the European Economic Area;

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

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

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

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

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

(B) procuring that any Sub-Contractor or other third party who will be Processing and/or transferring the Personal Data outside the

European Economic Area enters into a direct data processing agreement with the Customer on such terms as may be required by the Customer, which the Supplier acknowledges may include the incorporation of standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).

- 28.4.3. The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Call Off Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- 28.4.4. The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 28.4.5. The Supplier shall, at all times during and after the Call Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under this Clause 28.4 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

**28.5. Confidentiality**

- 28.5.1. Except to the extent set out in this Clause 28.5 or where disclosure is expressly permitted elsewhere in this Call Off Contract, each Party shall:
  - (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 28.5.2. Clause 28.5.1 shall not apply to the extent that:
  - (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 28.7 (Freedom of Information);
  - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call Off Contract; or
- (e) such information is independently developed without access to the other Party's Confidential Information.

28.5.3. The Supplier may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality in Clause 28.5.

28.5.4. The Supplier shall not, and shall procure that the Staff shall not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Call Off Contract.

28.5.5. At the written request of the Customer, the Supplier shall procure that those members of Staff identified in a Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Call Off Contract.

28.5.6. In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Call Off Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Supplier is taking appropriate steps to comply with this Clause 28.5, including copies of any written communications to and/or from Staff, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.

28.5.7. Nothing in this Call Off Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Contracting Body Management Information obtained under Clause 12 of the Framework Agreement):

- (a) to any Crown body or any other Contracting Body. All Crown bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Body;
- (b) to any consultant, contractor or other person engaged by the Customer or any person conducting a Cabinet Office

gateway review (formerly known as Office of Government Commerce gateway review);

- (c) for the purpose of the examination and certification of the Customer's accounts; or
- (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

28.5.8. The Customer shall use all reasonable endeavours to ensure that any Crown body, Contracting Body, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 28.5.7 is made aware of the Customer's obligations of confidentiality.

28.5.9. Nothing in this Clause 28.5 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

28.5.10. The Supplier shall, at all times during and after the Call Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under Clauses 28.5.1 to 28.5.6 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

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

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

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

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

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

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

**28.7. Freedom of Information**

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

enable the Customer to comply with its Information disclosure obligations.

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

- (a) transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- (b) provide the Customer with a copy of all Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
- (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

28.7.3. The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call Off Contract or any other Call Off Agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

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

28.7.5. The Supplier acknowledges that (notwithstanding the provisions of Clause 28.5 (Confidentiality)) the Customer may, acting in accordance with the Ministry of Justice' (formerly Department of Constitutional Affairs') Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:

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

provided always that where Clause 28.7.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

28.7.6. The Supplier shall ensure that all Information relating to this Call Off Contract is retained for disclosure in accordance with the provisions of this Call Off Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.



- 28.7.7. The Supplier acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 28.7.5.

**28.8. Transparency**

- 28.8.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call Off Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of this Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 28.8.2. Notwithstanding any other term of this Call Off Contract, the Supplier hereby gives his consent for the Customer to publish this Call Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Call Off Contract, to the general public.
- 28.8.3. The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 28.8.4. The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Call Off Contract.

**D. LIABILITY AND INSURANCE**

**29. LIABILITY**

- 29.1. Neither Party excludes or limits its liability for:
- 29.1.1. death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable); or
- 29.1.2. bribery or Fraud by it or its employees; or
- 29.1.3. breach of any obligation as to title implied by section 2 of the Supply of Goods and Services Act 1982; or
- 29.1.4. any other liability to the extent it cannot be excluded or limited by Law.
- 29.2. Subject to Clause 29.1, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Call Off Contract as a result of defaults by the other Party shall in no event exceed the sum of five million pounds (£5,000,000) unless a different aggregate limit or percentage is stipulated by the Customer in the Order Form.
- 29.3. Subject to Clauses 29.1, in no event shall either Party be liable to the other for any:
- 29.3.1. loss of profits (direct or indirect);
- 29.3.2. loss of business opportunities;
- 29.3.3. loss of revenue;

- 29.3.4. loss of or damage to goodwill;
  - 29.3.5. loss of savings (whether anticipated or otherwise); and/or
  - 29.3.6. any indirect, special or consequential Loss.
- 29.4. Subject to Clauses 29.2, and notwithstanding Clause 29.3, the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of Default by the Supplier:
- 29.4.1. the additional operational and/or administrative costs and expenses arising from any Material Breach;
  - 29.4.2. any wasted expenditure or charges;
  - 29.4.3. the cost of procuring, implementing and operating any alternative or replacement services to the Services for the remainder of the Call Off Contract Period following termination of this Call Off Contract as a result of a Default;
  - 29.4.4. any Loss anticipated in Clauses 29.9 and 29.10;
  - 29.4.5. any compensation or interest paid to a third party by the Customer;
  - 29.4.6. any regulatory losses, fines, expenses or other Losses arising from a breach by the Supplier of any Law.
- 29.5. Where the Supplier is a company, no individual nor any service company of the Supplier employing that individual shall have any personal liability to the Customer for the Services supplied by that individual on behalf of the Supplier and the Customer shall not bring any claim under this Call Off Contract against that individual or such service company in respect of the Services save in the case of bribery, Fraud or any liability for death or personal injury.
- 29.6. No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by or on behalf of the Customer to any document or information provided by the Supplier in its provision of the Services, and no failure of the Customer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to carry out all the obligations of a professional supplier employed in a client/customer relationship.
- 29.7. Save as otherwise expressly provided, the obligations of the Customer under this Call Off Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in this Call Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under this Call Off Contract (howsoever arising) on the part of the Customer to the Supplier.
- 29.8. Without prejudice to Clauses 29.9 and 29.10, a Party shall not be responsible for any Loss under this Call Off Contract if and to the extent that it is caused by the default of the other (Default on the part of the Supplier and Customer Cause on the part of the Customer).
- 29.9. Subject to Clauses 29.1, 29.3, and 29.10, prior to any Fuel Card Loss Notification being made in respect of any Fuel Card, Loss arising from any

theft or Fraud, loss, misuse or Unauthorised Use of that Fuel Card (including End User Theft) shall be the responsibility of the Customer.

- 29.10. Subject to Clauses 29.1 and 29.3, any Loss directly arising from any theft or Fraud, misuse or Unauthorised Use (which is known by the Supplier to be an Unauthorised Use) that arises from the negligence, wilful default, act or omission of the Supplier shall be the responsibility of the Supplier.
- 29.11. Nothing in this Clause 29 shall act to reduce or affect a Party's general duty to mitigate its loss.
- 29.12.

### **30. INSURANCE**

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

### **E. TERMINATION**

## **31. TERMINATION EVENTS**

### **31.1. Termination on Insolvency**

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

### **31.2. Termination on Change of Control**

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

- (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.

### **31.3. Termination in relation to Financial Standing**

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

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

### **31.4. Termination relating to Guarantee**

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

- (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.]

**31.5. Termination on Default**

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

- (a) by giving written notice to the Supplier that the Supplier has not remedied the Default together with any damage resulting from such a Default to the satisfaction of the Customer, as specified by the Customer in a prior written notice to the Supplier stating the Default and requesting it to be remedied within ten (10) Working Days in accordance with the Customer's instructions; or
- (b) if the Default is a Material Breach of this Call Off Contract, by giving written notice of termination to the Supplier with immediate effect or with effect from such later date as the Customer may specify in the written notice.

**31.6. Termination without cause**

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

**31.7. Termination of Framework Agreement**

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

**31.8. Not Used**

**31.9. Termination for continuing Force Majeure Event**

31.9.1. Either Party may, by written notice to the other, terminate this Call Off Contract if, in accordance with Clause 0 (Force Majeure), a Force Majeure Event endures for a continuous period of more than one hundred and twenty (120) days.

**31.10. Termination in relation to Variation**

31.10.1. The Customer may terminate this Call Off Contract for failure of the Parties to agree or the Supplier to implement a Variation under Clause (b).

**31.11. Termination by Supplier**

31.11.1. The Supplier may seek the Approval to terminate this Call Off Contract if:

- (a) the Customer commits a material breach of (or materially fails to observe or perform its obligations under) this Call Off Contract and (if such breach or failure is remediable) fails to remedy it within sixty (60) calendar days of being requested in writing by the Supplier to do so;
- (b) the Customer commits a persistent or repeated breach of (or repeatedly fails to observe or perform its obligations under) this Call Off Contract (whether or not previous breaches or failures of the same kind have been remedied) which taking account of its persistence or repetition amounts in the reasonable opinion of the Supplier to be

either a material breach or a material failure to observe or perform its obligations; or

- (c) the Customer ceases to be a contracting authority as defined in the Regulations or any unit within any such organisation.

31.11.2. On receipt of the Approval, the Supplier may give written notice to the Customer of termination and the Call Off Contract shall terminate immediately on receipt of such notice or on such other date as is specified in such notice.

## **32. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION**

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

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

## **33. CONSEQUENCES OF EXPIRY OR TERMINATION**

### **33.1. Consequences of termination under Clauses 31.3 (Financial Standing), 31.4 (Guarantee) and 31.5 (Termination on Default)**

33.1.1. Where the Customer terminates this Call Off Contract under Clauses 31.3 (Financial Standing), 31.4 (Guarantee) or 31.5 (Termination on Default) and then makes other arrangements for the supply of the Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where this Call Off Contract is terminated under Clauses 31.3, 31.4 or 31.5, no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

### **33.2. Consequences of termination under Clause 31.6 (Termination without Cause)**

33.2.1. Where the Customer terminates this Call Off Contract under Clause 31.6 (Termination without Cause) or elects to partially terminate or suspend or partially suspend this Call Off Contract without cause under Clauses 31.6 and 32, the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call Off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. Where the Supplier holds insurance, the Supplier

shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 31.6 (Termination without Cause).

33.2.2. The Customer shall not be liable under Clause 33.2.1 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 prior to the expiry or earlier termination (for whatever reason) of this Call Off Contract.

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

33.3.1. On expiry or earlier termination (for whatever reason) of this Call Off Contract, the Supplier shall:

- (a) immediately return to the Customer all Customer Data;
- (b) cease to use the Customer Data and, at the direction of the Customer, provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Supplier;
- (c) except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or twelve (12) Months after the expiry or earlier termination (for whatever reason) of this Call Off Contract, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.
- (d) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and provide such assistance and co-operation as the Customer may require;
- (e) return to the Customer any sums prepaid in respect of the Services not provided the expiry or earlier termination (for whatever reason) of this Call Off Contract;
- (f) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence; and

- (g) terminate all User Agreements entered into in connection with this Call Off Contract within six months of the termination of this Call Off Contract.

33.3.2. If the Supplier fails to comply with Clauses 33.3.1(a)(a) to 33.3.1(c), the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its servants, consultants, agents or Sub-Contractors where any such items may be held.

33.3.3. Where the Call Off Contract terminates by reason of a Supplier's Default under Clause 31.4 (Termination on Default), the Supplier shall provide all assistance under Clause (g) free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

33.3.4. Save as otherwise expressly provided in this Call Off Contract:

- (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 (Contracting Body Management Information), 22.3 (Payment), 27 (Intellectual Property Rights), 28.4 (Protection of Personal Data), 28.5 (Confidentiality), 28.6 (Official Secrets Acts 1911 to 1989), 28.7 (Freedom of Information), 29 (Liability), 33 (Consequences of Expiry or Termination), 37 (Prevention of Bribery and Corruption), 38 (Records and Audit Access), 40 (Prevention of Fraud), 44 (Cumulative Remedies), 50 (Conflicts of Interest), 52 (The Contracts (Rights of Third Parties) Act 1999) and 55 (Governing Law and Jurisdiction) and, without limitation to the foregoing, any other provision of this Call off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Call Off Contract.



**F. CONTROL OF THE CALL OFF CONTRACT**

**34. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 34.1. The Supplier shall not make any press announcements or publicise this Call Off Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, suppliers, professional advisors and consultants comply with this Clause 34. Any such press announcements or publicity proposed under this Clause 34.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.
- 34.2. Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise this Call Off Contract in accordance with any legal obligation upon the Customer, including any examination of this Call Off Contract by the Auditor(s).
- 34.3. The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute. The Customer may terminate this Call Off Contract for Material Breach, in the event that, in the sole opinion of the Customer, the Supplier causes, permits, contributes or is in any way connected to material adverse publicity relating to or affecting the Customer and/or this Call Off Contract.

