

Dated

2012

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**emPSN Services - Customer Terms and Conditions**

***Framework SP – KCOM Group PLC***

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relating to the provision of telecommunications services and/or application services

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## emPSN Customer Terms and Conditions

### BACKGROUND

- (A) The following Customer Terms and Conditions are the terms and conditions upon which the Supplier provides Services to a Purchaser pursuant to an Order Form.
- (B) An Order Form, these Customer Terms and Conditions and any applicable Call-Off Notice, together form the Customer Contract for the purposes of the relevant Framework Agreement.
- (C) In the case of a Purchaser who has completed a **Member** Order Form, the Purchaser has become a member of SCo, has completed a Deed of Adherence, and has secured the signature of a duly authorised representative of SCo on the Order Form (and hence the agreement of SCo to be a party to the Customer Contract).
- (D) In the case of a Purchaser who has completed a **Customer** Order Form, the Purchaser has secured the signature of a duly authorised representative of SCo on the Order Form to confirm SCo's agreement to a (bipartite) Customer contract between the Purchaser and the Supplier.

### OPERATIVE PROVISIONS

#### 1. DEFINITIONS & INTERPRETATION

- 1.1 Unless the context requires otherwise, the following words shall have the following meanings in the Customer Contract:

**"Access Codes"** means any access code, number, user ID or password issued by the Supplier to the Purchaser from time to time in a dialling plan or otherwise to enable the Purchaser to use the Services

**"Additional Service/s"** any Services purchased by the Purchaser pursuant to a Call-Off Notice including (as the context permits) the purchase of:

(a) additional volumes of Services already purchased;

(b) a variation or an addition to an existing Service which is offered under the relevant Framework Agreement;

(c) an entirely new Service which is available under the relevant Framework Agreement

**"Agency Agreement"** the provisions contained in clause 1.4 and schedule 5 of the SCo Rules pursuant to which each SCo Member appoints SCo as its agent to carry out the Appointed Tasks and other

	<p>matters</p>
<b>"Application Services"</b>	<p>has the meaning given to it in the relevant Framework Agreement</p>
<b>"Appointed Tasks"</b>	<p>has the meaning given to it in the relevant Framework Agreement</p>
<b>"Authorised Site"</b>	<p>a site as detailed in the Order Form at which the Services will be provided to (or used by) a Customer</p>
<b>"Business Day"</b>	<p>a day (other than a Saturday or Sunday) on which clearing banks in London are open for a full range of banking transactions</p>
<b>"Call-Off Notice"</b>	<p>a notice in accordance with the pro-forma in Schedule 1 given by the Purchaser (or by SCo for and on behalf of an SCo Member):</p> <p>(a) ordering selected Additional Services; and/or</p> <p>(b) changes to the Authorised Sites at which such Services are being provided</p>
<b>"Charges"</b>	<p>the Charges payable by a Purchaser for a Service which are as detailed in the Order Form (as may amended from time to time pursuant to a Call-Off Notice) and which are calculated by reference to the prices and pricing formulae set out in the Price Book appended to the relevant Framework Agreement to the extent applicable to the specific design of the Services being provided under this Customer Contract and all of which are subject to variation in accordance with clause 6</p>
<b>"Code Of Connection, or CoCo"</b>	<p>the agreement, as set out in the Code Template, setting out the obligations and requirements for PSN Customers wanting to participate in and connect Authorised Sites to the emPSN, together with all documents annexed to it and referenced within it</p>
<b>"Code Template"</b>	<p>the template used to create the Code of Practice, Code of Interconnection and/or Code of Connection (as applicable) in respect of a particular PSN Service</p>
<b>"Commercially Sensitive Information"</b>	<p>information of a commercially sensitive nature relating to the Supplier, its sub-contractors, its suppliers, its IPR or its business or which, if disclosed by the Purchaser, would cause the Supplier significant commercial disadvantage or material financial loss</p>

<b>"Confidential Information"</b>	<p>all information (whether verbal or in writing or on magnetic or any other media) which is marked as such or which should by its nature be reasonably understood to be confidential by the other party, or is otherwise not publicly known which is used in relation to the business, customers, or financial affairs of any party including information (without limitation) relating to:</p> <p>(a) the contents of and the matters contemplated in this Customer Contract;</p> <p>(b) Intellectual Property Rights, computer systems and computer software;</p> <p>(c) projects, strategy, product launches, business development or planning, commercial relationships and negotiations;</p> <p>(d) the marketing of services and/or equipment including customer names and lists, sales targets and statistics;</p> <p>(e) products, equipment, services, discoveries, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, samples, flow charts, data, disks, diskettes, tapes; and</p> <p>(f) other technical, financial or commercial information</p>
<b>"Commencement Date"</b>	the date upon which the provision of a Service actually commences
<b>"CPE"</b>	Customer Premises Equipment
<b>"Customer"</b>	any party other than an SCo Member who purchases Services under a Framework Agreement
<b>"Customer Contract"</b>	the contract entered into between the Supplier and the Purchaser (and SCo where the Purchaser is an SCo Member) for the provision of Services pursuant to the terms of the relevant Framework Agreement and which comprises of the Order Form and these Customer Terms and Conditions as may be varied from time to time pursuant to a Call-Off Notice
<b>"Customer Environment"</b>	the technical and operational situation(s) and environment(s) of the Customer in which the Services will be deployed and used, including the networks, systems, processes and staff of the Customer (and of any organisations for

	which the Customer is responsible in the context of the Services as PSN Services (for example where the Customer has signed a Code of Connection for itself and on behalf of other PSN Service customers)
<b>"Customer Terms and Conditions"</b>	the terms and conditions in clauses 1 to 27 together with the Schedule hereto
<b>"Data Protection Laws"</b>	the Data Protection Act 1998 and any associated data protection legislation and/or regulations
<b>"Deed of Adherence"</b>	a deed entered into by a Customer who has completed a Member Order Form confirming adherence to the SCo Members Agreement
<b>"Deferred Charges"</b>	any Charges specified as such in any Order Form or Call-Off Notice
<b>"Direct Network Service"</b>	a PSN Compliant network with direct connectivity to the GCN
<b>"Direct Network Service Provider" or "DNSP"</b>	a PSN Service Provider that provides a Direct Network Service
<b>"Design &amp; Specification"</b>	any technical design solution to be implemented by the Supplier to connect the Authorised Sites to the emPSN, and to commence and to deliver the Services as and from the Commencement Date as the same may be described within, or attached to the Order Form
<b>"Effective Date"</b>	the date on which the Order Form is executed in accordance with the terms of the relevant Framework Agreement and upon which the Customer Contract is formed
<b>"emPSN Services"</b>	All or any Core Services, Access Services or Application Services provided or made available to Customers pursuant to a Framework Agreement
<b>"Framework Agreement/s"</b>	the framework agreement to which SCo is a party and under which the Order Form for Services is executed and the Customer Contract formed
<b>"Framework Agreement Termination Date"</b>	is defined in clause 4.3
<b>"Force Majeure"</b>	any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of

terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier, its personnel or any other failure in the Supplier's or a sub-contractor's supply chain

**"GCN Services"** services relating to connections with and services relating to the GCN provided by a GCNSP

**"GCN Service Providers" or "GCNSPs"** providers of GCN Services

**"Government Conveyance Network" or "GCN"** the wide area network currently being established by BT Group PLC for Central Government which will interconnect PSNs provided by multiple suppliers (including the emPSN) and give access to Central Government services

**"Information"** has the meaning given under section 84 of the Freedom of Information Act 2000

**"Intellectual Property Rights" or "IPR"** any patents, trademarks, service marks, trade names, registered designs, designs, copyrights, mask rights, semi-conductor topography rights and other forms of intellectual or industrial property, know-how, inventions, formulae, confidential or secret processes and trade secrets, all rights of whatsoever nature in computer programs, firmware, micro-code and other computer software and data, and any other protected rights and assets including the goodwill relating thereto, and whether or not registered or registrable

**"Infrastructure Agreement"** an agreement made on 30<sup>th</sup> March 2012 between emPSN Infrastructure Limited (1) and the Supplier (2) relating inter alia to the provisioning, operation, and management of the emPSN;

**"Insolvency Event"** the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity:

the entity passing a resolution for its winding-up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;

the filing of a notice of intention to appoint an administrator of or, the filing of a notice of appointment of an

administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or levying distress over, or selling, the whole or any part of the entity's undertaking, assets, rights or revenue;

the entity proposing to enter into, or entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors;

the entity being unable to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

the entity proposing to enter into, or entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors,

however, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event, provided that the Supplier has been informed of, and has consented to, the implementation of such reconstruction or amalgamation. The Customer will act reasonably in consenting to the implementation of such reconstruction or amalgamation

**"Law"**

any applicable law, statute, bylaw, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body

**"Migration Plan"**

any plan attached to the Order Form which describes the method, sequence and timetable which will be followed by the Supplier to provision, test, accept and make available the Services; and the Suppliers plan to carry out the migration of the Purchaser and the Authorised Sites (and all end users) to the Services from the relevant legacy services



