



Crown  
Commercial  
Service

# CALL-OFF CONTRACT

RM3764ii Standard Terms

This document forms Part C of the Call-Off Contract, together with Part A - Order Form, Specific Terms and Part B - The Schedules.

Following your Intention to Award letter, a member of the buyer tender team will contact the winning Supplier to enter into the Contract for the Services defined within the Mini Competition Tender. The Buyer and the Supplier will complete the Part A and B of the Call-Off Contract to define the Deliverables of the Contract and the specific terms relating to the individual contract. They will also complete any project specific Schedules in Part B which comprises of:

Schedule 1 – Services needed  
Schedule 2 – High Level Delivery Plan  
Schedule 3 – Buyer Responsibilities  
Schedule 4 – Non-Disclosure Agreement.  
Schedule 5 – Statement of Works  
Schedule 6 – Contract Change Note  
Schedule 7 – Staff Transfer

## Contents

|     |   |    |
|-----|---|----|
| 1.  | Definitions.....  | 3  |
| 2.  | Interpretation .....                                      | 3  |
| 3.  | Contract period.....                                      | 4  |
| 4.  | Warranties, representations and acceptance criteria ..... | 5  |
| 5.  | Premises .....  | 5  |
| 6.  | Standards and quality .....                               | 5  |
| 7.  | Supplier staff .....                                      | 6  |
| 8.  | Service delivery and governance .....                     | 8  |
| 9.  | Releases .....  | 8  |
| 11. | Reports.....  | 9  |
| 12. | Exit plan.....  | 9  |
| 13. | Contract charges.....                                     | 9  |
| 14. | Euro .....  | 10 |
| 15. | Expenses.....   | 10 |
| 16. | Payment and vat .....                                     | 10 |
| 17. | Recovery of sums due .....                                | 11 |
| 18. | Business continuity and disaster recovery (bcdr) .....    | 11 |
| 19. | Assistance at retendering.....                            | 12 |

|     |  |    |
|-----|--|----|
| 20. | Document and service management repository .....           | 12 |
| 21. | Intellectual property rights (ipr).....                    | 13 |
| 22. | Security requirements and protection of data .....         | 16 |
| 23. | Confidentiality .....                                      | 17 |
| 24. | Records and audit access .....                             | 19 |
| 25. | Force majeure .....  | 19 |
| 26. | Disruption .....   | 19 |
| 27. | Waiver .....   | 20 |
| 28. | Cumulative remedies .....                                  | 20 |
| 29. | Further assurances .....                                   | 20 |
| 30. | Changes to contract .....                                  | 20 |
| 31. | Changes to services .....                                  | 21 |
| 32. | Severability .....   | 21 |
| 33. | Supplier's status .....                                    | 21 |
| 34. | Entire agreement.....                                      | 21 |
| 35. | The contracts (rights of third parties) act 1999 .....     | 21 |
| 36. | Notices .....  | 22 |
| 37. | Legislative change .....                                   | 22 |
| 38. | Dispute resolution .....                                   | 23 |
| 39. | Liability .....  | 24 |
| 40. | Termination events.....                                    | 26 |
| 41. | Consequences of expiry or termination for any reason ..... | 27 |
| 42. | Employment, tax and national insurance liabilities .....   | 28 |
| 43. | Governing law and jurisdiction .....                       | 30 |
| 44. | Promoting tax compliance.....                              | 30 |
| 45. | Relevant convictions .....                                 | 30 |
| 47. | Additional staffing security .....                         | 31 |
| 48. | Call off guarantor.....                                    | 31 |
| 49. | Collaboration agreement.....                               | 31 |
| 50. | Staff transfer.....  | 31 |
| 51. | Glossary .....   | 56 |

## Background

- (A) The authority (CCS) undertook a procurement to select a Supplier, to provide Cyber Security Services ("the Services").
- (B) The Supplier is a provider of Cyber Security Services and undertook to provide the Services under the terms set out in the Framework Agreement "Agreement" number RM3764ii.
- (C) The Buyer is entitled to enter into this Call-Off Contract pursuant to the terms of the Agreement and has completed an RM3764ii Call-Off Contract – Part A Order Form ("Order Form") in respect of the Services.
- (D) The Parties enter into this Call-Off Contract on the understanding that there is no commitment from the Buyer to the Supplier until a Statement of Work (SoW) has been issued (this reflects National Cyber Security Centre Policies).
- (E) The Parties intend that specific instructions and requirements in respect of each SoW shall be issued and shall have contractual effect on the execution of a SoW and as agreed by the Parties in the SoW and that payment for Services shall only become due as set out in an executed SoW.