**35. NOT USED**

**36. ENVIRONMENTAL REQUIREMENTS**

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

**37. PREVENTION OF BRIBERY AND CORRUPTION**

- 37.1. The Supplier shall not commit and shall procure that all Staff or any person acting on the Supplier's behalf shall not commit, in connection with this Call Off Contract, any Prohibited Act.
- 37.2. The Supplier shall:
- 37.2.1. in relation to this Call Off Contract, act in accordance with the Ministry of Justice Guidance;
  - 37.2.2. immediately notify the Customer and the Authority if it suspects or becomes aware of any breach of this Clause 37;
  - 37.2.3. respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 37 and the Supplier shall co-operate with any investigation and

allow the Customer to audit the Supplier's books, records and any other relevant documentation in connection with the breach;

- 37.2.4. if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call Off Contract compliance with this Clause 37. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request;
- 37.2.5. have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Staff or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.
- 37.3. If the Supplier, the Staff or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches this Clause 37 the Customer shall be entitled to terminate this Call Off Contract for Material Breach.
- 37.4. Without prejudice to its other rights and remedies under this Clause 37, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer (whether before or after the making of a demand pursuant to the indemnity hereunder) in full from and against:
  - 37.4.1. the amount of value of any such gift, consideration or commission; and
  - 37.4.2. any other Loss sustained by the Customer in consequence of any breach of this Clause 37.

## **38. RECORDS AND AUDIT ACCESS**

- 38.1. The Supplier shall keep and maintain for seven (7) years after the expiry or earlier termination (for whatever reason) of this Call Off Contract (or as long a period as may be agreed between the Parties) full and accurate records and accounts (including but not limited to Open Book Data) of the operation of this Call Off Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Customer.
- 38.2. The Supplier shall keep the records and accounts referred to in Clause 38.1 above in accordance with Good Industry Practice and Law.
- 38.3. The Supplier shall afford the Customer and/or the Customer's representatives and/or the National Audit Office and/or an auditor appointed by the Audit Commission (each of whom shall for the purposes of this Clause 38 be an "Auditor") access to the records and accounts referred to in Clause 38.1 at the Supplier's premises and/or provide copies of such records and accounts (including copies of the Supplier's published accounts), as may be required by any of the Auditors from time to time during the Call Off Contract Period and the period specified in Clause 38.1, in order that the Auditor(s) may carry out an inspection including for the following purposes:

- 38.3.1. to verify the accuracy of the Call Off Contract Charges 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);
- 38.3.2. to verify the accuracy of the Rebate;
- 38.3.3. to verify the costs of the Supplier (including the costs of all Sub-Contractors, Merchants and any other third party suppliers) in connection with the provision of the Services;
- 38.3.4. to verify the Open Book Data;
- 38.3.5. to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
- 38.3.6. to review the Supplier's and each Sub-Contractor's compliance with applicable Laws;
- 38.3.7. to review the Supplier's compliance with its continuous improvement obligations set out in Framework Schedule 7 (Value for Money) and Clause 17 (Continuous Improvement) of this Call Off Contract;
- 38.3.8. to review the Supplier's compliance with its security obligations set out in Clause 28 (Security and Protection of Information);
- 38.3.9. to review any books of account kept by the Supplier in connection with the provision of the Services;
- 38.3.10. to carry out an examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
- 38.3.11. to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- 38.3.12. to review the Supplier's compliance with the Standards;
- 38.3.13. verify the accuracy and completeness of any information delivered or required by this Call Off Contract including but not limited to Contracting Body Management Information;
- 38.3.14. to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or
- 38.3.15. to ensure that the Supplier is complying with any other obligations under this Call Off Contract.
- 38.4. The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.
- 38.5. Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:

- 38.5.1. all reasonable information requested by the Customer within the scope of the audit;
- 38.5.2. reasonable access to sites controlled by the Supplier and to any Equipment used in the provision of the Services ; and
- 38.5.3. access to the Staff.
- 38.6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 38, unless the audit reveals a Material Breach by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.
- 38.7. Where requested by the Customer, the Supplier shall supply the Authority Management Information to the Customer in the form set out in the Management Information Framework Schedule 8 (Authority Management Information) (as amended from time to time) and on such date or dates during the Call Off Contract Period as the Customer may specify.
- 38.8. If an audit undertaken pursuant to this Clause 38 identifies that:
  - 38.8.1. the Supplier has committed a Default, the Customer may (without prejudice to any rights and remedies the Customer may have) require the Supplier to correct such Default as soon as reasonably practicable;
  - 38.8.2. the Customer has overpaid any Call Off Contract Charges, the Supplier shall pay to the Customer:
    - 38.8.2.1. the amount overpaid;
    - 38.8.2.2. interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Customer up to the date of repayment by the Supplier; and
    - 38.8.2.3. the reasonable costs incurred by the Customer in undertaking the audit,the Customer may exercise its right to deduct such amount from the Call Off Contract Charges if it prefers;
  - 38.8.3. the Customer has underpaid any Rebate, the Supplier shall pay to the Customer:
    - 38.8.3.1. the amount underpaid;
    - 38.8.3.2. interest on the amount underpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of underpayment by the Supplier up to the date of full payment by the Supplier; and
    - 38.8.3.3. the reasonable costs incurred by the Customer in undertaking the audit,the Customer may exercise its right to deduct such amount from the Call Off Contract Charges if it prefers; and

- 38.8.4. the Customer has underpaid any Call Off Contract Charges, the Supplier shall not be entitled to increase the Call Off Contract Charges paid or payable by the Customer.

**39. NOT USED**

**40. PREVENTION OF FRAUD**

- 40.1. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier (including its shareholders, members and directors) and any Staff in connection with the receipt of monies from the Customer. This may include but shall not be limited to velocity checks on usage or online authorisation.
- 40.2. The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or the Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 40.3. If the Supplier or the Staff commits any Fraud, the Customer may:
- 40.3.1. terminate this Call Off Contract for Material Breach; and/or
- 40.3.2. recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full for any Loss sustained by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in consequence of any breach of this Clause 40 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Call Off Contract Period.

**41. TRANSFER AND SUB-CONTRACTING**

**41.1. Transfer rights**

- 41.1.1. Subject to Clause 41.1.2, the Supplier shall not assign, novate, Sub-Contract or in any other way dispose of this Call Off Contract or any part of it without Approval. The Customer has consented to the engagement of the Sub-Contractors listed in Framework Schedule 2 (Sub-Contractors).
- 41.1.2. The Supplier may assign to a third party ("the Assignee") the right to receive payment of the Call Off Contract Charges or any part thereof due to the Supplier under this Call Off Contract. Any assignment under this Clause shall be subject to:
- (a) all related rights of the Customer under this Call Off Contract in relation to the recovery of sums due but unpaid; and
- (b) the Customer receiving notification under both Clauses 41.1.3 and 41.1.4.
- 41.1.3. In the event that the Supplier assigns the right to receive the Call Off Contract Charges under Clause 41.1.2, the Supplier or the

Assignee shall notify the Customer in writing of the assignment and, including a reasonable notice period, of the date upon which the assignment becomes effective.

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

41.1.5. The provisions of Clause 22.3 shall continue to apply in all other respects after the assignment and shall not be amended.

41.1.6. Subject to Clause 41.1.8, the Customer may assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof to:

- (a) any other Contracting Body; or
- (b) 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
- (c) any private sector body which substantially performs the functions of the Customer,

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Call Off Contract.

41.1.7. Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 41.1.8, affect the validity of this Call Off Contract. In such circumstances, this Call Off Contract shall bind and continue to take effect to the benefit of any successor body to the Customer.

41.1.8. If the rights and obligations under this Call Off Contract are assigned, novated or otherwise disposed of pursuant to Clause 41.1.6 to a body which is not a Contracting Body or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Body (in the remainder of this Clause both such bodies being referred to as "the Transferee"):

- (a) the rights of termination of the Customer in Clauses 31.1 (Termination on Insolvency) 31.2 (Termination on Change of Control) and 31.5 (Termination on Default) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof with the previous consent in writing of the Supplier.

41.1.9. The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Call Off Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information of the Supplier only for purposes relating to the performance of the Supplier's obligations under this Call Off Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a

confidentiality undertaking in relation to such Confidential Information.

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

**41.2. Sub-Contracting**

- 41.2.1. The Supplier shall not substitute or remove a Sub-Contractor or appoint an additional sub-contractor without the Approval of the Authority and the Customer. Notwithstanding any permitted Sub-Contract in accordance with this Clause 41.2, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Staff also do, or refrain from doing, such act or thing.
- 41.2.2. The performance of any part of this Call Off Contract by a Sub-Contractor shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Call Off Contract. The Supplier shall supply such information about proposed Sub-Contractors as the Customer may reasonably require in order to enable the Customer to consider whether to grant Approval.
- 41.2.3. Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 41.2.4. The Customer may, at its sole discretion, require the Supplier to ensure that each Sub-Contract shall include:
- (a) a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Sub-Contract as if it were the Supplier;
  - (b) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Customer;
  - (c) a provision requiring the Sub-Contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in Clause 28.5 (Confidentiality);
  - (d) a provision requiring the Sub-Contractor to comply with protection of data requirements pursuant to Clauses 28.3 (Customer Data) and 28.4 (Protection of Personal Data);
  - (e) a provision requiring the Sub-Contractor to comply with the anti-corruption and anti-bribery requirements pursuant to Clause 37 (Prevention of Bribery and Corruption);
  - (f) a provision requiring the Supplier to pay any undisputed sum due to the relevant Sub-Contractor within a specified

period that does not exceed thirty (30) days from the date the Supplier receives the Sub-Contractor's invoice; and

- (g) a provision restricting the ability of the Sub-Contractor to further Sub-Contract elements of the service provided to the Supplier without first seeking the prior written consent of the Customer and the Authority.

If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier in the supply of the Services, then the Customer may require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item.

## **42. FORCE MAJEURE**

- 42.1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Call Off Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure Event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Call Off Contract for the duration of such Force Majeure Event. However, if such Force Majeure Event prevents either Party from performing its material obligations under this Call Off Contract for a period in excess of one hundred and twenty (120) days, either Party may terminate this Call Off Contract with immediate effect by notice in writing to the other Party.
- 42.2. Any failure or delay by the Supplier in performing its obligations under this Call Off Contract which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded, as in the case of an Affected Party, by a Force Majeure Event from complying with an obligation to the Supplier.
- 42.3. If either Party becomes aware of a Force Majeure Event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 42.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 42.4. If a Force Majeure Event affects the Services, the Customer may direct the Supplier to procure those Services from a third party in which case the Supplier will be liable for payment for the provision of those Services for as long as the delay in performance continues.
- 42.5. The Supplier shall not have the right to any payment from the Customer under this Call Off Contract where the Supplier is unable to provide the Services because of a Force Majeure Event. However if the Customer directs the Supplier to use a replacement supplier pursuant to Clause 42.4, then the Customer will pay the Supplier (a) the Call Off Contract Charges; and (b) the difference between the Call Off Contract Charges and the new supplier's costs if, in respect of the Services that are subject to a Force Majeure Event, the new provider's costs are greater than the Call Off Contract Charges.



**43. WAIVER**

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

**44. CUMULATIVE REMEDIES**

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

**45. FURTHER ASSURANCES**

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

**46. VARIATION**

- 46.1. Subject to the provisions of this Clause 46, each party may request a variation to this Call Off Contract provided that such variation does not amount to a material change within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 46.2. A Party may request a Variation by completing and sending the variation form set out in Call Off Schedule 1 (the "**Variation Form**") to the other Party giving sufficient information for the receiving party to assess the extent of the Variation and any additional cost that may be incurred. The receiving party shall respond to the request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Order and the proposed Variation.
- 46.3. In the event that:
  - 46.3.1. the Supplier is unable to agree to or provide the Variation; and/or
  - 46.3.2. the Parties are unable to agree a change to the Call Off Contract Charges and/or Rebate that may be included in a request of a Variation or response to it as a consequence thereof,the Customer may:

- (a) agree to continue to perform its obligations under this Call Off Contract without the Variation; or
- (b) terminate this Call Off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Order in accordance with this Call Off Contract or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

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

#### **47. SEVERABILITY**

47.1. If any provision of this Call Off Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Call Off Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

47.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

#### **48. MISTAKES IN INFORMATION**

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

#### **49. SUPPLIER'S STATUS**

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

#### **50. CONFLICTS OF INTEREST**

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

- 50.2. The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 50.1 above arises or is reasonably foreseeable.
- 50.3. The Customer reserves the right to terminate this Call Off Contract for Material Breach and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Call Off Contract. The actions of the Customer pursuant to this Clause 50.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

**51. ENTIRE AGREEMENT**

- 51.1. This Call Off Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) between the Parties in relation to such matters.
- 51.2. Each of the Parties acknowledges and agrees that in entering into this Call Off Contract it does not rely on, and shall have no remedy in respect of, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as expressly set out in this Call Off Contract.
- 51.3. The Supplier acknowledges and agrees that it has:
- 51.3.1. entered into this Call Off Contract in reliance on its own due diligence alone; and
  - 51.3.2. received sufficient information required by it in order to determine whether it is able to provide the Services in accordance with the terms of this Call Off Contract.
- 51.4. Nothing in Clauses 51.1 to 51.3 shall operate to exclude any liability for (or remedy in respect of) Fraud.