<b>"Minimum Service Term"</b>	is defined in clause 4.2
<b>"Member Order Form"</b>	An Order Form completed by a purchaser of emPSN Services who is (or who intends to become as at the date of this Customer Contract) a member of SCo and (by signing a deed of adherence) a signatory to the SCo Rules
<b>"Netco"</b>	<b>KCom Group PLC</b> (registered company number 2150618) whose registered office is at 37 Carr Lane, Kingston upon Hull HU1 3RE
<b>"Order Form"</b>	an order form (being either a Member Order Form, or a Customer Order Form) which follows the pro-forma in the relevant Framework and which when duly completed forms part of a Customer Contract
<b>"Personal Data"</b>	the meaning given to it by section 1(1) of the Data Protection Act 1998
<b>"Parties"</b>	the parties to the Customer Contract being (i) the Supplier; (ii) the Purchaser and (iii) SCo (but only where the Purchaser is an SCo Member)
<b>"Planned Commencement Date"</b>	the date when a Service is scheduled to commence as detailed in the Order Form
<b>"Project Timetable"</b>	any timetable for provisioning, testing, and the making available of the Services; and for the migration of the Purchaser and the Authorised Sites (and all end users) to the Services from the relevant legacy services all as may be described in the Migration Plan or on the Order Form
<b>"PSN"</b>	public services network
<b>"PSN Authority" or PSNA"</b>	the Governance body of the Public Sector Network, an office of the Cabinet Office
<b>"PSN Compliance Certificate"</b>	the certificate awarded by the PSNA to indicate PSN Compliance Certification
<b>"PSN Compliance Certification" and</b>	the certification by the PSN Authority of an environment or service, confirming that the PSNA recognises that a customer or service provider is capable of achieving and maintaining PSN Compliance for that environment or service
<b>"PSN Compliant"</b>	continuing and ongoing adherence to the rules, conditions and obligations prevailing for the time being as identified in a signed Code, or where there is no such signed Code by

	reference to the equivalent published standard applicable as at the date of service provision, and as the same is updated from time to time
<b>"PSN Operating Model"</b>	the Cabinet Office document of the same name as may be updated from time to time
<b>"PSN Service"</b>	a service that is offered to the PSN marketplace by a PSN Service Provider, for which a PSN Compliance Certificate has been awarded by the PSNA (including Direct Network Services but excluding GCN Services)
<b>"PSN Service Provider"</b>	an organisation that is supplying or is approved to supply PSN Services in accordance with the CoP or CoICo (including DNSPs but excluding GCNSPs)
<b>"PSN Supply Agreement"</b>	a contract to deliver PSN Services
<b>"Purchaser"</b>	the SCo Member or Customer named on the Order Form who is procuring the Services and to whom the Services will be provided
<b>"Purchaser Dependency"</b>	those obligations of the Purchaser which are set out or are described in the Migration Plan
<b>"Regulatory Body"</b>	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Customer Contract or any other affairs of the Purchaser and "Regulatory Body" shall be construed accordingly
<b>"Request for Information"</b>	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations
<b>"Rightsizing Clause"</b>	Clause 12 of the Infrastructure Agreement which sets out the circumstances in which NetCo, working with ICo, and subject to the customer safeguards therein (and repeated in clause 8.2 hereof), may implement variations in one or more of the emPSN, the Price Book set out in the relevant Framework Agreement, the descriptions of the Services set out in the relevant Framework Agreement, and the Service Levels, and/or the placing of restrictions on availability or the withdrawal of stipulated Services
<b>"SCo"</b>	emPSN Services Limited (formerly embc Procurement Limited) (registered company)

number 05882746) whose registered office is at Eversheds House, 70 Great Bridgewater Street, Manchester M1 5ES

**“SCo Member”**

the member organisations of SCo for the time being and which comprise or include on the Effective Date Derbyshire County Council, Leicester City Council, Leicestershire County Council, Lincolnshire County Council, Northamptonshire County Council, Nottingham City Council, and Rutland County Council

**“SCo Rules”**

an agreement (in the form of a set of rules) entered into by the SCo Members prior to the Effective Date (but relating to the period on and from the Effective Date) (or to which SCo Members who join as SCo Members after the Effective Date agree to adhere) concerning the governance of SCo; and incorporating the Agency Agreement

**“Service Credits”**

the compensation payments payable to the Purchaser in the event of failure by the Supplier to meet the Service Levels, particulars of which are set out in Schedule 8 of the relevant Framework Agreement

**“Service Development Order” or “SDO”**

an order formulated and issued pursuant to a Framework Agreement which details changes, variations and additions to be made to the Services

**“Service Levels”**

the agreed service standards against which the Supplier has agreed to provide the Services as detailed in the applicable Framework Agreement

**“Services”**

(a) the services purchased by the Purchaser using an Order Form; and

(b) any Additional Services purchased under a Call-Off Notice (as applicable),

all of which are described more fully under the relevant Framework Agreement and as may be amended from time to time pursuant to a Call-Off Notice

**“Service Term”**

the term during which the Services are to be supplied as defined in clause 4.2

**“SP”**

one of the following parties as the context permits:

(a) **British Telecommunications PLC** (registered company number 1800000) whose

registered office is at 81, Newgate Street, London EC1A 7AJ;

(b) **Capita Business Services Limited** (registered company number 2299747) whose registered office is at 71 Victoria Street, London, SW1H 0XA;

(c) **Virgin Media Business Limited** (registered company number 1785381) whose registered office is at Media House, Bartley Wood Business Park, Hook, Hampshire RG27 9UP

(d) **Udata Infrastructure UK Ltd** (registered company number [ ]) whose registered office is at Premier House, 1-7 Warren Road, Reigate, Surrey RH2 0BE

but provided, with respect to party, that they have entered into a Framework Agreement with SCo

**“Special Projects”** has the meaning given to it in the relevant Framework Agreement

**“Supplier”** the supplier detailed as such on the Order Form, being one of Netco or an SP depending upon the Framework Agreement under which the Services are being purchased

**“Supplier Equipment”** the hardware, computer and telecoms devices and equipment supplied by the Supplier or its sub-contractors (excluding any CPE) for the provision of the Services

**“Term”** is defined in clause 4

**“Transition Tasks”** has the meaning given to it in the relevant Framework Agreement

1.2 The following notes of construction and interpretation apply to each and every part of the Customer Contract:

1.2.1 references in the Customer Contract to “writing” shall include typewriting, printing, photography, electronic mail (e-mail), and facsimile messages and any other mode of reproducing words in a legible and non transitory form;

1.2.2 the singular shall include the plural and vice versa and reference to natural persons shall include bodies corporate;

1.2.3 references in the Customer Contract to clauses, schedules, or paragraphs are references to clauses, schedules, or paragraphs of the Customer Contract unless otherwise stated;

- 1.2.4 any covenant by either party not to do or omit to do any act or thing shall in either case be deemed to include an obligation not to permit or suffer such act or thing to be done or omitted;
- 1.2.5 except where otherwise stated, references to any legislation statute rule or order shall be deemed to include every statutory extension, modification, amendment, re-enactment or replacement of it for the time being in force and every bye-law, statutory instrument, rule, order, notice, direction and regulation from time to time made or in force under it;
- 1.2.6 the headings to the clauses, schedules and paragraphs of the Customer Contract are for ease of reference only and shall not be taken into account in its construction or interpretation;
- 1.2.7 references in the Customer Contract to a "person" include individuals, bodies corporate, unincorporated associations, partnerships, joint ventures, government departments and agencies, and references to any of the same include the others;
- 1.2.8 Any reference in the Customer Contract to a subsidiary or holding company shall be construed in accordance with section 736 of the Companies Act 1985 (as amended).
- 1.2.9 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Customer Contract or any part of it;
- 1.2.10 any phrase in the Customer Contract introduced by the term "include", "including", "in particular", "for example" or any similar expression will be construed as illustrating and will not limit the sense of the words preceding that term; and
- 1.2.11 save in respect of the Charges, if an amount or sum is expressed to be "subject to indexation" at a point in time, it shall be adjusted by reference to the percentage change in the Consumer Prices Index over the most recent twelve (12) months for which published data is available at that point in time.