**NOW IT IS HEREBY AGREED as follows:**

## A - GENERAL PROVISIONS

### 1. Definitions

- 1.1 References to "Contract" are, unless otherwise provided, references to this Call-Off Contract.
- 1.2 In relation to this Call-Off Contract "Contract" the capitalised expressions shall have the meanings set out in the **Glossary** unless the context otherwise requires .
- 1.3 If a capitalised expression does not have an interpretation in **Glossary**, it shall have the meaning given to it in the Agreement. If no meaning is given to it in the Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

### 2. Interpretation

- 2.1 The interpretation and construction of this Contract shall be subject to the following provisions:
  - 2.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - 2.1.2 words importing the masculine include the feminine and the neuter;
  - 2.1.3 the words "**include**", "**includes**" and "**including**" "**for example**" and "**in particular**" and words of similar effect are to be construed as if they were immediately followed by the words "**without limitation**" and shall not limit the general effect of the words which precede them;
  - 2.1.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

- 2.1.5 RM3764ii Call-Off Contract Part B - Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract.
- 2.1.6 executed SoWs and all other documents produced and agreed by the Parties under this Contract shall have effect as if set out in full in the body of this Contract;
- 2.1.7 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 2.1.8 headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;
- 2.1.9 references to “**Clauses**” and “**Schedules**” are, unless otherwise provided, references to the Clauses of and The Schedules to this Contract. References to “**paragraphs**” are, unless otherwise provided, references to paragraphs of the schedule in this Contract to which the references are made.
- 2.1.10 references to an Agreement Clause (FW) or paragraph shall mean a reference to the Agreement clause with that number;
- 2.1.11 terms or expressions contained in this Contract which are capitalised but which do not have a definition in the **Glossary** of this Contract or in Agreement Schedule 4 – Definitions And Interpretations shall be interpreted in accordance with the provisions in this Clause and the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;
- 2.1.12 if there is any ambiguity or dispute over the meaning of any obligation to be performed by either Party under this Contract, it shall be interpreted with reference to and in the context of the cyber security practices and National Cyber Security Centre (NCSC) standards.
- 2.1.13 reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 2.1.14 In the event of and only to the extent of any conflict between the Order Form, Statement of Work (SoW), the RM3764ii Standard Terms and the provisions of the Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Agreement, except Part B of Agreement Schedule 1 (Cyber Security Services);
  - (b) SoW;
  - (c) the Order Form;
  - (d) the RM3764ii Standard Terms (excluding the SoW),
  - (e) Part B of Agreement Schedule 1 (Cyber Security Services).

### 3. Contract period

- 3.1 This Contract shall take effect on the Contract Commencement Date and shall expire either:
- 3.1.1 on the Completion Date set out in the SoW then existing (or where there are multiple SoWs being executed concurrently, shall expire on the latest Completion Date specified in an SoW which occurs) unless terminated earlier in accordance with the provisions of this Contract; or
- 3.1.2 where no SoW is entered into by the Parties, three (3) Month after the Contract Commencement Date;
- and such date shall be the “**Contract Expiry Date**”.

## 4. Warranties, representations and acceptance criteria

- 4.1 The Supplier warrants, represents and undertakes to the Buyer that:
- 4.1.1 each Deliverable specified in the SoW shall be free of any material defects for a period (if required) as defined in the RM3764ii Call-Off Contract Part A – Order Form commencing on the date that the Buyer accepts the Deliverables within the SoW. Buyer Acceptance Criteria will be defined and agreed prior to SoW Completion Date as may be specified by the Buyer in the Order Form. All Acceptance Criteria will include as a minimum evidence of meeting the NCSC Cyber Security Standards and policy and guidance.
- 4.1.2 Acceptance Criteria shall also be included for each SoW relating to any relevant maintenance.
- 4.1.3 Any warranty for third party software or third party services specified by the Buyer will be exempt, any warranty provision is the responsibility and risk of the Buyer.
- GUIDANCE NOTE: Buyer to insert any other warranties, representations or undertakings that will apply throughout the Contract Period and which apply for each and every SoW under this Contract within the Order Form*

## 5. Premises

- 5.1 Any Buyer's Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such Buyer's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Contract and in accordance with Clause 39.
- 5.2 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Buyer Premises and conduct of personnel at the Buyer Premises as determined by the Buyer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 5.3 The Parties agree that there is no intention on the part of the Buyer to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Buyer retains the right at any time to use any Buyer's Premises in any manner it sees fit.

## 6. Standards and quality

- 6.1 The Supplier shall at all times during the Contract Period ensure that the Services are delivered in accordance with: the current NCSC standards (and the Supplier shall follow the guidance set out regarding the processes and procedures set out therein); the Standards; the Key Performance Indicators (KPIs); the Methodology; the applicable SoW; and all other applicable provisions of this Contract. All Services must meet the current NCSC Standards at the end of each SoW as part of the Buyer Acceptance Criteria.
- 6.2 Where a Service Integration model is being used by the Buyer, Suppliers will ensure full co-operation and collaboration with other Suppliers within the SI Model to ensure the full and successful delivery of the service. Further details of Service Integration, including Shared and Unique Service Levels, can be found in the Optional Collaboration Agreement.