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

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

**53. NOTICES**

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

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

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

#### **54. LEGISLATIVE CHANGE**

- 54.1. 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 and/or a decrease in the Rebate as the result of a:

- 54.1.1. General Change in Law;
- 54.1.2. Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Call Off Commencement Date.
- 54.2. If a Specific Change in Law occurs or will occur during the Call Off Contract Period (other than those referred to in Clause 54.1.2), the Supplier shall notify the Customer of the likely effects of that change.
- 54.3. As soon as practicable after any notification in accordance with Clause 54.2 the parties shall discuss and agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:
  - 54.3.1. providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
  - 54.3.2. demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier before it occurred;
  - 54.3.3. giving evidence as to how the Specific Change in Law has affected the cost of supplying the Services; and
  - 54.3.4. demonstrating that any expenditure that has been avoided, has been taken into account in amending the Call Off Contract Charges and/or Rebate.
- 54.4. Any increase in the Call Off Contract Charges or relief from any of the Supplier's obligations under this Call Off Contract agreed by the Parties pursuant to Clauses 54.2 and 54.3 above shall be implemented in accordance with Clause 46 (Variation).

## **G. DISPUTES AND LAW**

### **55. GOVERNING LAW AND JURISDICTION**

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

### **56. DISPUTE RESOLUTION**

- 56.1. Immediately upon either Party notifying the other of a dispute, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Call Off Contract and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in the Order Form.
- 56.2. Nothing in this Dispute Resolution Procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining

the other Party from doing any act or compelling the other Party to do any act.

- 56.3. If the dispute cannot be resolved by the Parties pursuant to Clause 56.1 within twenty (20) Working Days or such other period that the Customer may specify or Approve, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 56.5 unless:

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

56.3.2. the Supplier does not agree to mediation.

- 56.4. Without prejudice to any other rights of the Customer under this Call Off Contract, the obligations of the Parties under this Call Off Contract shall not be suspended, cease or be delayed by the reference of a dispute submitted to mediation and the Supplier and the Staff shall comply fully with the requirements of this Call Off Contract at all times.

- 56.5. The procedure for mediation is as follows:

56.5.1. a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice of the Mediator to either Party that that person is unable or unwilling to act, apply to the mediation provider or to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;

56.5.2. the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediation provider specified in Clause 56.5.1 to provide guidance on a suitable procedure;

56.5.3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

56.5.4. if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

56.5.5. failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Call Off Contract without the prior written consent of both Parties; and

56.5.6. if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

**57. PROMOTING TAX COMPLIANCE**

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

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

57.1.2. promptly provide to the Customer:

(a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonable require.

57.2. The Supplier acknowledges and agrees that failure to comply with Clauses 5.2.1(e) and/or 57.1 shall be a Material Breach of this Call Off Contract.

## GLOSSARY TO CALL OFF FORM AND CALL OFF TERMS

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

<b>"Achieve"</b>	means in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone in accordance with the Order Form and "Achieved" and "Achievement" shall be construed accordingly;
<b>"Additional Clauses"</b>	means the additional Clauses in Call Off Schedule 9 (Alternative and Additional Clauses) and any other additional Clauses stipulated by the Customer in the Order Form;
<b>"Affected Party"</b>	means the party seeking to claim relief in respect of a Force Majeure;
<b>"Affiliates"</b>	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;
<b>"Alternative Clauses"</b>	means the alternative Clauses in Call Off Schedule 10 (Alternative and Additional Clauses) and any other alternative Clauses stipulated by the Customer in the Order Form;
<b>"Approval"</b>	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
<b>"Auditor"</b>	has the meaning in Clause 38;
<b>"Authority"</b>	means <b>THE MINISTER FOR THE CABINET OFFICE</b> ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
<b>"Authority Management Information"</b>	means the management information that the Supplier is required to provide the Authority pursuant to Framework Schedule 8 (Management Information);
<b>"Business Continuity and Disaster Recovery Plan" or "BCDR Plan"</b>	means the Supplier's plan relating to business continuity and disaster recovery as referred to in Clause 18 and Call Off Schedule 5 (Business Continuity and Disaster Recovery);]
<b>"Call Off Agreement"</b>	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Commencement Date"</b>	means the date of commencement of the Call Off Contract set out in the Order Form;
<b>"Call Off Contract"</b>	means this Call Off Agreement between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form and the Call Off Terms;



<b>"Call Off Contract Charges"</b>	means the Spend and Fees payable to the Supplier by the Customer under this Call Off Contract;
<b>"Call Off Contract Period"</b>	means the period from the Call Off Commencement Date until expiry or earlier termination (for whatever reason) of this Call Off Contract;
<b>"Call Off Contract Year"</b>	means a consecutive period of twelve (12) Months commencing on the Call Off Commencement Date or each anniversary thereof;
<b>"Call Off Execution Date"</b>	has the meaning given to it in the Order Form;
<b>"Call Off Guarantee"</b>	means a deed of guarantee in favour of the Customer in the form set out in Framework Schedule 11 (Guarantee) granted pursuant to Clause 3 (Guarantee);
<b>"Call Off Guarantor"</b>	means the person acceptable to the Customer to give a Call Off Guarantee;
<b>"Call Off Schedules"</b>	means the schedules to this Call Off Contract;
<b>"Call Off Terms"</b>	means these terms and conditions entered by the Parties (excluding the Order Form) in respect of the provision of the Services, together with the Call Off Schedules hereto;
<b>"Change in Law"</b>	means any change in Law which impacts on the supply of the Services and performance of the Call Off Terms which comes into force after the Call Off Commencement Date;
<b>"Change of Control"</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charging Structure"</b>	means the structure to be used in the establishment of the charging model which is applicable to each Call Off Agreement, which structure is set out in Framework Schedule 3 (Charging Structure);
<b>"Code"</b>	has the meaning given to it in Clause 28.7.5 (and a copy of which can be found at <a href="http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice">http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice</a> );
<b>"Commercially Sensitive Information"</b>	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;
<b>"Comparable Supply"</b>	means the supply of services to another customer of the Supplier that are the same or similar to the Services;
<b>"Confidential Information"</b>	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
<b>"Continuous Improvement Plan"</b>	means a plan for improving the provision of the Services produced by the Supplier pursuant to Framework Schedule 7 (Value for Money);

<b>"Contracting Body"</b>	means the Authority and any other bodies listed in paragraph VI.3 of the OJEU Notice;
<b>"Contracting Body Management Information"</b>	means the management information specified in Framework Schedule 1 (Services and Key Performance Indicators) as may be specified further in the Order Form;
<b>"Control"</b>	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
<b>"Conviction"</b>	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);
<b>"Critical Service Failure"</b>	means any critical service failure(s) specified in Annex 2 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Crown"</b>	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;
<b>"Customer"</b>	means the customer(s) identified in the Order Form;
<b>"Customer Background IPRs"</b>	<p>shall mean:</p> <ol style="list-style-type: none"> <li>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;</li> <li>IPRs created by the Customer independently of this Call Off Contract; and/or</li> <li>Crown Copyright which is not available to the Supplier otherwise than under this Call Off Contract;</li> </ol> <p>but excluding IPRs owned by the Customer subsisting in the Customer Software;</p>
<b>"Customer Cause"</b>	means any breach by the Customer of its obligations under this Call Off Contract including Clause 10 (Customer Responsibilities) (unless caused or contributed to by the Supplier or as the result of any act or omission by the Customer to which the Supplier has given its prior consent);

<b>"Customer Data"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which: <ul style="list-style-type: none"> <li>i. are supplied to the Supplier by or on behalf of the Customer; and/or</li> <li>ii. the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or</li> </ul> </li> <li>b. any Personal Data for which the Customer is the Data Controller;</li> </ul>
<b>"Customer Responsibilities"</b>	means the responsibilities of the Customer set out in the Order Form and any other responsibilities of the Customer agreed in writing between the Parties from time to time;
<b>"Customer Representative"</b>	means the representative appointed by the Customer from time to time in relation to the Call Off Contract;
<b>"Customer's Confidential Information"</b>	means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Customer, including all IPR (including all Customer Background IPRs), together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
<b>"Customer's Premises"</b>	means the Premises identified in the Order Form and which are to be made available by the Customer for use by the Supplier for the provision of the Services on the terms set out in this Call Off Contract and any other Premises made available by the Customer from time to time for use by the Supplier in connection with this Call Off Contract;
<b>"Customer Software"</b>	means software which is owned by or licensed to the Customer, including software which is or will be used by the Supplier for the purposes of providing the Services but excluding the Supplier Software;
<b>"Customer System"</b>	means the Customer's finance system or any other computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer 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 Services;
<b>"Data Controller"</b>	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
<b>"Data Processor"</b>	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;

<b>"Data Protection Legislation" or "DPA"</b>	means the Data Protection Act 1998, GDPR 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;
<b>"Data Subject"</b>	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
<b>"Deductions"</b>	means all Service Credits or any other deduction which the Customer is paid or payable under this Call Off Contract;
<b>"Default"</b>	means any breach of the obligations of the Supplier (including but not limited to Material Breach) or any other default, act, omission (other than where the Supplier is acting with Approval), negligence or negligent statement of the Supplier or the Staff in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Customer;
<b>"Deliverables"</b>	means those deliverables listed in the Implementation Plan (if any);
<b>"Delivery"</b>	means the time at which the relevant Milestone set out in any Implementation Plan has been Achieved and "Deliver" and "Delivered" shall be construed accordingly;
<b>"Disaster"</b>	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable for a period of [insert period] or which is reasonably anticipated will mean that the Services or a material part thereof will be unavailable for that period;
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out in Clause 56;
<b>"DOTAS"</b>	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;
<b>"End User"</b>	means a person who is authorised by the Customer to use the Services;
<b>"End User Theft"</b>	means any act of fraud or dishonesty where there is a clear intent of obtaining an improper financial gain for the End User or for any other person or organisation intended by the End User to receive that gain;

**"Environmental Information Regulations"**

means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

**"Equipment"**

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

**"Fees"**

means any of the values and rates set out in Annex 2 of Framework Schedule 3 (Charging Structure);

**"FOIA"**

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

**"Force Majeure"**

means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:

- a. acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under the Call Off Contract;
- b. riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- c. acts of the Crown, local government or Regulatory Bodies;
- d. fire, flood or any disaster; and
- e. an industrial dispute affecting a third party for which a substitute third party is not reasonably available,

but excluding:

- i. any industrial dispute relating to the Supplier, the Staff (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and
- 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.

<b>“Framework Agreement”</b>	means the framework agreement between the Authority and the Supplier referred to in the Order Form;
<b>“Fraud”</b>	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;
<b>“Fuel Card(s)”</b>	means a payment card used to purchase fuels and associated services at Merchants as described further in Framework Schedule 1;
<b>“Fuel Card Loss Notification”</b>	means notification to the Supplier (or its insurer) of the loss of the Fuel Card or of a suspicion of any theft or Fraud (of any nature), misuse or Unauthorised Use;
<b>“Further Competition Procedure”</b>	means the award procedure described in paragraph 2 of Framework Schedule 5 (Call Off Procedure);
<b>GDPR</b>	Means the General Data Protection Regulations in force in the UK with effect from 25 <sup>th</sup> May 2018
<b>“General Anti-Abuse Rule”</b>	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;
<b>“General Change in Law”</b>	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;
<b>“Good Industry Practice”</b>	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;
<b>“Government”</b>	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;
<b>“Halifax Abuse Principle”</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>“Help Desk”</b>	means the customer service help desk that the Supplier is required to provide pursuant to Framework Schedule 1 (Services and Key Performance Indicators);
<b>“HMRC”</b>	means Her Majesty’s Revenue and Customs;
<b>“Holding Company”</b>	shall have the meaning given to it in section 1159 of the Companies Act 2006;
<b>“Implementation Plan”</b>	means the plan referred to in the Order Form;

<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>"Initial Call Off Period"</b>	means the initial call off period set out in the Order Form;
<b>"Installation Works"</b>	shall mean all works which the Supplier is to carry out at the beginning of the Call Off Contract Period to install the Supplier Software necessary for the provision of the Services required under this Call Off Contract in accordance with the Order Form;
<b>"Insolvency Event"</b>	<p>means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):</p> <ul style="list-style-type: none"> <li>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</li> <li>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</li> <li>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</li> <li>d. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>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</li> <li>f. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>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</li> <li>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</li> </ul>

- 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 “IPRs”**

**Means**

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

**“Key  
Performance  
Indicators” or  
“KPIs”**

means the performance measurements and targets set out in Part B of Framework Schedule 1 (Services and Key Performance Indicators);

**“Know-How”**

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

**“Law”**

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

**“Losses”**

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

**“Management  
Information” or  
“MI”**

means the Authority Management Information and/or the Contracting Body Management Information;

**“Malicious  
Software”**

means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;



**“Material Breach”**

means:

- a. a Critical Service Failure;
- b. a breach by the Supplier referred to by this term in any of the following Clauses: Clause 4 (Warranties and Representations), Clause 6.2 (Time of Delivery of Services), Clause 8 (Installation Works), Clause 15 (Monitoring of Implementation and Performance), Clause 17 (Continuous Improvement), Clause 19 (Disruption), Clause 20 (Contracting Body Management Information), Clause 22.4.1 (Payment of Rebate), Clause 24 (Staff and Staff Security), Clause 27 (IPR), Clause 28.4 (Protection of Personal Data), Clause 28.5 (Confidentiality), Clause 34 (Publicity, Media and Official Enquiries), Clause 28.6 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), Clause 37 (Prevention of Bribery and Corruption), Clause 40 (Prevention of Fraud), Clause 57 (Promoting Tax Compliance) and Clause 50 (Conflicts of Interest);
- c. any material breach of this Call Off Contract under the Law;
- d. a breach which prevents the Customer from discharging a statutory duty;

**“Milestone”**

means an event or task described in any Implementation Plan which must be completed by the corresponding date set out in such plan;

**“Milestone Date”**

means the date set against the relevant Milestone in any Implementation Plan;

**“Ministry of Justice Guidance”**

means Ministry of Justice Guidance in relation to Section 9 of the Bribery Act 2010 available at <http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf>;

**“Month”**

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

**“Monthly Invoice”**

means an invoice issued by the Supplier to the Customer which complies with Clause 22.3 and any further requirements as specified in the Order Form;

**“Monthly Billing Date”**

means the [7th] day of each Month, or if that day is not a Working Day, the next Working Day after the [7th] day of that Month;

**“Occasion of Tax Non Compliance”**

means:

- a. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:

- i. a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
- ii. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or

(b) the Supplier's tax affairs give rise on or after 1 April 2013 to a conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a penalty for civil fraud or evasion;

**"Online Programme Management Tool"**

means an internet-based technology platform provided by the Supplier as described further in Framework Schedule 1 (Services and Key Performance Indicators);

**"Open Book Data"**

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

- (a) the Supplier's costs broken down against each Service, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
  - (i) the unit costs and quantity of consumables and bought-in services;
  - (ii) manpower resources broken down into the number and grade/role of all Staff (free of any contingency) together with a list of agreed rates against each manpower grade;
  - (iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's profit margin; and
  - (iv) Fees;
- (c) overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier's profit achieved over the Call Off Contract

Period and on an annual basis;

- (f) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual costs profile for each Service Period.

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

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

**“Parent Company”** means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;

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

**“Personal Data”** shall have the same meaning as set out in the Data Protection Act 1998;

**“Premises”** means the location where the Services are to be supplied as set out in the Order Form;

**“Processing”** has the meaning given to "processing" under the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;

**“Prohibited Act”** means:

- a. to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority a financial or other advantage to:
  - i. induce that person to perform improperly a relevant function or activity; or
  - ii. reward that person for improper performance of a relevant function or activity; or
- b. committing any offence:

	<ul style="list-style-type: none"> <li>i. under the Bribery Act 2010; or</li> <li>ii. under legislation creating offences concerning Fraud; or</li> <li>iii. at common law concerning Fraud;</li> </ul>
	c. committing or attempting or conspiring to commit Fraud;
<b>"Project Specific IPRs"</b>	<ul style="list-style-type: none"> <li>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</li> <li>b. Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Call Off Contract;</li> </ul> <p>but shall not include the Supplier Background IPRs;</p>
<b>"Regulations"</b>	means the Public Contracts Regulations 2006 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
<b>"Related Supplier"</b>	means any person who provides services to the Customer which are related to the Services from time to time;
<b>"Relevant Conviction"</b>	means a Conviction that is relevant to the nature of the Services to be provided or as specified by the Customer in the Order Form or elsewhere in the Call Off Contract;
<b>"Relevant Person"</b>	means any employee, agent, servant, or representative of the Customer, or of any other Contracting Body or other public body;
<b>"Relevant Tax Authority"</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;
<b>"Relevant Tax Conviction"</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;
<b>"Replacement Services"</b>	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of this Call Off Contract, whether those services are provided by the Customer internally and/or by any third party;
<b>"Replacement Supplier"</b>	means any third party provider of Replacement Services appointed by the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
<b>"Request for Information"</b>	means a request for information or an apparent request relating to this Call Off Contract or the provision of the Services or an

	apparent request for such information under the FOIA or the Environmental Information Regulations;
<b>"Satisfaction Certificate"</b>	means the certificate materially in the form of the document contained in the Annex to Call Off Schedule 4 (Testing) granted by the Customer when the Supplier has Achieved a Milestone or a Test;
<b>"Security Management Plan"</b>	means the Supplier's security management plan prepared pursuant to paragraph 3 of Call Off Schedule 2 (Security) a draft of which has been provided by the Supplier to the Customer in accordance with paragraph 3.2 of Call Off Schedule 2 (Security) and as updated from time to time;
<b>"Security Policy"</b>	means the Customer's security policy and procedures in force from time to time, including any specific security requirements set out in Annex 1 to Call Off Schedule 2 (Security);
<b>"Service Credits"</b>	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;
<b>"Service Failure"</b>	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;
<b>"Service Level Failure"</b>	means a failure to meet any performance measures specified in Annex 1 to Part A of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) in respect of a Service Level;
<b>"Service Levels"</b>	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);
<b>"Service Period"</b>	shall have the meaning given to in paragraph 5.1 of Call Off Schedule 6 (Service Levels, Service Credits and Performance Monitoring);
<b>"Services"</b>	means the services to be supplied as referred to in the Order Form;
<b>"Software"</b>	means the Supplier Software and Customer Software;
<b>"Specific Change in Law"</b>	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
<b>"Spend"</b>	means the value of purchases made by the Customer and/or End Users using the Fuel Cards;
<b>"Staff"</b>	means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors)

	used in the performance of its obligations under this Call Off Contract;
<b>"Staff Vetting Procedures"</b>	means any Customer's procedures and departmental policies for the vetting of personnel as set out by the Customer in the Order Form or elsewhere in the Call Off Contract;
<b>"Standards"</b>	means: <ul style="list-style-type: none"> <li>a. any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b. any standards detailed in the specification in Framework Schedule 1 (Services and Key Performance Indicators);</li> <li>c. any standards detailed by the Customer in this Call Off Contract during a Further Competition Procedure or agreed between the Parties from time to time;</li> <li>d. any relevant Government codes of practice and guidance applicable from time to time.</li> </ul>
<b>"Sterling"</b>	means pounds sterling;
<b>"Sub-Contract"</b>	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;
<b>"Sub-Contractor"</b>	means the third party from the list of sub-contractors in Framework Schedule 2 (Sub-Contractors) or any third party engaged by the Supplier from time to time under a Sub-Contract permitted pursuant to the Framework Agreement and this Call Off Contract its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;
<b>"Supplier"</b>	means the person, firm or company with whom the Customer enters into the Call Off Contract as identified in the Order Form;
<b>"Supplier Background IPRs"</b>	means: <ul style="list-style-type: none"> <li>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</li> </ul>

	<p>b. Intellectual Property Rights created by the Supplier independently of this Call Off Contract,</p> <p>but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
<b>"Supplier Software"</b>	means any software identified as such in the Order Form together with all other software which is not listed in the Order Form but which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Customer to receive the benefit of and/or make use of the Services;
<b>"Supplier System"</b>	means the Online Programme Management Tool or any other information and communications technology system used by the Supplier in implementing and performing the Services including the Supplier Software, the Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System);
<b>"Supplier's Call Off Solution"</b>	means, if attached, the Supplier's solution in response to the Customer's invitation to suppliers for formal offers to supply the Customer with the Services pursuant to any Further Competition Procedure, a copy of which is set out in Call Off Schedule 3 (Call Off Solution);
<b>"Supplier's Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
<b>"Template Call Off Terms"</b>	means the template terms and conditions in Part 2 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
<b>"Template Order Form"</b>	means the template form in Part 1 of Framework Schedule 4 (Template Order Form and Template Call Off Terms);
<b>"Tender"</b>	means the tender submitted by the Supplier to the Authority on 25 <sup>th</sup> November 2016 and annexed to Framework Schedule 17;
<b>"Tests" and "Testing"</b>	means any tests required to be carried out pursuant to this Call Off Contract as set out in the Test Plan or elsewhere in the Call Off Contract;
<b>"Test Issue"</b>	means any variance or non-conformity of the Services or Deliverables from their requirements as set out in the Call Off Contract;
<b>"Test Plan"</b>	means a plan for the Testing of the Deliverables and other agreed criteria related to the achievement of Milestones as described further in paragraph 4 of Call Off Schedule 6 (Testing);
<b>"Test Strategy"</b>	means a strategy for the conduct of Testing as described further in paragraph 3 of Call Off Schedule 4 (Testing);

**“Unauthorised Use”**

means any use or attempted use of any Fuel Card which:

- a) breaches any limits on the usage of the Fuel Card stipulated in or under this Call Off Contract and/or Framework Agreement; and/or
- b) otherwise breaches the terms of:
  - (i) this Call Off Contract; or
  - (ii) the Framework Agreement;

**“User Agreement”**

means the user agreement set out in Annex A of the Order Form;

**“Variation”**

has the meaning given in Clause 46.1;

**“Variation Procedure”**

means the procedure set out in Clause 46;

**“VAT”**

means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

**“Working Day”**

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



## CALL OFF SCHEDULE 1: VARIATION FORM

No of Order Form being varied:

.....

Variation Form No:

.....

BETWEEN:

**Shropshire Council ("the Customer")**

and

**UK Fuels Limited ("the Supplier")**

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

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

CW1 6EG

## CALL OFF SCHEDULE 2: SECURITY

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

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

#### 1.1 This Call Off Schedule covers:

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

### 2. PRINCIPLES OF SECURITY

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

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

- 2.2.1 is in accordance with Good Industry Practice, Law and this Call Off Contract;
- 2.2.2 complies with the Security Policy;
- 2.2.3 complies with the security requirements as set out in Annex 1 to this Call Off Schedule; and
- 2.2.4 complies with the Customer's ICT standards.

2.3 Subject to Clause 12 (Standards and Quality), the references to standards, guidance and policies set out in paragraph 2.2 shall be deemed to be

references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

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

### **3. SECURITY MANAGEMENT PLAN**

#### **3.1 Introduction**

- 3.1.1 If the Customer has so stipulated in the Order Form, the Supplier shall develop and maintain a Security Management Plan in accordance with this Call Off Schedule to apply during the Call Off Contract Period.
- 3.1.2 The Supplier shall comply with its obligations set out in the Security Management Plan and any other provision of the Framework Agreement relevant to security.
- 3.1.3 The Security Management Plan shall, unless otherwise specified by the Customer, aim to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Premises, the Supplier System and any ICT, information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call Off Contract.
- 3.1.4 The Supplier is responsible for monitoring and ensuring that it is aware of changes to the Security Policy. The Supplier shall keep the Security Management Plan up-to-date with the Security Policy as amended from time to time.

#### **3.2 Development of the Security Management Plan**

- 3.2.1 Within twenty (20) Working Days after the Call Off Commencement Date (or such other period specified in the Implementation Plan or as otherwise agreed by the Parties in writing) and in accordance with paragraph 3.4 (Amendment and Revision), the Supplier will prepare and deliver to the Customer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan. If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 3.4 (Amendment and Revision), is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan.
- 3.2.2 If the Security Management Plan is not Approved the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for approval. The parties will use all reasonable endeavours to ensure that the approval

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

### **3.3 Content of the Security Management Plan**

- 3.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services (including the Customer's Premises, the Supplier System and any IT) and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Call Off Contract (including this Call Off Schedule, the principles set out in paragraph 2.2 and any other elements of this Call Off Contract relevant to security or any data protection guidance produced by the Customer).
- 3.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Call Off Contract and Annex 1 to this Call Off Schedule.
- 3.3.3 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the provision of the Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this Call Off Schedule.

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

- 3.4.1 The Security Management Plan will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:
  - 3.4.1.1 emerging changes in Good Industry Practice;
  - 3.4.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;
  - 3.4.1.3 any new perceived or changed security threats;
  - 3.4.1.4 any reasonable request by the Customer.
- 3.4.2 The Supplier will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and

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

- 3.4.2.1 suggested improvements to the effectiveness of the Security Management Plan;
  - 3.4.2.2 updates to the risk assessments; and
  - 3.4.2.3 suggested improvements in measuring the effectiveness of controls.
- 3.4.3 On receipt of the results of such reviews, the Customer will consider any amendments or revisions to the Security Management Plan for Approval in accordance with the process set out at paragraph 3.2.2.
- 3.4.4 Any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a Customer request or change to the requirements set out in Annex 1 to this Call Off Schedule or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved by the Customer.