## 2. **MIGRATION PLAN**

- 2.1 The Supplier undertakes that it will following the Effective Date implement the Migration Plan following the detail and methods set out therein; and will commence carry out and complete (or will procure and/or manage the same to the extent that steps and tasks are to be performed by third parties) all the steps, and the tasks described in the Migration Plan and as are otherwise necessary to connect the Authorised Sites of the Purchaser to the emPSN, and to establish and commence the provision and delivery of the Services on the Planned Commencement Date.
- 2.2 The Supplier undertakes that it will commence carry out and complete all the steps described in the Migration Plan so as to commence the Services, and to migrate the Authorised Sites of the Purchaser onto the emPSN:
  - 2.2.1 in accordance with the Design & Specification in all material respects;
  - 2.2.2 using all due diligence, skill and care;

- 2.2.3 using good quality materials techniques and standards, and appropriate industry practices;
- 2.2.4 fully in accordance with the Project Timetable, and the Planned Commencement Date.
- 2.3 The Supplier undertakes to follow the testing & acceptance procedure, and the arrangements for the bringing into service of the Services as are described in Part 2 of the Migration Plan.
- 2.4 The Supplier shall be granted a reasonable extension of time in the event that its failure to comply with the timescales in the Migration Plan or to meet the Planned Commencement Date is demonstrated to result solely from the Purchaser's failure to comply with a Purchaser Dependency ('Relief Event'), provided the Supplier has:
  - 2.4.1 notified the Purchaser as soon as possible of any failure by the Purchaser to comply with such Purchaser Dependency and the existence of the Relief Event (or, where such Relief Event is reasonably foreseeable in the circumstances, with such advance written notice as was reasonably practicable in the circumstances so as to prevent that Relief Event from arising);
  - 2.4.2 informed the Purchaser in writing of the likely consequences of the Relief Event, where foreseeable, in advance of those consequences occurring, and where those consequences were not reasonably foreseeable, as soon as practicable after their occurrence; and
  - 2.4.3 used best endeavours to comply with and meet the relevant timescales notwithstanding the occurrence of the Relief Event, and has mitigated (or will mitigate) as far as reasonably possible the impact of the Relief Event on its ability to comply with the timescales in the Migration Plan and to meet the Planned Commencement Date.
- 2.5 the Supplier shall only be given an extension of time under clause 2.4 in respect of those obligations of the Supplier that are set out in the notification pursuant to clause 2.4.1 and which are directly affected by the Relief Event.
- 2.6 Where the Supplier has been given an extension of time under clause 2.4 in respect of certain obligations, the Purchaser shall reimburse the Supplier for any additional costs it incurs in carrying out its obligations under this Customer Contract that the Supplier can demonstrate result solely from the relevant extension of time or the Purchaser's underlying failure to comply with any Purchaser Dependency (including in particular the reimbursement of any additional circuit rental costs incurred by the Supplier).
- 2.7 Where the Supplier is required to install any circuit or service (or procure the installation of any circuit or service by a third party communications service provider) in order to implement the Migration Plan or provide any Services, the parties acknowledge that the Migration Plan and the terms relating to the provision of any Services under this Customer Contract have been agreed on a "subject to survey" basis. Consequently, the parties agree that:
  - 2.7.1 If the Supplier (or the relevant third party communications service provider) identifies any unforeseen circumstances in a site survey that will increase the installation costs for any circuit or service, the Supplier shall be entitled give the Purchaser notice of the amount of

such increased costs. The Purchaser shall then be entitled to either (firstly) confirm that it is happy to proceed with the installation of the relevant circuit or service, in which event the Supplier shall be entitled to make an additional charge to the Purchaser that is equal to the amount of the additional installation costs incurred; or (secondly) cancel the provision of the relevant circuit or service as part of the Services, in which event the parties shall (acting reasonably) agree any consequential changes in the design of the Services and any related adjustment to the amount of the Charges.

- 2.7.2 If the Supplier (or the relevant third party communications service provider) identifies any unforeseen circumstances in its site survey that will cause a delay in the installation of the circuit or service, the Supplier shall be granted a reasonable extension of time in the event that its failure to comply with the timescales in the Migration Plan or to meet the Planned Commencement Date or to meet any other date for delivery is demonstrated to result solely from such cause.

The Supplier agrees that it shall always use all reasonable endeavours to avoid or minimise the amount of any increased installation costs incurred by it or any third party communications service provider. The Supplier agrees that it shall always use its reasonable endeavours to avoid or minimise the amount of any delay to the installation of any circuit or service. The Supplier also agrees that it shall provide the Purchaser with any information and copy documentation that are reasonably required by the Purchaser to verify the amount of any increased installation costs or delay incurred by the Supplier in relation to the application of this clause 2.7.

### **3. PROVISION OF SERVICES; SERVICE CREDITS; CPE**

- 3.1 These Customer Terms and Conditions are incorporated into any Order Form which is executed in accordance with the terms of the relevant Framework Agreement and shall govern the provision of Services under the Customer Contract which is formed as a result.
- 3.2 The Supplier will, in consideration of payment by the Purchaser of the Charges, as and from 00.01 hours on the applicable Planned Commencement Date and thereafter continuously during each Service Term, provide the Services to the Purchaser for use by it at the Authorised Site/s.
- 3.3 The Supplier undertakes to the Customer to provide the Services:
- 3.3.1 using all reasonable endeavours to ensure that they are available 24 hours per day on each day of the year, excluding only Force Majeure; and
  - 3.3.2 ensure that it provides the Services, to at least the availability and service level standards described in the Service Levels;
  - 3.3.3 with all due diligence skill and care, and good communications industry practice;
  - 3.3.4 using suitably qualified, trained and skilled personnel;
  - 3.3.5 in compliance with Law; and

- 3.3.6 in all respects fully in accordance with the Customer Contract, and with the relevant provisions in respect of the Services contained in the applicable Framework Agreement which shall be deemed to be incorporated herein.
- 3.4 Failure to deliver the Services to the standard described in the Service Levels will result in Service Credits accruing to the Purchaser.
- 3.5 The basis of calculation of any Service Credits due will be as set out in the relevant Framework Agreement; and the management of any entitlement of the Purchaser to Service Credits under a Customer Contract will:
  - 3.5.1 where the Purchaser is an SCo Member, be managed for and on behalf of the SCo Member by SCo in accordance with the relevant Framework Agreement; and
  - 3.5.2 where the Purchaser is a Customer, be managed by the Purchaser itself and the Supplier shall make available to the Purchaser such information on Service Levels and Service Credits as is made available to SCo under the Framework Agreements, in order for the Purchaser to assess its own eligibility for Service Credits.
- 3.6 Notwithstanding any role that SCo plays in the management of the entitlement to Service Credits, all Service Credits shall be payable directly to the Purchaser as a credit against future invoices (or in the event that no further invoice is issued, payable on demand to the Customer).
- 3.7 Service Credits shall be the sole and exclusive remedy for failure by the Supplier to comply with the relevant Service Levels, save in circumstances where:
  - 3.7.1 no Service Credits are attributable to a particular Service Level;
  - 3.7.2 the failure results from wilful default; or
  - 3.7.3 the agreed cap on Service Credits in clause 10 has been exceeded.
- 3.8 Risk in any CPE supplied as part of the Services will pass to the Customer upon completed installation of it at the Authorised Site.
- 3.9 Title in the CPE shall pass to the Purchaser upon payment to the Supplier of the relevant Charges for such CPE. The Purchaser shall not rent, lease, sell, charge, assign or otherwise deal with the CPE until the Supplier has received payment in full.
- 3.10 The Supplier does not make any warranty, representation or promise in respect of CPE beyond that given by the manufacturer of the CPE.

#### 4. **THE TERM**

- 4.1 The Customer Contract shall commence on the Effective Date and (subject to early termination in accordance with the Customer Contract) shall end on the expiry or termination of all Service Terms (the "Term").
- 4.2 Subject to early termination in accordance with the Customer Contract, the term applicable to each Service shall commence on the Commencement Date for that Service and shall be provided for either the fixed term, or for the minimum period ("Minimum Service Term") as specified in the Order Form applicable to



that Service and (in the case of a Minimum Service Term) continuing thereafter until:

4.2.1 terminated by notice in accordance with paragraph 9.3 or 9.4 of these Customer Terms & Conditions; or

4.2.2 such time as it is extended by a Call-Off Notice

(the "Service Term")

4.3 For the avoidance of doubt, following the termination or expiry of the relevant Framework Agreement ("Framework Agreement Termination Date"):

4.3.1 any proposed new Customer Contracts and/or Call Off Notices in relation to existing Customer Contracts shall not have legal effect;

4.3.2 no existing Service Term may be extended.

## 5. **'CALL OFF' OPTION**

5.1 The parties acknowledge that a degree of change will be necessary from time to time in the contents and detail of the Services to accommodate: growth or reduction in capacity demand from the Purchaser; other changes in the requirements of the Purchaser; the Purchaser's prospective need for Additional Services; and to facilitate changes to its Authorised Site, including to accommodate moves, changes, additions and subtractions from the Purchaser's estate.

5.2 The Purchaser shall, under its Customer Contract have the right to require changes in respect of the matters detailed in clause 5.1 at any time (prior to the Framework Termination Date) by serving a Call-Off Notice on the Supplier.

5.3 Any Charges for variations to be effected by way of by Call-off Notice shall be calculated by reference to the prices for such, changes, additions, subtractions or variations as set out in the relevant Framework Agreement.