## 7. Supplier staff

- 7.1 The Supplier Staff shall at all times during the Contract Period:
- 7.1.1 obey all lawful instructions and reasonable directions of the Buyer;
  - 7.1.2 apply all due skill, care and diligence in the delivery of the Services;
  - 7.1.3 be appropriately experienced, qualified and trained to supply the Services in accordance with this Call-Off Contract; and
  - 7.1.4 respond to any enquiries from the Buyer relating to the Services within the timescales agreed by the Parties (where applicable) and in any event as soon as is reasonably practicable.
- 7.2 The Supplier acknowledges and agrees that the continuity of the Key Personnel is paramount to the success of the Project and shall ensure that Key Personnel are assigned to the Project on a full-time basis and are not removed from the Services or assigned to any other Supplier or third party projects during the Contract Period (unless otherwise Approved by the Buyer).
- 7.3 The Buyer may also require the Supplier to remove and/or replace any Key Personnel that the Buyer (acting reasonably) considers in any respect to be unsatisfactory. The Buyer shall not be liable for the cost of removing or replacing any such Key Personnel.
- 7.4 The Buyer may, by written notice to the Supplier, refuse to admit and/ or withdraw permission to remain on the Buyer's Premises any member of the Supplier Staff or any person employed or engaged by any member of the Supplier Staff whom the Buyer believes represents a security risk or does not have the required levels of training and expertise or whose admission or continued presence would, in the reasonable opinion of the Buyer, be undesirable.
- 7.5 Supplier Staff engaged within the boundaries of the Buyer's Premises shall comply with such rules, regulations and requirements as may be in force from time to time for the conduct of Buyer personnel when at or within the boundaries of those Buyer's Premises.
- 7.6 **Appointment of Subcontractors**
- 7.6.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
  - (b) comply with its obligations under this Call-Off Contract in the Delivery of the Services; and
  - (c) assign, novate or otherwise transfer to the Buyer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Call-Off Contract.
- 7.6.2 Prior to sub-contacting any of its obligations under this Call-Off Contract, the Supplier shall notify the Buyer and provide the Buyer with:
- (a) the proposed Sub-Contractor's name, registered office and company registration number;
  - (b) the scope of any Services to be provided by the proposed Sub-Contractor; and
  - (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 7.6.3 If requested by the Buyer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 7.6.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
  - (b) any further information reasonably requested by the Buyer.
- 7.6.4 The Buyer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 7.6.2 (or, if later, receipt of any further information requested pursuant

to Clause 7.6.3), object to the appointment of the relevant Sub-Contractor if they consider that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Buyer under this Call-Off Contract;
  - (b) the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other Buyers; and/or
  - (c) the proposed Sub-Contractor employs unfit persons,
- in which case, the Supplier shall not proceed with the proposed appointment.

7.6.5

If:

- (a) the Buyer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
  - (i) the Supplier's notice issued pursuant to Clause 7.6.2; and
  - (ii) any further information requested by the Buyer pursuant to Clause 7.6.3,
- (b) the Supplier may proceed with the proposed appointment.

## 7.7 Supply Chain Protection

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

- (a) requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
- (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (c) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses (a) and (b) above; and
- (d) conferring a right to CCS and any Contracting Body with whom the Supplier has entered a Call-Off Agreement to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

7.7.2 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;

7.7.3 Any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed.

7.7.4 Notwithstanding any provision of Clauses 22 (Confidentiality) and FW-25 (Publicity, Branding Media and Official Enquiries) if the Supplier notifies CCS that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or CCS otherwise discovers the same, CCS shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

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



- 7.10 The Buyer may require the Supplier to terminate:
- 7.10.1 a Sub-Contract where:
- (a) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Buyer's right of termination pursuant to any of the termination events in H -TERMINATION; and/or
  - (b) the relevant Sub-Contractor or its Affiliates embarrassed the Buyer or otherwise brought the Buyer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Buyer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or
  - (c) Notwithstanding the Supplier's right to Sub-Contract, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

## B - PERFORMANCE OF THE SERVICES

### 8. Service delivery and governance

- 8.1 The Supplier shall comply with the Governance requirements as may be set out by the Buyer within the Buyer Requirements (as stated within the SoW)
- 8.2 In addition to the planning, delivery and retrospective meetings set out in the Buyer Requirements and in addition to any operational meetings, the Supplier shall ensure that all members of the Service Delivery Team or key individuals who are fully empowered to act on behalf of the Service Delivery Team members who they represent, attend a regular progress meeting with the Buyer (unless otherwise agreed with the Buyer).
- 8.3 The Supplier shall ensure that it makes available appropriate resources and persons with the necessary levels of authority to meet the aims and objectives of any meetings which the Supplier is required to attend under this Contract (including any meetings or other Governance requirements agreed by the Parties and set out in the SoW)
- 8.4 Where a Service Integration model is being used by the Buyer, Suppliers will ensure full co-operation and collaboration with other Suppliers within the SI Model to ensure the full and successful delivery of the service. Further details of Service Integration, including Shared and Unique Service Levels, can be found in The Collaboration Agreement.

### 9. Releases

- 9.1 In respect of each SoW during the Contract Period, the Parties shall execute an SoW substantially in the form set out in RM3764ii Call-Off Contract Part B - The Schedules – Schedule of Work (SoW) template
- 9.2 Upon the execution by the Parties of a SoW, the terms and conditions agreed in the SoW shall be incorporated into this Contract and the rights and obligations of the Parties in respect of such SoW shall be governed by the terms and conditions of this Contract.