#### **4. BREACH OF SECURITY**

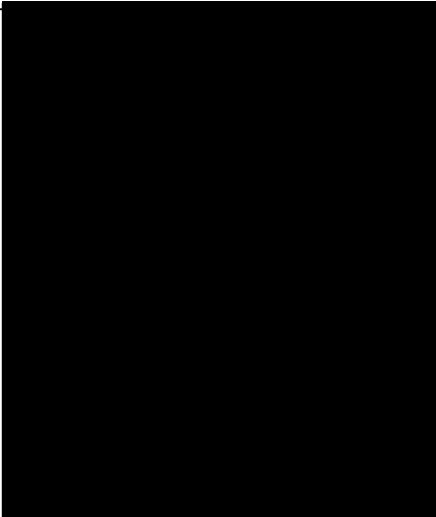
- 4.1 Either party shall notify the other in accordance with the agreed security incident management process as defined by the Security Management Plan upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 4.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 4.1, the Supplier shall:
- 4.2.1 immediately take all reasonable steps necessary to:
    - 4.2.1.1 remedy such breach or protect the integrity of the Customer against any such potential or attempted breach or threat; and
    - 4.2.1.2 prevent an equivalent breach in the future; and
  - 4.2.2 ensure that:
    - 4.2.2.1 such steps shall include any action or changes reasonably required by the Customer. In the event that such action is taken in response to a breach that is determined by the Customer acting reasonably not to be covered by the obligations of the Supplier under this Call Off Contract, then the Supplier shall be entitled to refer the matter to the Variation Procedure; and
    - 4.2.2.2 as soon as reasonably practicable provide to the Customer full details of the Breach of Security or the potential or attempted Breach of Security.



### CALL OFF SCHEDULE 3: SUPPLIER'S CALL OFF SOLUTION

1. This Call Off Schedule (Supplier's Call Off Solution) sets out a copy of the Supplier's Call Off Solution including its response to the Customer's Statement of Requirements in its invitation to further competition in accordance with the Further Competition Procedure in Framework Schedule 5 (Call Off Procedure).
2. Subject to Clauses 1.3 and 1.3.7 and in addition to any other obligations on the Supplier under this Call Off Contract, the Supplier shall provide the Services to the Customer in accordance with the Supplier's Call Off Solution.

<b>Card Proposal</b>		
<b>Lead Times</b>		New/replacement Cards: Dependent on card brand, 7-10 Days at longest.
<b>Pricing Structure</b>		

<p><b>Additional Costs</b></p>	
<p><b>Management Reporting Tool and Software</b></p>	<p>Velocity Fleet Management System</p> <p>Training provided where needed.</p>
<p><b>Account Management</b></p>	<p>Initial set up support provided</p> <p>If pin codes are forgotten, garage can call on University's behalf. Manual process to place the transaction through.</p>
<p><b>Student Benefits</b></p>	<p>Talent acquisition person has recently been appointed; there is the option to discuss the different options.</p> <p>Graduate positions are available, standard application process.</p>



## **CALL OFF SCHEDULE 4: TESTING**

### **1. INTRODUCTION**

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

### **2. TESTING OVERVIEW**

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

### **3. TEST STRATEGY**

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

### **4. TEST PLANS**

- 4.1 The Supplier shall develop Test Plans for the approval of the Customer as soon as practicable but in any case no later than sixty (60) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.
- 4.2 Each Test Plan shall include as a minimum:
  - 4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested;
  - 4.2.2 a detailed procedure for the Tests to be carried out, including:
    - 4.2.2.1 the timetable for the Tests including start and end dates;

- 4.2.2.2 the Testing mechanism;
  - 4.2.2.3 dates and methods by which the Customer can inspect Test results;
  - 4.2.2.4 the mechanism for ensuring the quality, completeness and relevance of the Tests;
  - 4.2.2.5 the process with which the Customer will review Test Issues and progress on a timely basis; and
  - 4.2.2.6 the re-Test procedure, the timetable and the resources which would be required for re-Testing.
- 4.3 The Customer shall not unreasonably withhold or delay its approval of the Test Plans and the Supplier shall implement any reasonable requirements of the Customer in the Test Plans.

## **5. TESTING**

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

## **6. TEST ISSUES**

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

## **7. TEST QUALITY AUDIT**

- 7.1 Without prejudice to its rights pursuant to Clause 38 (Records and Audit Access), the Customer or an agent or contractor appointed by the Customer may perform on-going quality audits in respect of any part of the Testing.
- 7.2 If the Customer has any concerns following an audit in accordance with paragraph 7.1 above the Customer will discuss such concerns with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.
- 7.3 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Satisfaction Certificate until

the issues in the report have been addressed to the reasonable satisfaction of the Customer.

**8. OUTCOME OF TESTING**

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

## **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 failures to achieve Service Levels and Critical Service Failures will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.
- 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 Failure;
  - 1.2.4 Part B: Performance Monitoring; and
  - 1.2.5 Annex 1 to Part B: Performance Monitoring

## **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 and KPIs (Key Performance Indicators) are met to the highest standard throughout the Term of the Framework Agreement and Call Off Agreement.
- 2.2 The Supplier shall provide support and advice through the provision of a dedicated Call Off Contract manager, where required on matters relating to:
  - 2.2.1 Supply performance;
  - 2.2.2 Quality of Services;
  - 2.2.3 Customer Support;
  - 2.2.4 Complaints handling; and
  - 2.2.5 Accurate and timely invoices.
- 2.3 The Supplier accepts and acknowledges that failure to meet the Service Levels set out in this Call Off Schedule will result in Service Credits being issued to Customers.

### **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 meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

### **4. SERVICE LEVELS**

- 4.1 The Annex 1 to Part A of this Call Off Schedule sets out Service Levels the performance of which the Parties have agreed to measure.
- 4.2 The Supplier shall monitor its performance of the provision by it of the Services by reference to the relevant Performance Criteria for achieving the Service Level(s) shown in Annex 1 to Part A of this Call Off Schedule and shall send the Customer a report detailing the level of service which was achieved in accordance with the provisions of Part B of this Call Off Schedule.
- 4.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Levels are achieved.

- 4.4 If the level of performance of the Supplier of any element of the provision by it of the Services during the Call Off Contract Period fails to or is likely to fail to achieve a Service Level or a Critical Service Failure occurs or is likely to occur, the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice to any other of its rights under the Call Off Contract or in Law, may:
- 4.4.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a failure of a Service Level or Critical Service Failure from taking place or recurring; and
  - 4.4.2 if the action taken under paragraph 4.4.1 above has not already prevented or remedied the failure of a Service Level or Critical Service Failure, provide the Customer with a correction plan (the "**Correction Plan**") within five (5) Working Days (or such other period as the Parties agree in writing) from the day the Supplier notifies the Customer under paragraph 4.4 above. The Supplier will set out in the Correction Plan the action that it will take to prevent the failure of a Service Level or Critical Service Failure or rectify and prevent the failure of a Service Level or Critical Service Failure from recurring. The Supplier will obtain the Customer's Approval of such Correction Plan (such Approval not to be unreasonably withheld or delayed) and carry out the Approved Correction Plan in accordance with its terms. If the Supplier fails to achieve the Service Level in accordance with the Correction Plan, then the Supplier may make a deduction from the Call Off Contract Charges by way of Service Credits in accordance with Annex 1 to Part A of this Call Off Schedule; or
  - 4.4.3 if a failure of a Service Level has occurred, make a deduction from the Call Off Contract Charges by way of Service Credits in accordance with Annex 1 to Part A of this Call Off Schedule; or
  - 4.4.4 if a Critical Service Failure occurs, terminate this Call Off Contract for Material Breach pursuant to Clause 31.5.
- 4.5 Approval and implementation of any Correction Plan by the Customer shall not relieve the Supplier of any responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation.

## 5. **SERVICE CREDITS**

- 5.1 Framework Schedule 3 (Charging Structure) sets out the mechanism used to calculate Service Credits payable to the Customer as a result of a failure to meet the Service Level in a given service period which, for the purpose of this Call Off Schedule, shall be a recurrent period of one Month during the Call Off Contract Period (the "**Service Period**").
- 5.2 Annex 1 to Part A of this Call Off Schedule includes details of each Service Credit available to each Service Level if not met by the Supplier.

- 5.3 The Customer shall use performance reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 5.4 Service Credits are liquidated and ascertainable damages. Both Parties agree that the Service Credits are a genuine pre-estimate of the loss likely to be suffered by the Customer and not a penalty.
- 5.5 The Supplier shall issue a credit note in respect of any Service Credit to which the Customer becomes entitled. The Service Credit shall be repayable by the Supplier as a debt within twenty eight (28) Working Days of issue of the credit note

## **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 and any Critical Service Failures in the contractual performance of the Supplier including the 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 all Critical Service Failures to the Customer in accordance with the processes agreed in paragraph 1.2 above.

### **3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW**

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



by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

- 3.2.1 take place within one (1) week of the reports referred to in paragraph 3.1 above being issued by the Supplier;
  - 3.2.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
  - 3.2.3 be attended by the Supplier's Representative and the Customer's Representative; and
  - 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Customer's Representative at each meeting.
- 3.3 The Customer shall be entitled to raise any additional questions and/or request any further information including regarding any failure to achieve Service Levels and any Critical Service Failures.
  - 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 Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with the Call Off Contract.
- 4.3 All other suggestions for improvements to the Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 17.

**CALL OFF SCHEDULE 7: NOT USED**

**CALL OFF SCHEDULE 8: NOT USED**

**CALL OFF SCHEDULE 9: NOT USED**

## CALL OFF SCHEDULE 10: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

### 1. INTRODUCTION

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

### 2. CLAUSES SELECTED

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

- 2.1.1 Scots Law (see paragraph 4.1 below);
- 2.1.2 Northern Ireland Law (see paragraph 4.2 below)
- 2.1.3 Termination (see paragraph 4.3 below);
- 2.1.4 Non-discrimination (see paragraph 4.4 below); or
- 2.1.5 Non-Crown Bodies (see paragraph **Error! Reference source not found.** below); or
- 2.1.6 Non-FOIA Public Bodies (see paragraph **Error! Reference source not found.** below).

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

- 2.2.1 Security Measures (see paragraph 5 below);

### 3. IMPLEMENTATION

- 3.1 The appropriate changes have been made in this Call Off Contract to implement the Alternative and Additional Clauses specified in paragraph 2.1 and the Additional Clauses specified in paragraph 2.2 and **Error! Reference source not found.** shall be deemed to be incorporated into this Call Off Contract.

### 4. ALTERNATIVE CLAUSES

#### 4.1 SCOTS LAW

Law and Jurisdiction (Clause 55)

The original Clause 55.1 shall be replaced with:

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

#### 4.2 NORTHERN IRELAND LAW

#### Law and Jurisdiction (Clause [55])

The original Clause 55.1 shall be replaced with:

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

#### 4.3 TERMINATION (Clause 31)

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

#### 4.4 DISCRIMINATION (Clause 39)

The original Clause 39 shall be replaced with the following:

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

### 5. ADDITIONAL CLAUSES: GENERAL

- 5.1 The following definitions to be added to the Glossary to the Call Off Form and the Call Off Terms:

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

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

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

- 5.2 The following new Clause 58 shall apply:

#### 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 the Call Off Contract had not been terminated, or at a reasonable price;

58.14.3. The Customer may take over any work or thing done or made under this Call Off Contract (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of this Clause 57 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Customer, deliver any work or thing taken over under this Clause 57.14.3, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause 57.14.3; and

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 57.13.1; or

58.15.2. the Customer shall state in the statement and particulars detailed in Clause 57.13.2. that the event upon which the Customer's decision to terminate this Call Off Contract was based is an event mentioned in Clause 57.11.3,

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

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 57.11 and properly provided by or supplied to the Supplier for the performance of this Call Off Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;

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

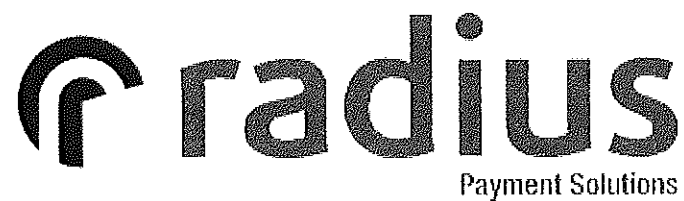
and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;

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 57.15 it shall be open to the Supplier to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this Clause 57.15.6 shall be final and conclusive; and

subject to the operation of Clauses 57.15.3, 57.15.4, 57.15.5 and 57.15.6 termination of this Call Off Contract shall be without prejudice to any rights of either party.