5.4 Upon the giving to the Supplier of a Call-Off Notice in accordance with clause 5.2, the Customer Contract shall be supplemented and/or amended by the terms of such Call-Off Notice in accordance with the terms therein subject only to;

5.4.1 satisfactory compliance with and completion of any NDO, SDO, CR or TCR procedure which is required under the relevant Framework Agreement and or the Infrastructure Agreement (including for the avoidance of doubt any NDO, SDO, CR or TCR procedure which is required to remedy any capacity or design constraint in the emPSN which needs to be remedied to allow the Supplier to provide the relevant Service);

5.4.2 agreeing the appropriate Charge for any additional Services to the extent that they cannot be calculated in accordance with the prices and the pricing formulae set out in the Price Book; and

5.4.3 the Purchaser agreeing to pay an amount to allow the Supplier to recover any early termination charges that the Supplier will unavoidably incur in terminating any third party circuit or service that is no longer required for the purpose of providing the Services as a result of the changes to be made under the Call-Off Notice subject to

such charges being capped at a maximum of the recurring charges for one period of twelve months, or such other lower cap as the Supplier is able to agree both with any relevant third party circuit or services provider, and agree in writing with the Purchaser.

- 5.5 The Supplier will proceed as soon as practicable to carry out and complete the instructions set out in any Call-Off Notice and in any event within any reasonable deadline stipulated therein ; including the commencement and supply of any Additional Services indicated in the Call-Off Notice. Such Additional Services shall from the commencement of their provision, be supplied in accordance with any applicable Service Levels.

## 6. **CHARGES**

- 6.1 Unless agreed to the contrary in an Order Form or Call-Off Notice (as applicable), the Charges shall be payable by the Purchaser to the Supplier as follows;

6.1.1 on the Commencement Date for the relevant Services in relation to any one off connection or installation charges;

6.1.2 quarterly in advance with effect from the Commencement Date for the relevant Services in relation to any Deferred Charges; and

6.1.3 quarterly in advance with effect from the Commencement Date for the relevant Services in relation to any recurring service or rental charges.

- 6.2 The Supplier agrees and confirms that the pricing set out in the relevant Framework Agreement contains sufficient detail as to the prices of the individual elements of the Services to enable it to handle many of the variations to the Charges which result from changes triggered by a Call-Off Notice; and that the Charges may not be reviewed or varied except;

6.2.1 in the circumstances, and on the dates specified in clause 10 (Charges) of the relevant Framework Agreement; or

6.2.2 By reference to the Rightsizing Clause.

- 6.3 The Supplier agrees that;

6.3.1 any review of the Charges in accordance with the relevant Framework Agreement may result in Charges payable by a Purchaser either increasing or decreasing in whole or in part or parts as and from the effective date of any such review.

6.3.2 any variation in the Charges which arise from the Rightsizing Clause may result in Charges payable by the Purchaser increasing as and from the date which falls three months after notice of the increase is given to the Purchaser subject to and in accordance with clause 8.

For the avoidance of doubt, except where otherwise permitted under the Framework Agreement, there shall be no increase in the Charges for a Service during a fixed term, or during a Minimum Service Term.

- 6.4 All Charges exclude VAT (or any similar United Kingdom sales tax), unless otherwise stated. VAT, where applicable, shall be shown on each invoice as a separate charge which shall be paid additionally at the rate prevailing at the tax point (being the date of the invoice).

- 6.5 Payment terms in respect of all sums payable under the Customer Contract by the Purchaser are 30 days from receipt by Purchaser of each invoice, and the Purchaser agrees that payment of such sums will be made within 30 days.
- 6.6 Save in respect of any sums which are the subject of a bona-fide dispute, if any sum payable by the Purchaser to the Supplier under the Customer Contract is not paid when due then, without prejudice to the Supplier's other rights under the Customer Contract, that sum will bear interest from the due date until payment is made in full both before and after any judgment, at Lloyds TSB Bank Base Rate plus 2% from time to time. The parties agree that this clause 6.6 is a substantial remedy for late payment of any sum payable under the Customer Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 6.7 If any invoice submitted by the Supplier which is payable by the Purchaser has not been calculated correctly or if the invoice contains any other error or inadequacy, the Purchaser shall be entitled to withhold payment in respect of the portion of such invoice that is in dispute and shall notify the Supplier as soon as reasonably practical, and in any event within 20 Business Days. For the avoidance of doubt, the portion of the invoice that is not in dispute shall be paid in accordance with the payment terms in the Customer Contract. The parties shall work together to resolve the error or inadequacy. The Supplier shall submit a revised invoice and if correct, the Purchaser will ensure that payment of any outstanding sum is made within 30 days of receipt of the revised invoice.
- 6.8 Payments shall be made by Bank Transfer (Bank Automated Clearance System BACS) or such other method that may be agreed between the parties from time to time.
- 6.9 Unless otherwise agreed, all payments due from the Purchaser under the Customer Contract shall be in Pounds Sterling.
- 6.10 The parties acknowledge that any Deferred Charges comprise charges that would normally be recovered by the Supplier as one-off charges (typically with respect to installation charges or charges for the supply of equipment) but which the Supplier has agreed to recover as a recurring charge over the Service Term. Consequently, the parties agree that if this Customer Contract terminates early for any reason (including for the avoidance of doubt as a result of the Supplier's breach or insolvency) then the any Deferred Charges that relate to items that have already been delivered or provided to the Purchaser and which would have fallen due for payment if this Customer Contract had continued for the remainder of the Service Term shall become immediately due for payment by the Purchaser on the date this Customer Contract terminates.

## 7. **SCO's AGENCY; CONTRACT MANAGEMENT**

- 7.1 The parties agree that nothing in the Customer Contract, or in a Framework Agreement will be construed so as to confer on the Supplier concurrent or double liabilities in respect of a single default, and in particular nothing will entitle SCo in its own right to any remedy for default in relation to the Service Level obligations in the Customer Contract.
- 7.2 The parties further agree that nothing in the Customer Contract, or in the Framework Agreement will be construed so as to confer on SCo any liability to the Supplier for any default by the Purchaser in respect of any aspect of the Customer Contract.

- 7.3 The Supplier acknowledges that:
- 7.3.1 any Customer Contract to be entered into by SCo Members will be tripartite, and will accordingly be made between the Supplier (1) the SCo Member (2) and SCo (3). SCo is joined into each such Customer Contract as the appointed agent acting on behalf of each SCo Member, enabling the SP and each purchasing SCo Member to have a direct contractual link to each other; and
  - 7.3.2 Customer Contracts to be entered into by Customers will be bipartite and will accordingly be made between the Supplier (1) and the Customer (2). SCo will countersign the relevant Order Form to consent to such a Customer Contract, but will not be a party to it.
- 7.4 The rest of this clause 7 shall only apply to Customer Contracts to which an SCo Member is a party.
- 7.5 SCo confirms that, (pursuant to the Agency Agreement) the SCo Members have each appointed SCo to be their agent generally to operate and to actively manage this Customer Contract, and more particularly:
- 7.5.1 for and on its (and their) behalf to carry out the Transition Tasks; and
  - 7.5.2 for and on its (and their) behalf to carry out the Appointed Tasks; and
  - 7.5.3 for and on behalf of all the SCo Members collectively, (or, by agreement with the SCo Members concerned), for and on behalf of any individual or group of SCo Members) to carry out the Special Projects.
- all as the same may be varied from time to time by the SCo Members and SCo pursuant to the terms of the Agency Agreement.

## 8. **VARIATIONS TO SERVICES: SDOs**

- 8.1 Whilst the parties acknowledge that the Purchaser shall be entitled to Purchase Additional Services pursuant to a Call-Off Notice, the parties also acknowledge and agree that no variation to any aspect of the description, specification, or pricing of the Services detailed under a Framework Agreement may be introduced otherwise than;
- 8.1.1 via the formulation and issue of an SDO pursuant to clause 8 of the relevant Framework Agreement; or
  - 8.1.2 by reference to the Rightsizing Clause.
- 8.2 The Supplier further agrees that no Service may be discontinued other than by reference to the Rightsizing Clause; and no discontinuation may be implemented by the Supplier unless and until the Purchaser has received:
- 8.2.1 at least three months prior notice; and
  - 8.2.2 an offer from the Supplier allowing the the Purchaser to transfer to the nearest equivalent Service that it is reasonably practical for the Supplier to continue to provide (but provided always that the Purchaser acknowledges that such a nearest equivalent service may be more expensive than and/or have different service characteristics to the discontinued Service).

8.3 the Supplier agrees that;

8.3.1 no variation made by reference to the Rightsizing Clause which is adverse to the Purchaser which affects any aspect of the description, or specification, or the pricing of the Services may be made on less than three months written notice to the Purchaser; and that

8.3.2 the Purchaser shall have the right to terminate any Service which is affected by a price increase by reference to the Rightsizing Clause as at the date on which the increase takes effect, or at any date within six months after that date

## 9. **SUSPENSION & TERMINATION AND CONSEQUENCES OF TERMINATION**

9.1 In the event that the Purchaser is in default in relation to payment of undisputed Charges and the amount of the arrears is not less than a sum equal to three months in aggregate, the Supplier will have a right to suspend all or part or parts of the Service or Services supplied to the Purchaser to which the late payment relates (but not, for the avoidance of doubt, to any other Purchaser) until (but not after) payment in full has been made. If following suspension under this clause 9.1, the amount of arrears which led to the suspension is not paid in full within one month, the Supplier shall be entitled to terminate the suspended Service/s on 20 Business Days notice to the Purchaser.