## 11. Reports

- 11.1 The Supplier shall provide the Buyer with a report of its performance for the applicable stages of consultancy delivery (or as may be otherwise specified by the Buyer in a SoW) including for example; the following details:
- 11.1.1 Cost savings
  - 11.1.2 Time savings
  - 11.1.3 Meeting milestone commitments
  - 11.1.4 Buyer Satisfaction
  - 11.1.5 Performance Improvement
  - 11.1.6 Quality Improvement
  - 11.1.7 Risk Reduction
  - 11.1.8 Return on investment

## 12. Exit plan

- 12.1 Within 10 working days of end of the first SoW or starting a project the Supplier shall provide and agree with the Buyer with a detailed Exit Plan. The Exit Plan shall:
- 12.1.1 detail the requirements of both parties in relation to the continuation of the Services after Call-Off Contract expiry or termination; and
  - 12.1.2 be fully maintained throughout this Call-Off Contract; and
  - 12.1.3 as a minimum be revised and form part of the Acceptance Criteria for every SoW.
- 12.2 The Exit Plan shall set out: the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Buyer and/or any replacement supplier on the expiry or termination of this Call-Off Contract including but not limited to: use of open standards, data standards, interoperability with existing and new services, technology and systems (provided to the Buyer), ease and ability to switch service to alternative suppliers, access and usability of solutions delivery by third parties, provide and continuously maintained, detailed service development documentation and change control records, configuration management (CMD), service management and link to Clause 18 (**Assistance at Retendering**) and Acceptance Criteria at time of exit e.g. how easy it is to pick up the developed, Buyer owned cyber service, development documentation etc. to enable the service to be continuously developed.
- 12.3 Suppliers need to design and deliver service solutions that are easy to transfer to other suppliers to continue development. Suppliers need to outline what information assets relating to the delivered service that they will hand over to the Buyer at termination or expiry of the Call-Off Contract.

## C - CONTRACT CHARGES AND PAYMENT

### 13. Contract charges

- 13.1 The Contract Charges for the Services shall be structured using any of the following pricing mechanisms (as may be agreed by the Parties and set out in an SoW);
- 13.1.1 Capped Time and Materials;
  - 13.1.2 Milestone deliverables;
  - 13.1.3 Time and Materials;
  - 13.1.4 Fixed Price;
- or using such other pricing mechanism or combination of pricing mechanism thereof as may be agreed by the Parties.

- 13.2 In consideration of the Supplier's performance of its obligations under this Contract and in consideration of the specific services that are set out in an applicable SoW, the Buyer shall pay the undisputed Contract Charges in accordance with the relevant SoW for the Release and the payment provisions set out at Clause 15 (**Payment and VAT**).
- 13.3 The Buyer shall, in addition to the Contract Charges and following delivery by the Supplier of an Invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with this Contract.
- 13.4 If at any time during this Contract Period the Supplier reduces its Agreement Prices as shown in Schedule 8 – Charging Structure of the Agreement for any Services which are provided under the Agreement (whether or not such Services are offered in a catalogue (if any) which is provided under the Agreement) in accordance with the terms of the Agreement, the Supplier shall immediately reduce the Contract Charges for such Services under this Contract by the same amount.
- 13.5 The Supplier shall in any event ensure that the Contract Charges are at all times compliant and consistent with the charging structure set out in Agreement Schedule 8 (Charging Structure) and do not exceed the prices set out therein.
- 13.6 Contract Charges:

Please refer to RM3764ii Call-Off Contract Part A – Order Form

## 14. Euro

- 14.1.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Buyer.
- 14.1.2 The Buyer shall provide all reasonable assistance to facilitate compliance with Clause 13.1.1 by the Supplier.

## 15. Expenses

- 15.1 Unless agreed by the Parties otherwise in a SoW, the Supplier shall be not entitled to be reimbursed by the Buyer (in accordance with the Buyer's Travel and Subsistence Policy (T&S)) for reasonable travel and subsistence (e.g. hotel and food) expenses ("**Reimbursable Expenses**") properly and necessarily incurred by the Supplier in the performance of the Services. Any Travel and Subsistence that is chargeable shall be charged at cost without mark-up, within the maximum levels in the Buyers T&S Policy.

## 16. Payment and vat

- 16.1 The Buyer shall pay all valid undisputed Contract Charges that are properly due and payable to the Supplier in cleared funds in arrears within thirty 30 days of receipt of an Invoice (which shall include VAT at the prevailing rate) submitted in accordance with the provisions of this Contract.
- 16.2 The Supplier shall ensure that each Invoice (whether submitted electronically or in a paper form, as the Buyer may specify) (Where a Buyer is a Central Government Body, the Buyer's right to request paper invoicing shall be subject to PPN 11/15) contains the information specified by the Buyer in the Order Form; contains all appropriate references; contains a detailed breakdown of the Services provided; provides full cost transparency of the make-up of the Contract Charges including details of direct and indirect costs, overheads, salary costs of Supplier Staff, material costs and other labour costs including mark up to a level of detail agreed in advance with the Buyer; is supported by any other documentation reasonably required by the Buyer to substantiate the Invoice (including VAT breakdowns, timesheets and associated Milestone Deliverables, details of expenses etc.) and all Invoices submitted to the Buyer for the Services shall be exclusive of any Management Charge.

- 16.3 The Supplier shall ensure that all Sub-Contractors valid undisputed invoices are paid within 30 days of receipt of a valid invoice; and this Clause is reflected in all Sub-Contractor contracts.
- 16.4 The Supplier shall fully indemnify the Buyer and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Buyer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this shall be paid by the Supplier to the Buyer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Buyer.