# Radius Payment Solutions

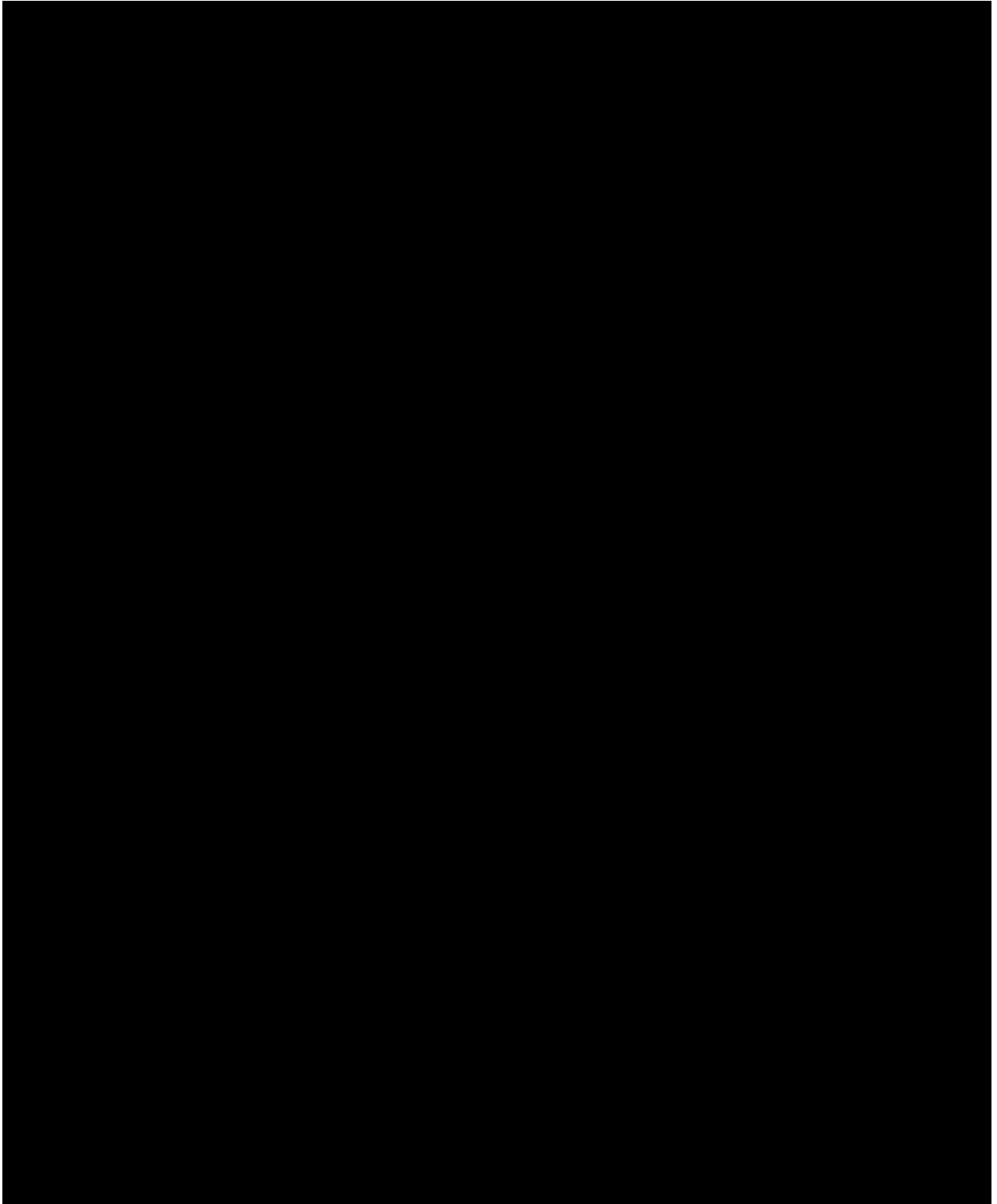


## Business Continuity Plan

Version 4.8

personal info

## **BCP – Approval of Plan**

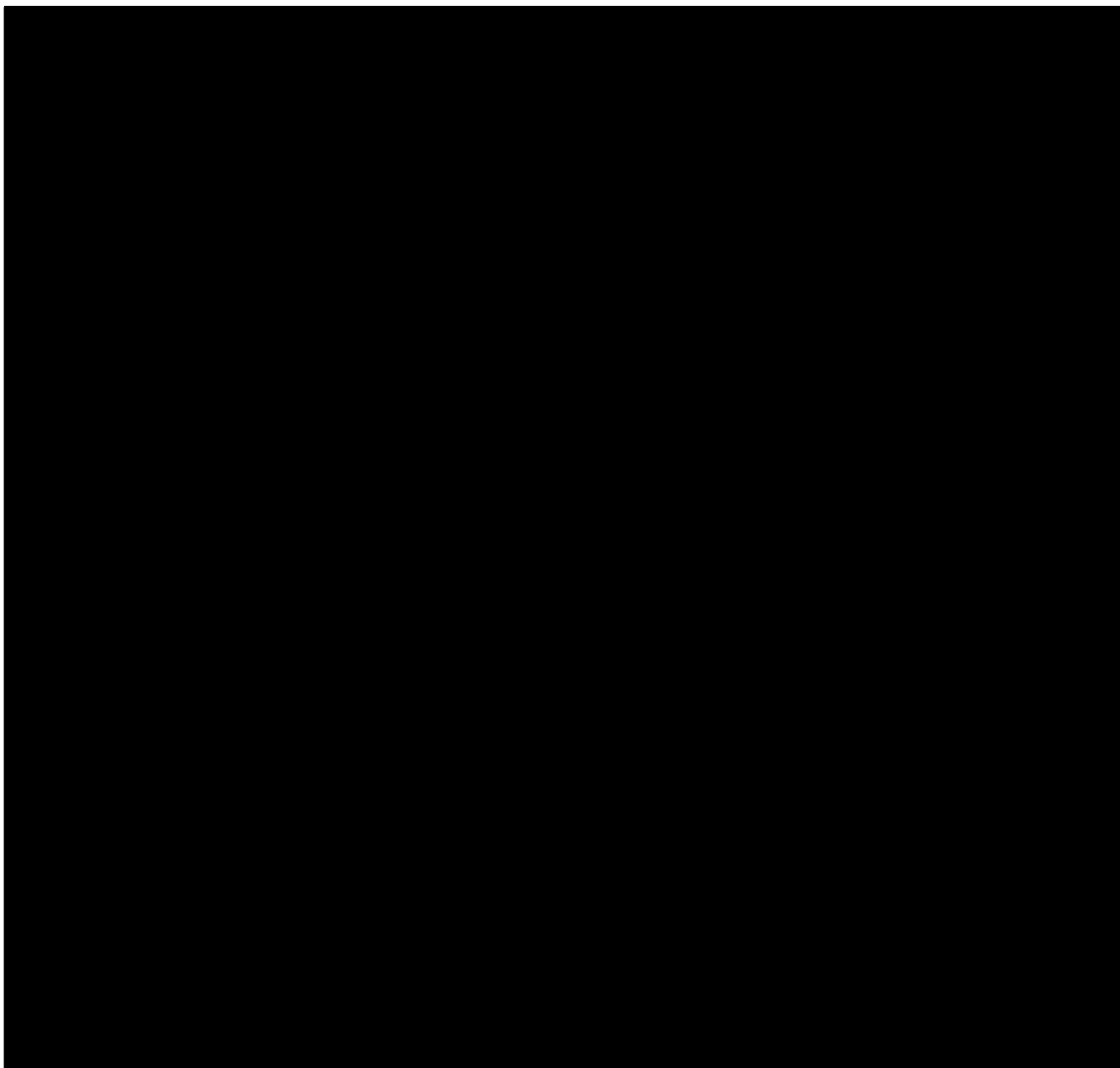


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## 1.1 Document History

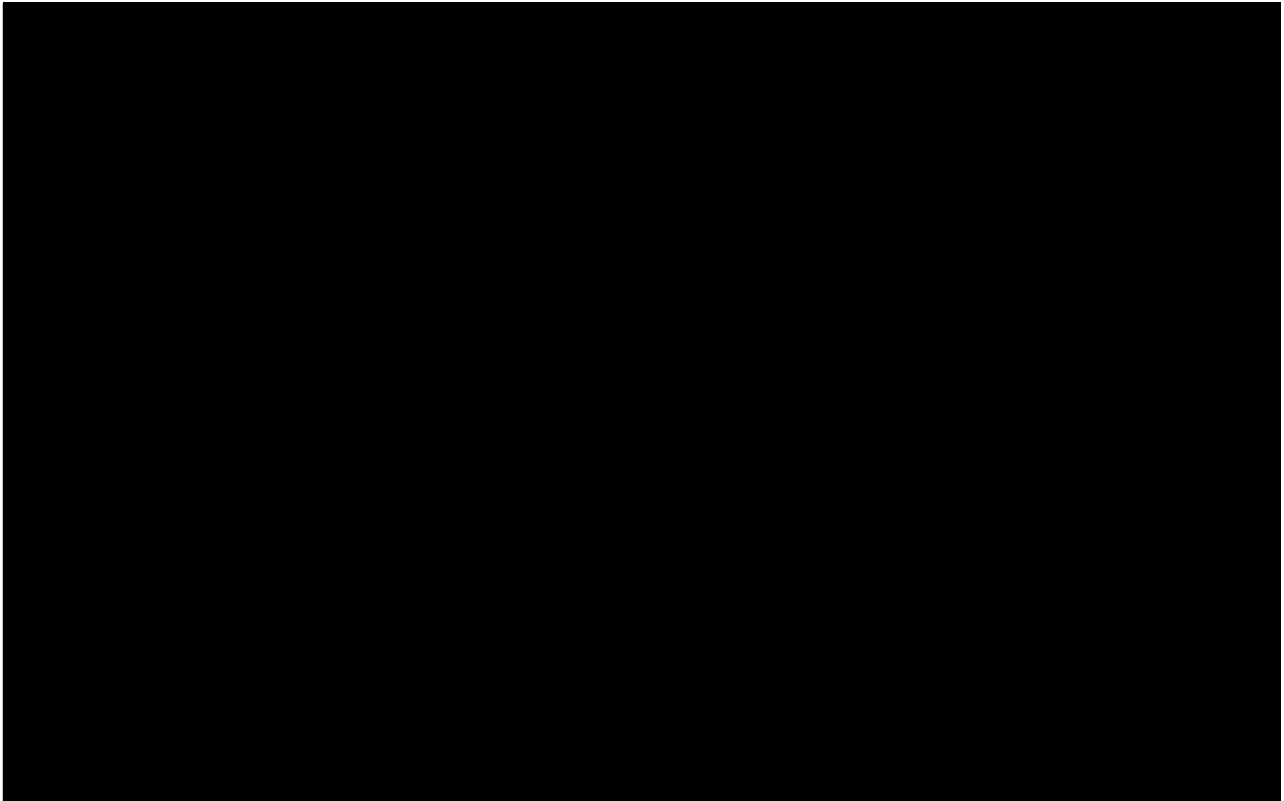
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## 1.2 Distribution List

This document has been distributed to:



This group would be responsible for supporting any invocation of a BCP event as described in section 3.2 of the Major Incident procedure.

## 2.1 Introduction

The objective of this Business Continuity Plan is to provide guidance to Radius Payment Solutions management for the efficient restoration of business operations at the Group's Headquarter offices (EuroCard and EuroSales Centres).

The plan defines what the Business Continuity Major Incident Team (BCMIT) and supporting teams need to do during any crisis to restore critical business functions. The information contained in this plan is intended to provide an overview of the high level processes and procedures and complement the detailed plans that exist at departmental level for recovery, communications and continuing the business.

These predefined procedures are not to be interpreted as the only course of action. It is anticipated that in all cases the specific nature of a particular emergency situation and other factors such as the timing of the particular incident will demand a flexible approach to implementation of the defined plan but nevertheless this plan will provide the framework for decision making and a planned return to standard business operations.

The major goals of this plan are the following:

- To minimise interruptions to the normal operations.
- To limit the extent of disruption and damage.
- To minimise the economic impact of the interruption.
- To establish alternative means of operation in advance.
- To train personnel with emergency procedures.
- To provide for rapid restoration of service.

## 2.2 Purpose

This Business Continuity Plan establishes procedures to recover the Headquarter operations following a disruption. The following objectives have been established for this plan:

- Provide in one document, the high level processes and procedures for the (BCMIT) and supporting teams involved in a crisis situation. Reference will be made to the location of any other key data and documents providing detailed operational procedures that reside outside of this document.
- Support the short and long term sustainability of the business in the aftermath of a major incident that severely disrupts day-to-day operations.
- Maximise the effectiveness of operations through the following phases:
  - Notification/Activation phase to detect and assess damage and to activate the plan.
  - Recovery phase to restore temporary operations and assess damage to facilities and systems.

- Reconstitution phase to restore operational capabilities initially to a minimum standard to support the on-going viability of the business and then back to full capability in a minimum timeframe.
- Identify the activities, resources, and procedures needed to carry out processing requirements during prolonged interruptions to normal operations.
- Assign responsibilities to designated personnel and provide guidance for recovering capability during prolonged periods of interruption to normal operations.
- Ensure coordination with other staff who will participate in the Business Continuity Planning strategies. Ensure coordination with external points of contact and vendors who will participate in the Business Continuity Planning strategies.
- Identify the primary vulnerabilities of the organisation to factors that might result in a major disruption to day-to-day operations along with mitigation approaches designed to reduce the likelihood and impact of these occurrences.
- Identify the key stakeholders that will need to be communicated with in the aftermath of a major incident in order to reduce confusion, uncertainty and reputational risk.

## 2.3 Applicability

The Business Continuity Plan applies to all of the functions, operations, and resources necessary to restore and resume operations as they currently operate at both the Group's Headquarter offices.

Whilst worst case scenarios (up to and including the total loss of one of the facilities covered by the plan) have been taken into account other severe disruptions to service have also been considered and subsets of the plan would then be utilised to effect the required continuation of business. As previously stated this plan will provide the detailed framework for response but management assessment and decision making will also be required to tailor the plan to match specific requirements.