9.2 The Purchaser may, by written notice to the Supplier, terminate this Customer Contract (either wholly or in part), or require the termination of the Services (in whole or in part) on the occurrence in relation to that part, if:

9.2.1 an event of Force Majeure occurs which affects all or a substantial part of the Services for a continuous period of more than 90 days; or

9.2.2 an event of Force Majeure occurs which affects a part but not a substantial part of the Services for a continuous period of more than 120 days.

9.3 A Service shall automatically terminate as and from the expiry of a fixed term, except if the Supplier and the Customer otherwise agree in writing. The Purchaser may terminate a Service following the expiry of the Minimum Service Term, on 30 days' notice to the Supplier. The Supplier may terminate a Service following the expiry of the Minimum Service Term, on 90 days' notice to the Purchaser.

9.4 If at any time during the Term the Supplier suffers an Insolvency Event then the Purchaser may by written notice given to the Supplier at any time at the Purchaser's absolute discretion terminate the Customer Contract as and from the date stipulated in the notice.

9.5 If at any time during the Term the Supplier:

9.5.1 is in material or persistent breach (where such persistent breaches together constitute a material breach) of its obligations in this Customer Contract; and

9.5.2 where such material breach is capable of being remedied, has failed to remedy the breach or breaches complained of notwithstanding having been given written notice by the Purchaser of the breach or breaches,

and a reasonable opportunity to remedy the same within 20 Business Days,

the Purchaser may where the material breach is irremediable, terminate the Customer Contract (or individual Services) immediately (or where the breach was capable of being remedied at any time after the date given for remedy of the breach or breaches in the Purchaser's notice of complaint) by written notice given to the Supplier (either in whole or in part).

9.6 Any notice of termination served pursuant to this clause 9 shall:

9.6.1 be without prejudice (in any such case) to any financial claims of either party against any other arising under this Customer Contract;

9.6.2 take effect:

9.6.2.1 on the basis that the Term and/or Service Term (as applicable) will continue in full force and effect pending the expiry of the period between the date of the notice and the date for termination stipulated in the notice (the 'Rundown Period') during which the Supplier will continue to provide all Services in accordance with the terms of the Customer Contract; and

9.6.2.2 so as to terminate the Customer Contract and/or Service/s as and from the expiry of the Rundown Period.

9.7 During the Rundown Period, the Supplier shall provide to the Purchaser all reasonable assistance requested by the Purchaser to allow the Services to continue without interruption or adverse effect following the termination of this Customer Contract or termination or expiry of any Service and to facilitate the orderly transfer of responsibility for any conduct of the Services to the Purchaser or its replacement supplier. The Supplier shall provide such reasonable assistance without additional costs. For the avoidance of doubt, the Supplier's reasonable assistance in accordance with this clause 9.7 shall include:

9.7.1 the provision at all times by the Supplier of such reasonable information to the Purchaser or its replacement supplier as the Customer requests from time to time.

9.7.2 the provision by the Supplier of such reasonable co-operation to the Purchaser and/or replacement supplier as the Purchaser requests from the Supplier from time to time specifying the co-operation that is required in transferring the Services and the actions, if any, which the Supplier is requested to undertake. The co-operation referred in this clause 9.7.2, may include liaising and meeting with the Purchaser and/or a replacement supplier.

## 10. **PSN OBLIGATIONS**

10.1 The Purchaser acknowledges that:

10.1.1 it shall be fully responsible for continuing compliance with the terms of its Code of Connection when purchasing or consuming any Services which are PSN Services; and

- 10.1.2 continuing compliance with its Code of Connection includes responsibility to ensure that the Customer Environment is and remains compliant at all times with the terms of the Purchaser's Code of Connection.
- 10.2 Each of the Purchaser and the Supplier (respectively) warrants and undertakes to each other and to SCo that they shall throughout the Term where specifically requested in writing to do so by the PSN Authority (acting on advice from the Infrastructure SIRO) immediately disconnect its PSN Services or Customer Environment (as the case may be) from such PSN Services (including any direct Network Services) GCN Services and Customer Environments as the PSN Authority instructs where there is an event affecting either national security; or fitness for purpose accreditation; or the security of the PSN.
- 10.3 Each of the Purchaser and the Supplier acknowledge and agree that:
- 10.3.1 the PSN Authority shall not be liable to the Supplier (or to the Customer) for any claims, proceedings, actions, damages, costs, expenses and any other liabilities of any kind which may arise out of or in consequence of any notification pursuant to clause 10.2; and that
- 10.3.2 clauses 10.2 and 10.3 are for the benefit of and may be enforced by the PSN Authority notwithstanding that the PSN Authority is not a party to this Customer Contract pursuant to the Contracts (Rights of Third Parties Act 1999).
- 10.4 The Supplier undertakes to the Customer (and (where a Member Order Form has been signed) to SCo) to cooperate with suppliers of other PSN Services and with GCN Service Providers to enable the efficient operation of the Public Sector Network in accordance with the PSN Operating Model.
- 10.5 The Supplier undertakes to the Customer (and (where a Member Order Form has been signed) to SCo) to ensure that any Services which are PSN Services shall be delivered in a way that enables the sharing of services across Customers of PSN Services and maximises the savings to be achieved by such sharing of services.
- 10.6 The Supplier shall:
- 10.6.1 ensure that it is PSN Compliant as at the Commencement Date and will take all necessary steps to remain PSN Compliant throughout the Term; and
- 10.6.2 deliver the Services fully in compliance with all relevant Codes as updated from time to time by the PSN Authority.

## 11. **OBLIGATIONS OF THE PURCHASER; AUTHORISED SITES**

- 11.1 The Purchaser will use all reasonable endeavours to ensure that all Authorised Sites conform to such stipulated network standards as SCo and the Supplier reasonably designate from time to time.
- 11.2 The Purchaser further agrees to be bound by an acceptable use policy for the emPSN reasonably stipulated from time to time by SCo (following consultation with the Supplier).

- 11.3 [The Purchaser shall be responsible at all times for the safety, safe custody and safe use of the Supplier Equipment after installation at the Authorised Sites and in particular (but without limitation to the generality of the foregoing) the Purchaser undertakes:
- 11.3.1 to house, keep and use the Supplier Equipment in accordance with such written instructions as may be notified by the Supplier to the Purchaser from time to time; or
  - 11.3.2 at all times to keep the Supplier Equipment at the Authorised Sites free from movement, external vibration or collision;
  - 11.3.3 not to add to, modify, or in any way interfere with, the Supplier Equipment except in accordance with such written authorisation as may be notified by the Supplier to the Purchaser from time to time;
  - 11.3.4 not to cause the Supplier Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of the Supplier; and
  - 11.3.5 not to remove, tamper with or obliterate any words or labels on the Suppliers Equipment or any part thereof.
- 11.4 The Purchaser undertakes to use Services and to use reasonable endeavours to procure that each user uses Services in accordance with such reasonable operating instructions as may be notified in writing or verbally (and confirmed in writing) to the Purchaser as appropriate from time to time and in accordance with any conditions which govern the running of an Electronic Communications Network (as defined in the Communications Act 2003).
- 11.5 Without limitation to the generality of clause 11.4, the Purchaser undertakes not to use Services, and to use reasonable endeavours to procure that its users do not use the Services:
- 11.5.1 for the communication, publication, transmission or receipt of any material which is defamatory, offensive or abusive or of an obscene, nuisance, hoax threatening or menacing character; or
  - 11.5.2 in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright, privacy or confidentiality); or
  - 11.5.3 in a manner that is associated with a criminal offence; or
  - 11.5.4 to cause annoyance, inconvenience or needless anxiety.
- 11.6 Where as part of the provision of Services the Supplier provides the Purchaser with numbers and/or Access Codes then all rights associated with such numbers and Access Codes belong to the Supplier. The Purchaser shall not or attempt to rent, lease, let, sell, charge, assign or otherwise deal with such numbers and/or Access Codes in a manner prejudicial to the Supplier's rights therein.
- 11.7 The Supplier shall be entitled, for operational or technical reasons or in order to comply with any numbering scheme or other obligation imposed on the Supplier or by the Act or any competent Regulatory Body, to withdraw any number or Access Codes allocated to the Purchaser provided that the Supplier gives the



Purchaser as appropriate the maximum period of notice in writing thereof practicable in the circumstances.

11.8 The Purchaser as appropriate shall:

11.8.1 keep any Access Codes confidential and personal to the Purchaser who shall be responsible for keeping such Access Codes safeguarded; and

11.8.2 use such Access Codes in accordance with the reasonable rules or instructions set out in this Customer Contract and as provided to it by the Supplier from time to time; and

11.8.3 be responsible for all charges incurred through the use of Services when access to Services is obtained through the use of any Access Code whether with or without the Purchaser's knowledge or permission.