*Note to Bidders: This indemnity shall remain as uncapped. The Supplier is under a statutory obligation to account for VAT for payments made under the Contract and in the event that the Buyer incurs liability as a result of the Supplier's failure, it should be indemnified to the full extent of that liability.*

## 17. Recovery of sums due

- 17.1 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, the Buyer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under this Contract or under any other Call-Off Contract or other agreement between the Supplier and the Buyer.
- 17.2 Any overpayment by either Party, whether of the Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 17.3 The Supplier shall make any payments due to the Buyer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Buyer to the Supplier.
- 17.4 All payments due under this Clause due shall be made within thirty (30) days from the date that the Parties agree that the payment is due (unless agreed otherwise) and shall be made in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## 18. Business continuity and disaster recovery (BCDR)

- 18.1 At the Supplier's request, the Buyer shall provide the Supplier with a copy of its BCDR Plan.
- 18.2 The Supplier develop a BCDR Plan and shall ensure that it is linked and integrated with the Buyer's BCDR Plan and the Supplier shall review and amend its BCDR Plan on a regular basis and as soon as is reasonably practicable on receipt of an amended Buyer BCDR Plan from the Buyer; and the Supplier shall ensure that its Sub-Contractor's BCDR Plans are integrated with the Supplier's BCDR Plan.
- 18.3 If there is a Disaster, the Parties shall, where applicable, implement their respective BCDR Plans and use all reasonable endeavours re-establish their capacity to fully perform their obligations under this Contract. A Disaster will only relieve a Party of its obligations to the extent it constitutes a Force Majeure Event in accordance with Clause 24 (**Force Majeure**).

## 19. Assistance at retendering

- 19.1 The Supplier shall, where so requested by the Buyer, at its own expense provide assistance to the Buyer to migrate the provision of the Services to a Replacement Supplier in order to ensure continuity and orderly transition of the Services; such assistance may include Supplier demonstrations of the existing service or solution and development documents, and Buyer approval documents and Supplier assistance to answer service and development related clarification questions.
- 19.2 The Supplier shall ensure that all items that are uploaded to the Repository (where applicable), by the Supplier pursuant to Clause 18 contain sufficient detail, documentation and instructions so that a third party service provider with reasonable technical abilities within the applicable role would be able to understand how the service item was created and how it works and fits together with the other items in the Repository in a reasonable timeframe.
- 19.3 Subject to the DPA, the Supplier shall within ten 10 Working Days of a request by the Buyer, provide to the Buyer, any information which is reasonably required by the Buyer in order to facilitate the preparation of any invitation to tender and/or to facilitate any potential Replacement Contractor undertaking due diligence (except where such information is deemed to be Commercially Sensitive Information in which case the Supplier shall provide the information in a redacted form to the extent necessary to prevent disclosure of the Commercially Sensitive Information).

## 20. Document and service management repository

- 20.1 The Supplier shall, at the end of each SoW (unless otherwise agreed with the Buyer) upload to the Repository the following items: all deliverable documentation for the current SoW, daily changes, test scripts, technical libraries, archive libraries, advice, guidance, build configurations, dependencies, environments, schema, details, current orders, change control notices) and any other service specific documentation or items as may be requested by the Buyer.

## D - PROTECTION OF INFORMATION

### 21. Intellectual property rights (IPR)

- 21.1 Unless otherwise specified in this Call-Off Contract:
- 21.1.1 the Buyer will not have any right to the Intellectual Property Rights (IPRs) of the Supplier or its licensors, including the Supplier Background IPRs and any IPRs in the Supplier Software.
- 21.1.2 the Crown may publish any Deliverable that is software as open source.
- 21.1.3 the Supplier will not, without prior written approval from the Buyer, include any Supplier Background IPR or third party IPR in any Deliverable in such a way to prevent its publication; and failure to seek prior approval gives the Buyer right and freedom to use all Deliverables.
- 21.1.4 the Supplier will not have any right to the Intellectual Property Rights of the Buyer or its licensors, including:
- (a) the Buyer Background IPRs;
  - (b) the Project-Specific IPRs;
  - (c) IPRs in the Buyer Data.
- 21.2 Where either Party acquires, by operation of Law, right to IPRs that is inconsistent with the allocation of rights set out in Clause 20.1 it will assign in writing such IPRs as it has acquired to the other Party on the request of the other Party (whenever the request is made).
- 21.3 Except where necessary for the performance of this Call-Off Contract (and only where the Buyer has given its prior approval), the Supplier shall not, and shall procure that the Supplier Staff shall not, (except when necessary for the performance of this Contract) without Approval (which the Buyer shall have the sole and absolute right to grant or deny) use or disclose any of the Buyer Background IPR, Buyer Data or the Project Specific IPRs to or for the benefit of any third party.
- 21.4 The Supplier will not include any Supplier Background IPRs or third-party IPRs in any release or Deliverable that is to be assigned to the Buyer under this Call-Off Contract, without approval from the Buyer.
- 21.5 The Supplier shall not embed any Supplier Background IPRs or third party IPRs in any SoW or Deliverable that is to be assigned to the Buyer under this Contract without Approval from the Buyer. The default position is that this IPR should be assigned to the Buyer on terms equivalent to the Open Government Licence terms unless otherwise agreed with the Buyer.
- 21.6 The Supplier will grant the Buyer (and any replacement Supplier) a perpetual, transferable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use the Supplier Background IPRs for any purpose connected with the receipt of the Services that is additional to the rights granted to the Buyer under this Call-Off Contract and to enable the Buyer:
- 21.6.1 to receive the Services;
  - 21.6.2 to make use of the Services provided by the replacement Supplier; and
  - 21.6.3 to use any Deliverables.
- 21.7 The Buyer grants the Supplier a non-exclusive, non-assignable, royalty-free licence to use the Buyer Background IPRs, the Buyer Data and the Project-Specific IPRs during the Contract Period for the sole purpose of enabling the Supplier to provide perform its obligations under this Contract and provide the Services.
- 21.8 The Buyer gives no warranty as to the suitability of any IPRs licensed to the Supplier hereunder. Any such licence:
- 21.8.1 may include the right to grant sub-licences to Subcontractors engaged in providing any of the Services (or part thereof) provided that any such Subcontractor has entered into a