## 2.4 Scope

The scope of the procedures documented in this Business Continuity Plan is restricted to operations and functions provided by the Group's Headquarter offices.

No reference is made in this plan to:

- Other offices for other companies that form part of the Radius Payment Solutions Group.
- Business Continuity and Disaster Recovery plans for 3<sup>rd</sup> party suppliers such as financial services or IT infrastructure and application providers. It is incumbent upon each business team to ensure that they have carried out a reasonable assessment of the level of preparedness of key suppliers for any major incident that they themselves might encounter.

## 2.5 Critical Business Functions

In developing this plan, the primary focus has been on the identification of critical business functions that must be restored at the earliest opportunity and conversely, the identification of those business functions that are less critical in the immediate aftermath of a major incident.

At the highest level the key critical business functions are considered to be:

- Those activities that cater for the welfare, health and safety concerns of all employees.
- Those activities that maintain company cash flow.
- Those activities that protect company assets and facilitate the maintenance of short and medium term financial interaction with customers, partners and suppliers.
- Those activities that maintain customer, partner and supplier confidence.

At both the company and departmental level the business processes and functions that support these high level requirements have subsequently been identified and prioritised to align with them. Consequently, tasks and functions have been identified as requiring restoration in a clearly defined priority order and the IT Disaster Recovery Plan has also been aligned with these priorities. However, as previously stated, the specific nature of a particular incident requiring invocation of the Business Continuity Plan and other factors such as the time of the month when the incident occurs will also require an on the spot assessment of relative priorities within the framework of the overall plan. So, for example, if an incident was to occur sometime around the end of the month or at the start of a new month then certain key monthly tasks may have to be given greater priority than if the incident occurred in the middle of a month.

## 2.6 Planning Principles

A broad range of potential scenarios were considered to form a basis for this Business Continuity Plan and these are detailed in Appendix E. These range from disruptions to the supply of key services through the total destruction of the Group's Head offices. The applicability of the plan is predicated on a number of key principles:

- Either the EuroCard Centre facility is partially or totally inaccessible and the EuroSales Centre is available as an alternative facility.
- Or the EuroSales Centre facility is partially or totally inaccessible and the EuroCard Centre is available as an alternative facility.
- Due to facility and/or system unavailability all or part of the Radius Payment Solutions organisation is unable to perform operational processing at one of its facilities.
- The IT Disaster Recovery Plan will allow use of either facility as a contingency operational centre with access to all key systems.
- The alternate site (either the EuroCard or EuroSales Centre) will be used to effect rapid recovery and then sustain business operations throughout the period of disruption for a

period of up to or in excess of 3 months until there is a return to normal operations either at the original facility or an alternative facility.

## 2.7 Assumptions

The following assumptions were used when developing the Business Continuity Plan:

- This plan will only be used to manage a major incident and will only be invoked by the BCMIT. It will not be implemented to manage daily operational problems.
- Backups of the application software and data are intact and available at the offsite storage facility.
- Copies of this document and all other vital records are stored in a secure off-site location and are immediately accessible following the disaster.
- Data centre equipment, including components supporting key systems are connected to an uninterruptible power supply (UPS) that provides for the safe shutdown of key systems in the event of a power failure.
- In the event of a power failure a system generator will be available to restore power to one of both of the EuroSales and EuroCard Centre.
- Equipment, connections, and capabilities required to operate all key systems are available at the alternate site.
- The incident is specific to the operations at the EuroCard Centre or the EuroSales centre and has not impacted other businesses within the local district.
- Hardware and software at the original site are unavailable.
- Key contacts are available to coordinate the recovery process.
- Key personnel have been identified and trained in their emergency response and recovery roles; they are available to activate the Business Continuity and Business Continuity Plan.
- Qualified Business Continuity Plan personnel are available to perform the recovery activities and they are familiar with the procedures documented in this plan.
- Service agreements are maintained with hardware, software, and communications providers to support the emergency system recovery.
- Technological recovery plans are addressed separately as part of the IT Business Continuity Plans.
- The offsite storage or co-located standby site remains intact and accessible.

## 2.8 Prerequisites

In order for disaster recovery to be effective it is agreed that:

- An adequate backup of data should be lodged off-site.

- Appropriate IT infrastructure is in place to support the transfer of business functions between the EuroCard and EuroSales Centre's and sustain this for a significant period of time (up to and in excess of 3 months).
- A supply of up-to-date stationery will be stored at each other's site for printing.
- A list of main staff contacts will be available in the immediate aftermath of a major incident, including home numbers and addresses, to support effective call tree communications. Management of this list will be subject to appropriate data protection controls.
- All employees will have an understanding of the underlying principles that support the organisation's response to a major incident.
- Those employees who will play a lead role in restoring operations and supporting the business in the event of a major incident have had sufficient training in those activities and are very familiar with the overall structure of the plan and the specifics of their role.
- Each department will be responsible for keeping its part of the plan up to date with new and amended procedures and will have a BCP coordinator to facilitate this.
- The plan, in its entirety, will be reviewed and updated as a minimum every 12 months.

## 2.9 Backup Site

In the event of a major incident occurring that disable either the EuroCard Centre or the EuroSales Centre the other facility will be utilised as the emergency recovery centre where key management and staff would resume the organisation's most critical business functions.

## 2.10 Alternative Back-up Sites

If circumstances dictate that the Group's Headquarter offices are unavailable, then alternative group office locations will be used. Head Office functions will be split between Ipswich, Manchester, York and home working options.

For the Global Sales offices, we would relocate staff to alternative group locations in region or use commercial flexible office space as an on-demand service. The Enterprise IT Cloud strategy reduces the dependency on an individual office location.

## 3.1 Business Continuity Team Structure and Process

### Roles and Responsibilities

In the event of a major incident it is crucial that Radius Payment Solutions has a predetermined Business Continuity Major Incident Team designed in order to bring structure and order to what will tend to be a chaotic and high pressure situation. If the organisation is to recover effectively and in the shortest possible time and if maximum benefit is to be drawn from the development of this Business Continuity Plan, then an organisational structure designed to manage in that environment with predetermined roles and responsibilities will bring the optimum chance of success.

To this end the Radius Payment Solutions Business Continuity Plan establishes several teams, each with a specific role and assigned to participate in defined operational activities.

## 3.2 Business Continuity Major Incident Team - BCMIT

### Responsibilities

The BCMIT comprises members of the Executive Management team and is responsible for:

- Ensuring that in the event of an emergency affecting Radius Payment Solutions generally appropriate decisions and actions are taken to protect the viability of the organisation.
- Approving recovery strategies and ensuring the most appropriate and cost effective solutions are implemented.
- Coordinate appropriate departmental Business Continuity Team decisions and actions to manage and control emergency and recovery operations.

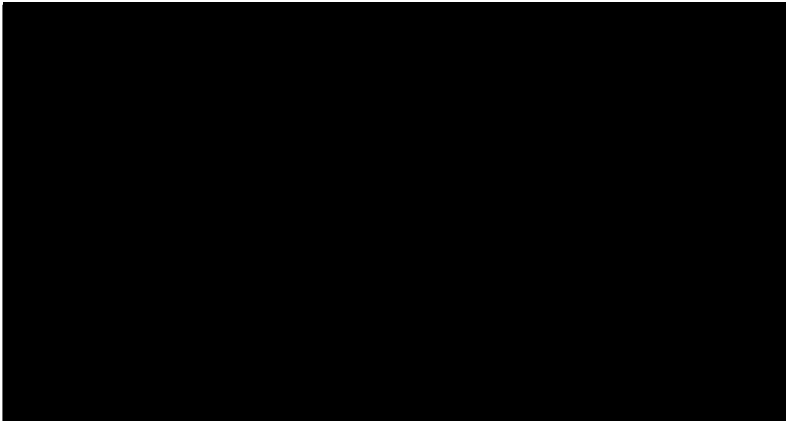
### Membership

Contingent upon the nature of the incident, the BCMIT may be comprised of some or all of the following roles:

- Team Leader
- Deputy Team Leader
- Communications Manager
- Business Coordinator
- Disaster Recovery Coordinator (IT)
- HR Coordinator
- Finance Manager
- Log Keeper
- Administration Staff

Other roles may be needed to form a complete team contingent on the event. These may be defined at the time of the event.

In terms of named individuals, the structure of this team would comprise a small group of permanent members, specifically trained in and aware of the detailed process, impact and requirements for declaring an event and implementing the initial assessment stages of the plan. These people are:



Dependent upon the specific nature of the incident other key personnel would be drafted onto the team during both the initial assessment period and in any activation scenario.

#### Team Responsibilities

The role of the BCMIT is to undertake the following:

- Assess the scale and impact of the emergency on the organisation in terms of:
  - Scale of injury and threat to the safety and wellbeing of employees
  - Inability to maintain positive cash flow
  - Inability to maintain customer service
  - Damage to Radius Payment Solutions assets
  - Business management failure (IT, communication etc.)
  - Damage to image and reputation
  - Failure to meet legal or regulatory requirements
- Authorise the invocation of emergency and business recovery plans.
- Co-ordinate the recovery process.
- Co-ordinate the activity to restore operations and resolve the emergency.
- Authorise the expenditure to support recovery operations.
- Agree the appropriate communication to all internal and external stakeholders.



### 3.3 Specific Individual Responsibilities

#### Team Leader

- Chair BCMIT meetings.
- Coordinate the activity of the team.
- Achieve a consensus view from team members on the action required
- Adhere to the agreed processes for business continuity crisis management contained in this plan.
- Monitor progress against agreed actions.
- Ensure that Executive Management are regularly informed of current status.

The role of the Deputy Team leader must be kept separate to other roles defined and this individual must not be used to cover other roles specified such as the Business or Recovery Coordinator roles.

#### Crisis Communications Manager

- Co-ordination of crisis communications activity.
- Co-ordination and dissemination of information requirements as appropriate to the nature of the incident.
- Proactively issue agreed statements and information to all key stakeholders.
- Monitor all internal and external communications to ensure consistency.

#### Recovery Coordinator(s)

- Provide initial incident report to the BCMIT at first meeting and regular situation reports thereafter.
- Communicate BCMIT decisions to other internal company teams.
- Provide information relating to the recovery activity for the Crisis Communications Team.
- Monitor all recovery activity and advise BCMIT accordingly.

#### Business Coordinator(s)

- Provide business impact report to BCMIT at first meeting.
- Communicate BCMIT decisions to Business Recovery Teams.
- Inform the BCMIT of business issues as they arise.
- Implement individual department Business Continuity Plans following BCMIT approval.
- Monitor implementation of department Business Continuity Plans and report to BCMIT accordingly.

- Introduce staff cross training in all areas of the department in the event that we are working with a skeleton team of employees
- Complete regular reviews and audits on department procedure documents to ensure that they are up to date and self-explanatory
- Complete quarterly tests on critical tasks using procedure documents and un-trained staff within the team

#### Management Support Team

- Providing administrative and specialist support to the BCMIT.
- Calling out members of the BCMIT when directed by a company director.
- Ensuring that the Management Centre are available with the appropriate equipment and support mechanisms.
- Arranging conference call facilities when required teams cannot meet in one location.
- Following completion of an incident, complete the following reporting procedures.
  - Collect and complete log books
  - Collate and collect all evidence relevant to the event
  - Arrange for debriefs

#### Communications Support Team

- To gather, filter, quantify and log information which comes in and send relevant and accurate information on to the necessary organisations and personnel.
- Act as a focal point for all incoming information and ensure it is complete, accurate and current.
- To be the principal source of information to key stakeholders concerning the emergency and progress of recovery.
- To ensure that positive messages are issued that portray the company and its recovery in the best possible way.
- To keep the BCMIT informed of actions and progress.
- To work with HR to provide a consistent and accurate update to staff in terms of recovery progress and their day-to-day involvement in the recovery process.

#### External press relations and communication

- The Group Marketing Director will manage external press relations and communication. Refer to section 5.1 Communication Plan.

### 3.4 Departmental Business Continuity Teams

Each department within the company has made its own individual assessment (or cross discipline assessment in the case of multiple departments that carry out similar functions such as the various Finance departments) to assess and prioritise its own specific functions. Once an event has been declared by the BCMIT then each department, using its own individually designed plan and working closely in line with the IT Disaster Recovery Plan, will implement its own individual plan to ensure that the highest priority functions are completed first and that the staff required to carry out those functions are available.

For each department there exists documentation stored in a logical hierarchy of:

- Prioritised functions
- Individual tasks required to complete those functions
- Detailed working procedures for each task

This will ensure that in the event of an incident, the primary focus will be given to the restoration of those functions that have the highest impact on the continued operation of the business as a whole. It also ensures that there is an agreed and documented procedure for who needs to be available to work and when in order to support this.

It should be noted that although functions have been prioritised within a general context, specific prioritisation will also be required at the point that the event is declared. This is because priorities will change, to a greater or lesser extent, dependent upon the day of the week, the week of the month and even the month of the year when the event occurs. So, for example, a critical month end function that normally completes on the third working day of a new month and must complete by the tenth working day of a new month will be a higher or lower priority dependent upon whether the incident occurs on the last day of the month or the twelfth day of the month. This on-the-spot assessment that will need to take place is built into the emergency procedure described in section 3 below.