11.9 The Purchaser shall at all reasonable times by prior notice and agreement allow the authorised personnel of the Supplier and any sub-contractor such access to the Authorised Site(s) as may be necessary for the performance of the Services.

11.10 The Purchaser shall have the right to refuse to admit to, or order the removal from, the Authorised Sites (or any of them) any person employed by or acting on behalf of the Supplier or a sub-contractor who, in the reasonable opinion of the Purchaser is not a fit and proper person to be on the Authorised Site. The decision of the Purchaser shall be final.

11.11 The Supplier shall:

11.11.1 ensure that its personnel as a minimum adhere to any Authorised Site instructions, requirements (including security) notified to it from time to time by the Purchaser;

11.11.2 ensure that the personnel exercise care when entering and leaving the Authorised Sites and shall take all adequate precautions to safeguard the occupants and the general public from injury by reason of his use of the Authorised Sites;

11.11.3 ensure that all work carried out under this Customer Contract is carried out with due regard to convenience of the occupants of any Authorised Sites and their neighbours; and

11.11.4 be held responsible for any damage to roads, paved areas, grassed areas, trees, fences and property which may be caused by the execution of the Services or by trespass and will be required to make good any damage at its own expense and to the satisfaction of the Purchaser; and

11.11.5 ensure that re-instatement of surfaces after cable-laying shall provide a firm and stable base and surface which will not compact in use and which will be at least as strong as the original base and surface; and

11.11.6 in the event that subsidence occurs in any area (which the Supplier has re-instated) be responsible for remedial works at his own expense to the satisfaction of the Purchaser.

## 12. **EXCLUSIONS AND LIMITATIONS OF LIABILITY**

- 12.1 Nothing in a Customer Contract will limit or exclude the liability of a party:
- 12.1.1 for death or personal injury caused by negligence;
  - 12.1.2 to pay any charges properly due to the other under a Customer Contract;
  - 12.1.3 for wilful default, or fraudulent misrepresentation; or
  - 12.1.4 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 12.2 Nothing in a Customer Contract will limit or exclude the liability of the Supplier in respect of the indemnities in clause 18.1.1 to 18.1.4 and clause 18.1.7.
- 12.3 Subject to clauses 12.1, 12.2 and 12.5, the Supplier's total aggregate liability pursuant to a Customer Contract will be limited as follows:
- 12.3.1 for all loss of or damage to property or assets (including technical infrastructure, assets or equipment but excluding any loss or damage to) of the Purchaser shall in no event exceed £2,000,000 (two million pounds) (subject to indexation);
  - 12.3.2 in respect of the indemnity in clause 18.1.5 shall be limited to £1,000,000 (one million pounds) (subject to indexation);
  - 12.3.3 in respect of Services Credits shall be limited to the sums specified in Schedules 3 and/or 5 of the relevant Framework Agreement; and
  - 12.3.4 in respect of all other claims, losses or damages, (except for those under clauses 12.3.1 to 12.3.3, which shall operate as separate limits on liability) shall be limited to:
    - 12.3.4.1 in respect of any one event, or series of related events, the event limit; and
    - 12.3.4.2 in respect of all claims arising during the lifetime of this Customer Contract, an amount equal to the aggregate amount of the Charges paid or due from the Purchaser under this Customer Contract with respect to the provision of the Services during the Service Term
- 12.4 Subject to clauses 12.1 and 12.5, the total aggregate liability of the Purchaser for any claims, losses or damages arising pursuant to this Customer Contract will be limited to
- 12.4.1 In respect of any one event, or series of related events, the event limit; and
  - 12.4.2 In respect of all claims arising during the lifetime of this Customer Contract, an amount equal to the aggregate amount of the Charges paid or due from the Purchaser under this Customer Contract with respect to the provision of the Services during the Service Term

For the avoidance of doubt, nothing in this clause 12.4 shall limit the liability of the Purchaser to pay any Charges which are properly due in accordance with this Customer Contract.

- 12.5 For the purpose of this clause 12.3 and of clause 12.5, the "event limit" with respect to any one event or series of related events shall be an amount equal to the aggregate amount of the Charges paid or due from the Purchaser under this Customer Contract with respect to the provision of the Services during the period of 12 months immediately preceding the relevant event (or series of related events) provided that if less than 12 months have passed between the Effective Date and the date on which the relevant event (or series of related events) occurs the "event limit" shall be calculated by taking the aggregate amount of the Charges paid or due from the Purchaser under this Customer Contract with respect to the provision of the Services during the period of one month immediately preceding the relevant event (or series of related events) and multiplying that amount by twelve.
- 12.6 No party shall be liable to another in respect of any indirect unforeseeable or consequential loss or damage or for any loss of profits, turnover, business opportunities, data (subject to clauses 12.3.2, 14.2 and 18.1.5), anticipated savings, or damage to goodwill (whether direct or indirect).
- 12.7 Subject to clauses 12.3, the Purchaser may, amongst other things, recover the following as a direct loss resulting from the Supplier's breach of a Customer Contract or its negligent acts or omissions or those of its personnel:
- 12.7.1 any additional operational and/or administrative costs and expenses; and
- 12.7.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Purchaser.
- 12.8 Subject to the remaining provisions of this clause 12, either party to this Customer Contract may claim relief from liability for non-performance of its obligations to the extent this is due to an event of Force Majeure.
- 12.9 A party cannot claim relief if the event of Force Majeure is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.
- 12.10 The party affected by the event of Force Majeure cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the party affected (unless that other person is itself prevented from or delayed in complying with its obligations as a result of an event of Force Majeure).
- 12.11 The party affected shall immediately give the other party written notice of the event of Force Majeure. The notification shall include details of the event of Force Majeure together with evidence of its effect on the obligations of the party affected, and any action the party affected proposes to take to mitigate its effect.
- 12.12 As soon as practicable following after the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure and to facilitate the continued performance of this Customer Contract. Where the Supplier is the affected party, it shall take all steps in accordance with good

industry practice to overcome or minimise the consequences of the Force Majeure.

- 12.13 The affected party shall notify the other party as soon as practicable after the Force Majeure ceases or no longer causes the affected party to be unable to comply with its obligations under this Customer Contract. Following such notification, this Customer Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure unless agreed otherwise by the parties.

### 13. **CONFIDENTIALITY**

- 13.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Customer Contract, each party shall:

13.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

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

- 13.2 The parties agree that Confidential Information (or any part thereof) may only be disclosed or reproduced or used by such persons (such as employees, authorised sub-contractors and agents) who need to know the Confidential Information for the purposes of either party performing its obligations or exercising its rights under this Customer Contract and shall procure that such persons to whom Confidential Information may be disclosed pursuant to this clause 11 are made aware of and comply with substantially similar obligations of confidentiality and non-disclosure as are set out in this Customer Contract.

- 13.3 Confidential Information does not include information which:

13.3.1 is required to be disclosed by law (including, without limitation as set out in clause 15 - Freedom of Information) or by any governmental or other regulatory authority (including without limitation the rules and regulations of any applicable stock exchange) acting within the scope of its powers;

13.3.2 is or becomes part of the public domain through no fault of the receiving party;

13.3.3 the receiving party can demonstrate that the Confidential Information was known to it prior to the disclosure by the disclosing party without an obligation to keep such Confidential Information confidential;

13.3.4 is subsequently obtained by the receiving party from a third party without breach of any obligation of confidentiality owed to any third party or the disclosing party; or

13.3.5 is independently developed by the receiving party or a company within the receiving party's group without any breach of the Customer Contract; or

13.3.6 any disclosure for the purpose of:

13.3.6.1 the examination and certification of the Purchasers or the Supplier's accounts; or

13.3.6.2 any examination pursuant to the Local Government Act 1999 of the economy, efficiency, and effectiveness with which the Purchaser has performed its functions.

13.4 The parties agree that monetary damages may not be a sufficient remedy if either party is in breach of this clause 13 and the party who disclosed the Confidential Information will be entitled to seek any legal remedy or relief to prevent any breach, or anticipated breach, by the other party. This right shall be in addition to the party who disclosed the Confidential Information other rights in law or in equity.

#### 14. **DATA PROTECTION**

14.1 The Supplier acknowledges that it neither has nor will acquire pursuant to the Customer Contract any right or claim to any IPR in any data belonging to the Purchaser, or any Authorised Site.

14.2 The Supplier will when providing the Services maintain all reasonable safeguards against loss or corruption of data, or disclosure of the same to any third party and will in respect of any data which is lost or corrupted during the provision of Application Services and where recovery of such data is possible, take all reasonable steps at its own cost to recover any data belonging to the Purchaser or any Authorised Site at its own cost if such loss or corruption is caused by the Supplier.

14.3 The Supplier undertakes to the Purchaser to comply with all prevailing and applicable laws and prevailing best practice, relating to the protection of personal data, and privacy; and will take all reasonable steps in relation to the protection of authentication data security and access security measures.