- confidentiality undertaking with the Supplier on the same terms as in Clause 22 (Confidentiality) and that any such subcontracts will be non-transferable and personal to the relevant Subcontractor; and
- 21.8.2 is granted solely to the extent necessary for the provision of the Services in accordance with this Call-Off Contract. The Supplier will ensure that the Subcontractors do not use the licensed materials for any other purpose.
- 21.9 At the end of the Contract Period, the Buyer grants to the Supplier a licence to use the Project-Specific IPRs (excluding any information which is the Buyer's Confidential Information or which is subject to the Data Protection Act (DPA)) on the terms of the Open Government Licence v3.0
- 21.10 Subject to Clause 20.10 and Clause 20.11, the Supplier will ensure that no unlicensed software or open source software (other than the open source software specified by the Buyer) is interfaced with or embedded within any Buyer Software or Deliverable.
- 21.11 Prior to using any third party IPRs in connection with the supply of the Services, the Supplier shall submit all details of such third party IPRs as the Buyer may request to the Buyer for Approval ("Request for Approval").
- 21.12 Where the Supplier is granted permission to use the third party IPRs set out in a Request for Approval, the Supplier shall procure that the owner of such third party IPRs grants to the Buyer a licence upon the terms informed to the Buyer in the Request for Approval.
- 21.13 If the third-party IPR is made available on terms equivalent to the Open Government Licence v3.0, the request for approval will be agreed and the Supplier will buy licences under these terms. If not, and the Buyer rejects the Request for Approval, then this Call-Off Contract will need to be varied in accordance with Clause 30 'Changes to Services'.
- 21.14 The Supplier shall, during and after the Contract Period, fully indemnify and keep fully indemnified and hold the Buyer and the Crown harmless from and against all Losses which the Buyer or the Crown may suffer or incur at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) as a result of any claim (whether actual alleged asserted and/or substantiated and including third party claims) that the rights granted to the Buyer pursuant to this Contract and/or the performance by the Supplier of the provision of the Services and/or the possession or use by the Buyer of the Services or Deliverables delivered by the Supplier (as appropriate) infringes or allegedly infringes a third party's Intellectual Property Rights ("IPR Claim") except where the Claim arises from:
- 21.14.1 designs supplied by the Buyer; or
- 21.14.2 the use of data supplied by the Buyer which is not required to be verified by the Supplier under any provision of this Contract.
- 21.14.3 other material provided by the Buyer necessary for the provision of the Services.
- 21.15 The indemnity given in Clause 20.15 will be uncapped.

*Note to Bidders: This indemnity shall remain as uncapped because the potential liability and losses which could be incurred by the Buyer as a result of a breach of 3rd party IPRs are potentially vast and are not quantifiable. In the event that the Supplier is unable to procure a licence to use a 3rd party's infringed IPRs, the Buyer's entire business could be put at serious risk, in addition to the possible claims for damages. This risk is within the full control of the Supplier. This indemnity shall remain as uncapped*

- 21.16 The Buyer will notify the Supplier in writing of the IPR Claim made against the Buyer and the Buyer will not make any admissions which may be prejudicial to the defence or settlement of the IPR Claim. The Supplier will at its own expense conduct all negotiations and any litigation arising in connection with the IPR Claim provided always that the Supplier:
- 21.16.1 consults the Buyer on all substantive issues which arise during the conduct of such litigation and negotiations;
- 21.16.2 takes due and proper account of the interests of the Buyer;