An overarching company level plan also exists within the context of the departmental plans to ensure that:

- There is an absolute focus on company rather than departmental priorities (these could very easily differ if not managed).
- Business Continuity Plans are in-line and compatible with IT Disaster Recovery Plans.
- Critical tasks defined in one department have critical pre-requisite and dependent tasks in another department completed earlier. For example, there is no point in a Finance Department prioritising an invoicing task ahead of the completion of associated transaction collection and processing tasks in Operations.

## 3.5 Emergency Procedures

### Declaring an Incident

The BCMIT will be called together at the request of any company director who deems that an event has occurred or may imminently occur. The company call tree (Appendix D) will be utilised as necessary and a Conference Call facility will be used in the event of team members being in multiple locations.

At the initial meeting the BCMIT will review details of the event or potential event as they are known at that time and, depending upon the type of incident, will call-out additional support as required to make the required assessment or monitor the situation going forward. Additional team members with specific roles as described in section 1.2 above may be assigned at that time as part of this process. In particular, a Recovery Team Coordinator will be appointed to give an overall situation report at subsequent meetings.

A draft agenda for BCMIT meetings is contained in Appendix B

A checklist for BCMIT activities is contained in Appendix C

At this initial meeting or potentially at a subsequent meeting, based upon information as it becomes available and the criteria defined in Appendix A, the BCMIT may decide that the incident is of sufficient severity and potential longevity that it is necessary to invoke the Business Continuity Plan.

### Activating the Business Continuity Plan

Once the decision has been made by the BCMIT to activate the Business Continuity Plan, the BCMIT will convene a meeting of all Departmental Directors. The purpose of this meeting will be to:

- Inform the directors of current incident status.
- Confirm invocation of the plan and any other decisions made by the BCMIT.
- Direct a review of each departmental plan based upon the nature of the specific incident and the timing of the specific incident. As previously outlined, when the incident occurs will determine detailed prioritisation requirements. No additional functions will be added but the requirement to complete specific daily, weekly, monthly or quarterly tasks in a predetermined timescale may alter the prioritisation of some tasks and therefore may require the re-sorting of some activities.

An agreed timescale for completion of this review will be set at this meeting – this should be a maximum of 1 hour.

Ahead of the completion of this review the BCMIT, dependent upon the nature of the incident, may already have taken some immediate decisions such as:

- Invocation of the IT Disaster Recovery Plan.
- Invocation of the Communication Call plan to cascade an initial message to all employees and key stakeholders.

- Initiation of some initial facilities management and procurement activities.

Once these departmental reviews have been completed, all departmental directors will re-convene to confirm any prioritisation changes required to their individual plans. These will need to be assessed by the meeting to identify:

- Impacts to the IT Disaster Recovery Plan – these are unlikely to be necessary as core Oracle system recovery is likely to be at the core of initial recovery efforts and will support most of the critical business functions.
- Any impacts of changes required in one department upon the prioritised tasks of another department. For example, if a task in Finance is escalated up the prioritisation scale then it may well require a higher priority to be placed upon prerequisite activity in Operations.

This meeting will also be used to:

- Communicate latest status on the incident, expected IT recovery times, expected facilities recovery times etc.
- Agree onward communication, specifically to employees both in terms of general information and in terms of specific attendance requirements to initiate and complete tasks within the plan.
- Determine the timing of the next departmental directors meeting.

The BCMIT will remain in place to control the overall management of the incident until it decides that this is no longer necessary. This would typically be until normal operational conditions had been restored but the determination of when this point has been reached will remain within the remit of the BCMIT itself.

At the conclusion of the incident there will be a controlled and managed handover back to normal operations. This will involve:

- Confirmation from each business department that they have returned to normal operational processes.
- A detailed review of the incident, the response to the incident and the implementation of the plan involving all departmental directors and key stakeholders.
- An update of the Business Continuity Plan and any other associated documents such as the IT Disaster Recovery Plan based upon the lesson learnt from execution of the Plan during the incident.

## 4.1 Risk Assessment

Risk assessment is a central component of Business Continuity Planning. There are several reasons for this:

- By identifying the most likely scenarios at a general and specific level that will cause a disruption to business operations it is possible to put preventative and mitigating measures in place and in so doing reduce the risk of major incidents occurring.
- By identifying the most likely causes of a major incident and ranking their likelihood of occurring and the impact if they were to occur it is possible to create a risk rating focus primary planning efforts in the most important areas
- Areas where there are insufficient mitigation strategies and planning are identified

In general terms risks fall into a number of key categories:

### Deliberate Disruption

- Theft
- Arson
- Industrial Action

### Environmental Disasters

- Flood
- Storm
- Fire
- Contamination (Gas and chemicals)

### Loss of Services

- Electricity
- Gas
- Water
- Telecoms

### Loss of Systems

- IT Systems
- IT Infrastructure
- Alarm Systems
- Air Conditioning

### Security

- Cyber Crime
- Loss of records or data
- Disclosure of sensitive information

- IT System failure

Other Potential Scenarios

- Public transport disruption
- Neighbourhood hazard
- Health and Safety Regulations
- Negative publicity
- Legal Issues

These risks, as they affect Radius Payment Solutions, have been documented and assessed within a Risk Assessment Matrix that forms Appendix E of this document.

## 5.1 Communications Plan

Within the disrupted and extraordinary circumstances that will follow on from the declaration of a major incident it is essential that both internal and external communication is timely, appropriate and consistent. For this reason, communication needs to be very well managed through a central management team.

### Communication to Employees

In general terms communication to employees will be managed primarily through the HR team working in close harmony with business line managers.

Detailed communication messages have not been developed as part of this plan as it is felt that each incident may require a different style, tone and content but in general communication will address the following primary areas:

- Confirmation that the employee has not suffered any form of injury as part of the incident.
- Details of a safe alternative, working environment as required.
- Confirmation that facilities will be available to ensure employee safety.
- Confirmation of actions ongoing to alleviate the current problem at hand.
- Confirmation of how and when further information will be provided.
- Confirmation of the person/team that will provide a single point of contact for inquiries.
- Confirmation of staff evacuation and transportation plans if necessary.
- Reassurance that plans are in hand to restore normal operations, that jobs are secure etc.

As the recovery progresses it is likely that different groups of employees will be required at different times, outside of their normal working hours. Working in close cooperation with the BCMIT and the various recovery teams working schedules will need to be developed and communicated to ensure that the right people are available as required.

### Communication to Third Parties

In general terms communication to third parties specifically relating to the incident will be managed primarily through the departmental directors who will disseminate the agreed message as required. Appendix D of this plan contains details of all key and day-to-day departmental contacts and this will be used to facilitate initial communication.

Detailed communication messages have not been developed as part of this plan as it is felt that each incident may require a different style, tone and content but in general communication will address the following primary areas:

- Alternative facilities have been made available to facilitate continued operations with minimal disruption.



- Radius Payment Solutions is able to continue the exceptional, expected service to our clients.
- Radius Payment Solutions is able to continue to meet all financial, legal, and contractual obligations.
- Radius Payment Solutions is working to alleviate the problem and will provide continuous updates on the situation.
- Provision of a single point of contact for any ongoing inquiries.
- If normal email communication channels are down, as a result of the major incident, external email broadcasting tools will be utilised to facilitate internal and external communications. (A database of internal and customer email addresses should be kept in the Cloud to access in the event a major incident preventing the company to access email data from our internal systems)
- The Group Marketing Director will manage external press relations and communication. The Group Marketing Director should handle all queries from the press centrally. For all press enquiries, where possible, a formal written press release should be supplied, that has been signed off in advance by the BCMIT. If necessary, the company's social media network and internal web channel will be used to communicate and update relevant groups about the major incident and the latest developments. The Group Marketing Director will manage this, with the assistance of the group's appointed Social Media agency.
- Where possible, a message should be added to the company's main inbound telephone numbers, giving a brief update of the major event if a caller is put on hold.

## 6.1 Testing

It is important that the Business Continuity Plan is tested and maintained so that the document remains relevant and reliable for use in the event of a disaster. There are a number of ways of doing this up to and including a full invocation of the plan but the need to test also needs to be offset against the business disruption caused by the testing process. For this reason, full plan invocation is not a part of Radius Payment Solutions approach to BCP testing. Instead other approaches are adopted. These include:

### Scenario testing

This involves stepping through the recovery procedures to ensure they remain relevant to current operations against hypothetical situations.

### Transferring systems to an alternate site

This involves confirming the ability to transfer IT operations to alternate sites. The goal of the testing is to ensure that the systems can be reproduced within the required time frames.

### Structured Walk-through

This is an evaluation of the Business Continuation Plan designed to expose errors or omissions without incurring the level of planning and expenses associated with performing a full operations test.

Scenario and walkthrough testing occur on an annual basis as part of the cycle of maintenance activities that ensure that the plan is fully up to date and reflective of the business operations and any changes that have occurred. Any changes or omissions highlighted are then built back into each level of the plans as appropriate and are signed off and approved by the relevant departmental director to confirm that they have the necessary level of focus and are fit for purpose.

## 7.1 Maintenance

The Business Continuity Plan needs to be constantly relevant and up to date on the basis that an incident requiring invocation could occur at any time. This is achieved in a number of ways:

### On-going updates

As and when procedural changes are made within departments they are directed to review and update their procedures both for day-to-day control and management and also for the purposes of the Business Continuity plan. All BCP documents (other than those that contain personal data) are held in a central network repository, accessible by all departments and also offsite in a hard copy format.

### Annual Review

There needs to be an annual review of all BCP documentation. Ultimately this involves sign-off and approval of all documentation at a departmental level by the department director to confirm that all their documentation is up-to-date and relevant.

As part of this review, scenario and walkthrough testing are carried out to ensure not only that each departmental plan is fit for purpose but also to ensure that inter-departmental dependencies have been accounted for and that the overall company plan is consistent and appropriate.

Any outcomes from this testing are passed back into the plan with suitable revision notes.

Versions of the plan are held as follows:

- Hard copies held at the homes of the CEO, Managing Director, CIO, CFO, HR Director & Operations Director.
- Each Departmental Director holds a copy on an encrypted USB Memory stick.

Network version held as described above

## Appendix A – Incident Escalation Criteria

Radius Payment Solutions' Incident Management response is governed by a set of escalation criteria that categorise the severity of an incident

Severity		Time Elapsed	Action
1	A service or building is totally unavailable. No immediate workaround is available.  e.g. loss of all or part of a building, denial of access to a building or major service outage	1 hour	Internal service provider (e.g. IT) provides an assessment of incident status.  Impacted director(s) and leader of the BCMIT decide on the need to convene the BCMIT.
2.	A service is significantly impaired; one or more functions are unavailable. Potential for major loss of service. A workaround may be available.  E.g. denial of access to building for <24 hours, loss of power to building, one or more core systems unavailable.	1 hour	Internal service provider (e.g. IT) provides an assessment of incident status.
		3 hours	With service still unavailable BCMIT members alerted to be on standby. Incident monitored hourly by director of internal service provider department and if disruption is likely to be >24 hours, the incident will be classified as Severity 1. BCMIT will meet.
3.	Problem causing minimal impact or creating a risk to a service  e.g. non-core system unavailable	1 hour	Internal service provider (e.g. IT) provides an assessment of incident status.
		24 hours	Incident reviewed by internal service provider
		48 hours	If the problem is still outstanding and no suitable action plan is available, incident to be reported to the BCMIT leader

## Appendix B - BCMIT Agenda

### Business Impact Report

- Assess damage and impact upon Radius Payment Solutions
- Obtain details of injuries and fatalities if any
- Assess situation relating to service provision
- Arrange for regular updates on damage assessment to be available
- Ensure that departmental directors and other key stakeholders, including Key Clients, are notified of any decisions

### Recovery Team Report

- People impact
- Workplace impact
- IT impact
- Key Client/Stakeholder impact
- Communications
- Monitor progress of salvage and restoration of damaged site
- Monitor and control expenditure

### Communications – Impact / Activity

- Clients
- Staff
- Media
- Stakeholders
- Agree communications to stakeholders
- Monitor press and media output

### Next steps

- Further information required
- Decisions (Facts, issues and plan)
- Incident escalation
- Next meeting

## Appendix C - BCMIT Checklist

No	Activity	Tick Box
1.	Check that sufficient members of the Team are present. If not call out other members / deputies or arrange a conference call	
2.	Assess damage and impact on Radius Payment Solutions	
3.	Obtain details of injuries and fatalities if any	
4.	Assess situation relating to service provision	
5.	Arrange for regular updates on damage assessment to be available	
6.	Ensure that all departmental directors and key stakeholders are notified of any decisions	
7.	Agree communications to various stakeholders	
8.	Monitor press and media output	
9.	Monitor progress of salvage and restoration of damaged site	
10.	Monitor and control expenditure	