14.4 Without prejudice to the generality of clause 14.3, the Supplier will:

14.4.1 process Personal Data only in accordance with the instructions of or from the Purchaser;

14.4.2 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, such measures to be appropriate having regard 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;

14.4.3 take all reasonable steps to ensure the reliability (including (wherever practicable) carrying out all necessary enhanced CRB checks) of any personnel who has access to the Personal Data;

14.4.4 subject to clause 14.5, not transfer any Personal Data outside the UK;

14.4.5 notify the Purchaser of any subject access requests which it receives relating to Personal Data which it is processing under the Customer Contract, and provide full cooperation and assistance to the Purchaser both in relation to any such request; and any in relation to any other requests (for example a request received by the Purchaser) relating to Personal Data which the Supplier is processing under the Customer Contract;

- 14.4.6 permit audits to be carried out on the Supplier's data processing activities and infrastructure on terms that enable the Purchaser (as Data Controller) to comply with its obligations in that respect in the Data Protection Act 1998.
- 14.5 With respect to those Services that are provided by RM Education plc (as indicated in the Framework Agreement), Personal Data may be transferred for processing to one of RM Education plc's associate companies in India. Where any such transfer takes place, the Supplier shall ensure that RM Education plc takes such steps as are necessary under Data Protection Laws to put in place adequate safeguards for the transfer of the Personal Data.
15. **FREEDOM OF INFORMATION**
- 15.1 The Supplier acknowledges that the Purchaser is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Purchaser to enable the Purchaser to comply with its Information disclosure obligations.
- 15.2 The Supplier shall and shall procure that its sub-contractors shall:
- 15.2.1 transfer to the Purchaser all Requests for Information that it receives as soon as practicable and in any event within two Business Days of receiving a Request for Information;
- 15.2.2 provide the Purchaser with a copy of all Information (relating to such Requests for Information) in its possession, or power in the form that the Purchaser requires within five Business Days (or such longer period as the Purchaser may specify) of the Purchaser's request; and
- 15.2.3 provide all necessary assistance as reasonably requested by the Purchaser to enable the Purchaser 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.
- 15.3 Subject to clause 15.5, the Purchaser will use reasonable endeavours to consult with the Supplier before it discloses any of the Supplier's Commercially Sensitive Information. The Purchaser shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Customer Contract or any other 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.
- 15.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Purchaser.
- 15.5 The Supplier acknowledges that the Purchaser may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the FOIA Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
- 15.5.1 in certain circumstances without consulting the Supplier; or
- 15.5.2 following consultation with the Supplier and having taken their views into account;

provided always that where 15.5.1 applies the Purchaser shall, in accordance with any recommendations of the FOIA Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

15.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Purchaser to inspect such records as requested from time to time.

16. **NO WAIVER**

16.1 No delay, neglect, forbearance or other failure on the part of any party in exercising or enforcing against another party any provision of a Customer Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Customer Contract.

16.2 No right power or remedy herein conferred upon or reserved for any party is exclusive of any other right, power or remedy available to that party.

17. **ENTIRE AGREEMENT**

17.1 The Customer Contract (together with any provisions of the relevant Framework Agreement which are referred to herein) comprise the entire agreement between the parties with respect to the Services and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature whether oral or written between the parties. Any subsequent alterations, amendments or variation to the Customer Contract shall be in writing signed by authorised representatives of the parties.

17.2 The Purchaser acknowledges that in entering into the Customer Contract, it is not relying on any statements, warranties or representations given or made (whether negligently or innocently and whether express or implied) on any acts or omission by or on the part of the Supplier or by or on behalf of any other person not a party to the Customer Contract in relation to the subject matter of the Customer Contract, except those expressly set out in the Customer Contract.

17.3 The Supplier acknowledges that in entering into the Customer Contract, it is not relying on any statements, warranties or representations given or made (whether negligently or innocently and whether express or implied) or any acts or omission by or on the part of the Purchaser or by or on behalf of any other person not a party to the Customer Contract in relation to the subject matter of the Customer Contract, except those expressly set out in the Customer Contract.

17.4 So far as is expressly permitted by Law, no conditions or warranties or other terms other than are expressly set out are to be implied into the Customer Contract.

18. **INDEMNITIES**

18.1 The Supplier shall indemnify the Purchaser and its officers, agents and employees against all claims and proceedings, damages, costs (including legal costs) and expenses arising or incurred in respect of:

18.1.1 death or personal injury of any person to the extent caused by the negligence or acts or omissions of the Supplier, or its Personnel

- without limit (including third party product liability claims made against the Purchaser); or
- 18.1.2 fraudulent acts or omissions of the Supplier and/or its Personnel;
  - 18.1.3 the willful default of the Supplier and/or its Personnel;
  - 18.1.4 for breaches of clause 12 (Confidentiality), clause 14 (Data Protection), clause 15 (Freedom of Information) and clause 19 (Corrupt Gifts);
  - 18.1.5 loss, destruction, corruption, degradation, inaccuracy or damage to data caused by the Supplier's negligence or acts or omissions of the Supplier or its personnel in the provision of the Services, subject to the liability cap in clause 12;
  - 18.1.6 loss of or damage to any property (including that which arises from third party claims) to the extent caused by the negligence or acts or omissions of the Supplier or its personnel, subject to the liability cap in clause 12; and
  - 18.1.7 any third party claim that the Purchaser's use of the Services or receipt of the Services or any software licensed to it pursuant to the Customer Contract infringes the Intellectual Property Rights of such third party.
- 18.2 In the event that a claim is made against the Purchaser to which the indemnity in clause 18.1.7 applies, the Supplier shall have conduct of the claim. It is further agreed that the Purchaser shall:
- 18.2.1 upon becoming aware of any claim, infringement or allegations of infringement notify the Supplier of the same as soon as reasonably practicable;
  - 18.2.2 not make any admissions without the Supplier's consent (such consent not to be unreasonably withheld or delayed); and
  - 18.2.3 at the Supplier's cost and expense provide all reasonable assistance in connection with any negotiations and litigation arising from such claims or demands. The Supplier shall use its reasonable endeavours to mitigate any losses it incurs as a result of such claim or infringement.
- 18.3 Without prejudice to the rights and remedies of the Purchaser under the Customer Contract or otherwise, where there is any claim of infringement or alleged infringement or the Purchaser is enjoined in any action of infringement or alleged infringement as referred to in clause 18.1.7 and such claim causes the Purchaser's use of Services to be disrupted or materially impaired, the Supplier shall, in the following order of priority and at its own cost and expense following consultation with the Purchaser:
- 18.3.1 procure for the benefit of the Purchaser the right to continue to use the infringing or potentially infringing application or service; or
  - 18.3.2 modify or replace the infringing or potentially infringing application or service so that there is no infringement or potential infringement and ensure that such modification or replacement shall be effected by the Supplier with minimal interruption to the educational and other relevant activities of the Purchaser and must comply with the warranties set out in the Customer Contract.



18.4 The indemnity in clause 18.1.7 shall not apply to the extent that any claims or proceedings arise due to any unauthorized alteration or modification of the Services by or on behalf of the Purchaser.

## 19. **CORRUPT GIFTS**

19.1 The Supplier shall not:

19.1.1 offer or agree to give any person working for or engaged by the Purchaser or ICo or any other Crown Body any gift or other consideration which could act as an inducement or a reward for any act or failure to act connected to the Customer Contract, or any other agreement between the Supplier and/or the Purchaser and/or ICo or any Crown Body, including its award to the Supplier and any of the rights and obligations contained within it; nor

19.1.2 enter into the Customer Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Purchaser or ICo or any other Crown Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Purchaser or ICo before execution of the Customer Contract.

19.2 If the Supplier (including any the Supplier employee, sub-contractor or agent, in all cases whether or not acting with the Supplier's knowledge) breaches:

19.2.1 clause 19.1; or

19.2.2 the Prevention of Corruption Acts 1889 - 1916 in relation to the Customer Contract or any other contract with ICo or any Crown Body; or

19.2.3 the Bribery Act 2010,

the Purchaser may terminate the Customer Contract by written notice with immediate effect.

19.3 Any termination under clause 19.2 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Purchaser.

19.4 Any dispute relating to:

19.4.1 the interpretation of clauses 19.1 to 19.3 inclusive; or

19.4.2 the amount or value of any gift, consideration or commission,

shall be determined by the Purchaser and the decision shall be final and conclusive.

## 20. **INTELLECTUAL PROPERTY RIGHTS**

The Supplier will be the owner or the licensor of the Intellectual Property Rights in all software applications and other materials provided by the Supplier to the Purchaser in connection with the provision of the Services or used by the Supplier in the provision of the Services pursuant to the relevant Framework

Agreement. All rights and title to all software and materials and all Intellectual Property Rights therein shall remain vested in the Supplier or its licensor.