- 21.16.3 considers and defends the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Buyer into disrepute; and
- 21.16.4 does not settle or compromise the IPR Claim without prior approval of the Buyer (such decision not to be unreasonably withheld or delayed).
- 21.17 If an IPR Claim is made (or in the reasonable opinion of the Supplier is likely to be made) against the Supplier, the Supplier will immediately notify the Buyer in writing.
- 21.18 If an IPR Claim is made (or in the reasonable opinion of the Supplier is likely to be made) in connection with this Call-Off Contract, the Supplier will, at the Supplier's own expense immediately notify the Buyer, and subject to prompt approval (such decision to Approve or not shall not be unreasonably withheld or delayed), use its best endeavours to:
- 21.18.1 modify the relevant part of the Services and/or Deliverables without reducing their functionality or performance, or substitute Services and/or Deliverables of equivalent functionality or performance, to avoid the infringement or the alleged infringement.
- 21.18.2 procure a licence to use and supply the Services and/or Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Buyer; and/or
- 21.18.3 promptly perform any responsibilities and obligations to do with this Call-Off.
- In the event that the Supplier is unable to comply with Clause 20.16 above within twenty (20) Working Days of receipt of the Supplier's notification the Buyer may terminate this Contract for Material Breach and the Supplier shall, upon demand, refund the Buyer with all monies paid in respect of the Service and/or Deliverable that is subject to the IPR Claim.
- 21.19 The Supplier will have no rights to use any of the Buyer's names, logos or trademarks without the Buyer's prior written approval.
- 21.20 The Supplier will, as an enduring obligation throughout the term of this Call-Off Contract where any software is used in the provision of the Services or information uploaded, interfaced or exchanged with the CCS or Buyer systems, use software and the most up-to-date antivirus definitions from an industry-accepted antivirus software vendor. It will use the software to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between CCS or the Buyer, and the Supplier).
- 21.21 If Malicious Software is found, the Supplier will co-operate with the Buyer to reduce the effect of the Malicious Software. If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, the Supplier will use all reasonable endeavours to help the Buyer to mitigate any losses and restore the provision of the Services to the desired operating efficiency as soon as possible.
- 21.21.1 Any costs arising from the actions of the Buyer or Supplier taken in compliance with the provisions of the above clause, will be dealt with by the Buyer and the Supplier as follows:
- (a) by the Supplier, where the Malicious Software originates from the Supplier Software or the Buyer Data while the Buyer Data was under the control of the Supplier, unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier.
- (b) by the Buyer if the Malicious Software originates from the Buyer Software or the Buyer Data, while the Buyer Data was under the control of the Buyer.
- 21.22 All Deliverables that are software shall be created in a format, or able to be converted into a format, which is suitable for publication by the Buyer as open source software, unless otherwise agreed by the Buyer.



- 21.23 Where Deliverables that are software are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the CCS unless the CCS agrees in advance in writing that the converted format is not required.

## 22. Security requirements and protection of data

- 22.1 The Supplier shall, within five (5) Working Days of the Commencement Date, develop and thereafter maintain a Security Management Plan, which shall be submitted to the Buyer for Approval, in accordance with this Clause to apply during the Contract Period.
- 22.2 The Supplier shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will be submitted for Approval by the Buyer, tested in accordance with the Methodology, periodically updated and audited in accordance with ISO/IEC 27001.
- 22.3 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the Buyer, aim to protect all aspects of the Services and all processes associated with the delivery of the Services and shall comply with the Security Policy.
- 22.4 The Supplier shall comply, and shall procure the compliance of the Supplier Staff, with the Security Policy and the Security Management Plan (if any) and the Supplier shall ensure (and the Buyer shall be entitled to audit) that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 22.5 Buyer Data shall be dealt with in the following way:
- 22.5.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Buyer Data.
- 22.5.2 The Supplier shall not store, copy, disclose, or use the Buyer Data except as necessary for the performance by the Supplier of its obligations under this Call-Off Contract or as otherwise Approved by the Buyer.
- 22.5.3 To the extent that the Buyer Data is held and/or processed by the Supplier, the Supplier shall supply that Buyer Data to the Buyer as requested by the Buyer and in the format (if any) specified by the Buyer from time to time in writing.
- 22.5.4 To the extent that Buyer Data is held and/or processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of the Buyer Data and preventing the corruption or loss of Buyer Data.
- 22.5.5 The Supplier shall ensure that any system on which the Supplier holds any Buyer Data, including back-up data, is a secure system that complies with the security requirements set out by the Buyer under this Call-Off Contract.
- 22.5.6 The Supplier shall ensure that any system on which the Supplier holds any Buyer Data which is protectively marked shall be accredited using such accreditation policy or system as specified by the Buyer (such as the HMG Security Policy framework and Information Assurance Policy, taking into account guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems, and/or relevant HMG Information Assurance Standard(s), as in force from time to time) and, where the term of this Call-Off Contract exceeds one year, the Supplier shall review such accreditation status at least once in each year to assess whether material changes have occurred which could alter the original accreditation decision in relation to Buyer Data. If any such changes have occurred then the Supplier shall resubmit such system for accreditation.
- 22.5.7 If the Buyer Data is corrupted, lost or sufficiently degraded as a result of a Supplier's Default so as to be unusable, the Buyer may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Buyer Data (as the case may be) to the extent and in accordance with the BCDR Plan and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Buyer; and/or

- (b) itself restore or procure the restoration of Buyer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.
- 22.5.8 If at any time the Supplier suspects or has reason to believe that the Buyer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Buyer immediately and inform the Buyer of the remedial action the Supplier proposes to take.
- 22.5.9 The Supplier shall, at all times during and after the Term and during and after the Call-Off Contract Period, indemnify the Buyer and keep the Buyer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Buyer at any time (whether such Losses arise before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under this Clause 21.5.9 except and to the extent that such liabilities have resulted directly from the Buyer's instructions.

## 23. Confidentiality

- 23.1 Except to the extent set out in this Clause 22 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 23.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 23.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 23.2 Clause 22.1 shall not apply to the extent that:
- 23.2.1 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure;
- 23.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 23.2.3 such information was obtained from a third party without obligation of confidentiality, before receiving it from the disclosing Party;
- 23.2.4 such information is or becomes public knowledge (otherwise than by breach of this Clause 22);
- 23.2.5 such information is independently developed without access to the other Party's Confidential Information;
- 23.2.6 is used for the purpose of obtaining professional advice.
- 23.3 The Buyer may disclose the Confidential Information of the Supplier:
- 23.3.1 to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- 23.3.2 to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- 23.3.3 to the extent that the Buyer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 23.3.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.5.6 (including any benchmarking organisation) for any purpose relating to or connected with this Call-Off Contract;
- 23.3.5 on a confidential basis for the purpose of the exercise of its rights under this Call-Off Contract; or
- 23.3.6 to a proposed transferee, assignee or novatee of, or successor in title to the Buyer,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Buyer under this Clause 22.