21. **PUBLICITY AND ANNOUNCEMENTS**

- 21.1 No party shall make any announcement, circular, press release, advertisement or other publicity which includes reference to any other party or concerning the contents of and/or the matters contemplated in the Customer Contract or any related matter without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 21.2 No party shall without the prior written consent of the other parties, refer in any of its advertising or marketing material to the other parties or the fact that it has a contractual relationship with the other parties.

22. **NOTICES**

22.1 All formal notices and communications between the parties made in the course of the Customer Contract shall be deemed to have been received by the addressee at the time stated below PROVIDED THAT the notice of communication is addressed to the recipient at the address and contact details specified below and marked for the urgent notification of the relevant point of contact designated below (or to any other address or point of contact as notified in writing to the other party from time to time in accordance with this clause 21):

- 22.1.1 **by post:** (if properly franked, or otherwise sent postage prepaid): 2 Business Days after despatch;
- 22.1.2 **by facsimile:** immediately upon despatch PROVIDED THAT the sender of the facsimile obtains a facsimile journal report showing proper transmission, and PROVIDED THAT a copy of the notice is also sent to the intended recipient by any other means specified in this clause 21;
- 22.1.3 **by e-mail:** immediately upon despatch PROVIDED THAT the sender of the e-mail sends a printed copy of the e-mail confirming the date and time on which it was sent electronically to the intended recipient by any other means specified in this clause 22;
- 22.1.4 **by hand delivery:** during normal working hours: immediately upon receipt by the recipient; or
- 22.1.5 by a reputable overnight **express mail** service with a reliable tracking system: on the next Business Day.

22.2 The addresses and contact details of the parties for the purpose of clause 21 are as given below:

<b>For the Purchaser</b>	
For the attention of:	
Mail Address:	
E-mail address:	
Facsimile Number:	
Copy to:	
Mail Address:	
E-mail address:	

<b>For the Supplier</b>	
For the attention of:	The CEO
Mail Address:	KCOM Group PLC, 37 Carr Lane, Hull HU1 3RE
Copy to:	The Company Secretary
Mail Address:	KCOM Group PLC, 37 Carr Lane, Hull HU1 3RE

<b>For SCo</b>	
For the attention of:	The Managing Director
Mail Address:	4 Prospect Court, Blisworth, Northamptonshire NN7 3DG
E-mail address:	m.kendall@embc.org

## 23. GENERAL

- 23.1 The parties agree to take all reasonable care to avoid any act that may reflect adversely on or be harmful to the reputation or prestige of each other.
- 23.2 Subject to clause 7, nothing in the Customer Contract will create a partnership or joint venture between the parties, even though the parties may describe themselves as 'partners' or their relationship as 'a partnership'; and the Supplier will not in any way be or represent itself as an agent of the Purchaser, or of SCo, and the Supplier shall have no right or authority to enter into any obligation on behalf of the Purchaser, or SCo, nor to bind the Purchaser, or SCo in that respect.
- 23.3 The parties shall do and execute and shall use their reasonable endeavours to procure that any other necessary party including themselves will do and execute all such further acts, things, deeds and documents as may be necessary to give effect to the terms of the Customer Contract.

## 24. INSURANCES

- 24.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following (annual) levels of cover:
- 24.1.1 public and products liability insurance with an annual limit of indemnity of not less than £40,000,000 (forty million pounds) in relation to all claims arising in any one year;
- 24.1.2 employer's liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds) in relation to any one claim or series of claims;
- 24.1.3 professional indemnity insurance with an annual limit of indemnity of not less than £5,000,000 (five million pounds) in relation to all claims arising in any year and shall ensure that all professional consultants or

sub-contractors involved in the provision of the Services hold and maintain appropriate cover;

(the "Required Insurances"). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of this agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

- 24.2 The Supplier shall give the Purchaser, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 24.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Purchaser may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this agreement.
- 24.5 the Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of this agreement.

## 25. **ASSIGNMENT AND SUBCONTRACTING**

- 25.1 Subject to clause 23.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Customer Contract without the prior written consent of the other party, the Supplier may not sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Purchaser.
- 25.2 In the event that the Supplier enters into any sub-contract in connection with this Customer Contract it shall:
  - 25.2.1 remain responsible to the Purchaser for the performance of its obligations under this agreement notwithstanding the appointment of any sub-contractor and be responsible for the acts omissions and neglects of its sub-contractors;
  - 25.2.2 impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the sub-contractor complies with such terms; and
  - 25.2.3 provide a copy, at no charge to the Purchaser, of any such sub-contract on receipt of a request for such by the Purchaser's authorised representative.
- 25.3 The Purchaser shall be entitled to novate this agreement to any other body which substantially performs any of the functions that previously had been performed by the Purchaser.

## 26. **HEALTH & SAFETY AND EQUALITY & DIVERSITY**

- 26.1 The Supplier shall be responsible for and shall at all times provide adequate and competent supervision of all works carried out pursuant to this Customer

Contract, , and shall itself comply, and ensure compliance by its personnel, with all applicable laws, provisions, orders, regulations, rules, requirements, and procedures, now or hereinafter in force relating to safety and health. The Supplier shall at all times be responsible for the discipline of its personnel in ensuring that they perform their duties in a safe manner.

- 26.2 The Supplier shall ensure that all equipment, machinery, tools, facilities and other items used by the Supplier, and/or its personnel in the execution of any works shall be safe, sound and in good working condition and shall conform to all applicable laws, orders, and regulations and as a minimum conform to the applicable industry standards. The Supplier shall at its own expense provide the necessary safety equipment, personnel protective equipment clothing and footwear, and such other appliances as may be necessary in the circumstances or required by law or regulation for the proper and safe execution of any works, and shall ensure that the same is used or worn by all personnel at all times when works are carried out.
- 26.3 The Supplier shall at its own expense ensure that all personnel deployed in the performance of any works, including the operation of any equipment or software, are fully trained, qualified, competent and properly certified in all safety and health aspects. Such training, qualification, competency and/or certification shall be provided by the Supplier or relevant authorities or bodies under the applicable laws, rules, regulations, directive of any government body.
- 26.4 The Supplier shall, and shall procure that the personnel, comply with any applicable anti-discrimination legislation.

27. **OPERATIVE LAW**

The Customer Contract will be interpreted in accordance with the Laws of England and Wales (including in relation to non-contractual disputes), and, the parties hereby submit to the exclusive jurisdiction of the English courts in relation to any matter or dispute (including non-contractual disputes) arising out of or in connection with the Customer Contract.

## SCHEDULE 1

### Call-Off Notice - pro-forma

**CALL-OFF NOTICE - DATE:** [            ]

**[INSERT] ('the Purchaser')**

**Framework Agreement dated [   ] [June] 2012 between SCo (1) and [INSERT SUPPLIER] (2)**

**Customer Contract dated [   ] [   ] 2012 between [INSERT SUPPLIER] (1) [INSERT PURCHASER] (2) and [(3) SCo]**

This is a Call-Off Notice made pursuant to clause 5 of the Customer Contract. The Purchaser hereby exercises its option to purchase the Additional Services mentioned in the Particulars below for the benefit of the Authorised Site(s) mentioned in the Particulars.

Insofar as any such Services are by way of substitution for existing Services, details of the Authorised Site(s), and the relevant Services to be discontinued are as set out in the Particulars.

This Call-Off Notice operates as a binding variation to the Customer Contract. It represents the parties agreement for the supply and the purchase (or the substitution, as appropriate) of the additional or substitute Services mentioned which will be supplied by the Supplier to the Purchaser until the end of the Service Term unless stipulated otherwise below but subject always to the reservations made in clause 5.4 of the Customer Contract.

The Purchaser and the Supplier agree and confirm that save as specified in the Particulars the charges (or, as appropriate the formula to calculate, or the basis of the charges) applicable to the additional or substitute services referred to in the Particulars will be as set out in the Framework Agreement.

The Supplier undertakes to proceed as soon as practicable (and in any event within [x] days of the Call-Off Notice coming into force) to carry out and complete the instructions in this Call-Off Notice, and to bring into service (or in the case of a substitution, to discontinue as appropriate) the Additional Services mentioned below for the Authorised Site(s) mentioned below.

Please review the Particulars below and confirm as soon as practicable:

- the effect of this Call-Off Notice on the Charges payable by the Purchaser by reference to the relevant Framework Agreement;
- the first practicable date for commencement / discontinuation of the service(s) having regard to the desired date(s) indicated in the Particulars.

Yours faithfully

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for and on behalf of [SCo (duly authorised agent for the Purchaser)/the Purchaser]

**PARTICULARS**

<p><b>Authorised Site(s) affected by the Call-off</b></p>	<p><b>the Additional Services required</b></p>	<p><b>anticipated effect on the Charges payable by the Purchaser as calculated by the Purchaser by reference to the relevant Framework Agreement</b></p> <p><b>(Please specify if the Charges cannot be calculated by reference to the Price Book and therefore need agreeing by the parties)</b></p> <p><b>(Please specify if any Charges are Deferred Charges for the purpose of clause 6.10 of the Customer Contract)</b></p>	<p><b>Desired date for commencement or discontinuation of the Additional Service(s)</b></p>