- 23.4 The Supplier may only disclose the Buyer's Confidential Information to the Supplier Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier Staff are aware of and shall comply with these obligations as to confidentiality in this Clause 22.
- 23.5 The Supplier shall not, and shall procure that the Supplier Staff shall not, use any of the Buyer's Confidential Information received otherwise than for the purposes of this Contract.
- 23.6 At the written request of the Buyer, the Supplier shall procure that those members of Supplier Staff identified in a Buyer's written request sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 23.7 In the event that any default, act or omission of any Supplier Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Supplier Staff, the Supplier shall provide such evidence to the Buyer as the Buyer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Supplier is taking appropriate steps to comply with this Clause 22, including copies of any written communications to and/or from Supplier Staff, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Supplier Staff in connection with obligations as to confidentiality.
- 23.8 Nothing in this Clause 22 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 23.9 The Supplier shall, at all times during and after the Contract Period, indemnify the Buyer and keep the Buyer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Buyer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under Clauses 22.1 to 22.6 except and to the extent that such liabilities have resulted directly from the Buyer's instructions.
- 23.10 In the event that the Supplier fails to comply with Clauses 22.1 to 22.6, the Buyer reserves the right to terminate this Contract for Material Breach.

Subject to Clause 22.3, the Buyer may disclose the confidential information of the Supplier. Where a Non-Disclosure Agreement may be required, please use Call-Off Schedule 4 – Non-Disclosure Agreement.

## E - CONTROL OF THE CONTRACT

### 24. Records and audit access

- 24.1 The Buyer shall use reasonable endeavours to ensure that the conduct of each audit carried out pursuant to FW-47 (Records and audit access) of the Agreement does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Buyer.
- 24.2 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under FW-47 (Records and audit access) of the Agreement unless the audit reveals a Material Breach by the Supplier in which case the Supplier shall reimburse the Buyer for the Buyer's reasonable costs incurred in relation to the audit.

### 25. Force majeure

- 25.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure Event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Contract for the duration of such Force Majeure Event. However, if such Force Majeure Event prevents either Party from performing its material obligations under this Contract for a period in excess of fifteen (15) consecutive Calendar Days either Party may terminate this Contract with immediate effect by notice in writing to the other Party.
- 25.2 Any failure or delay by the Supplier in performing its obligations under this Contract which results from any failure or delay by an agent, Sub-Contractor or Supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or Supplier is itself impeded, as in the case of an Affected Party, by a Force Majeure Event from complying with an obligation to the Supplier.
- 25.3 If either Party becomes aware of a Force Majeure Event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 24.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 25.4 Subject to Clause 24.1 the Supplier shall not have the right to any payment from the Buyer under this Contract where the Supplier is unable to provide the Services and/or Deliverables because of a Force Majeure Event.

### 26. Disruption

- 26.1 The Supplier shall immediately inform the Buyer of any actual or potential industrial action, whether such action is by the Supplier Staff or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Contract.
- 26.2 In the event of industrial action by the Supplier Staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Contract.
- 26.3 If the Supplier's proposals referred to in Clause 25.2 are considered insufficient or unacceptable by the Buyer acting reasonably then the Buyer may terminate this Contract for Material Breach.

## 27. Waiver

- 27.1 The failure of either Party to insist upon performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 27.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 35 (Notices). Such waiver shall only be operative with regard to the specific circumstances referred to.
- 27.3 A waiver by either Party of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

## 28. Cumulative remedies

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

## 29. Further assurances

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

## 30. Changes to contract

- 30.1 No amendment to the provisions of this Contract, other than a change to the Services in accordance with the procedure and provisions set out at Clause 30, shall be effective unless made in accordance with the procedures set out in this Clause 29.
- 30.2 Subject to Clause 29.1, either Party may request a contract change (provided always such change does not amount to a material change of this Call-Off Contract within the meaning of the Regulations and the Law) by completing and sending a draft Contract Change Note in the form set out in Call-Off Contract Part B (the "**Contract Change Note**") to the other Party giving sufficient information to enable the other Party to assess the extent of the change and any additional cost that may be incurred. The Party requesting the contract change shall bear the costs of preparation of the Contract Change Note.
- 30.3 The Party receiving the request for a contract change shall respond to the request within five (5) Working Days (or such other period as may be agreed by the Parties) or receipt and if applicable, the Parties shall enter into discussions to discuss the proposed change and neither Party shall unreasonably withhold or delay consent to the other Party's proposed changes to this Contract.
- 30.4 Where the Buyer has proposed a contract change and the Supplier is unable to provide the change, including where the Parties are unable to agree a change to the Contract Charges, the Buyer may terminate this Contract with immediate effect.
- 30.5 Following execution of the final Contract Change Note, the Supplier shall implement such change and be bound by the same provisions so far as is applicable, as though such change was stated in this Contract.
- 30.6 A Contract Change Note that is signed by both Parties shall constitute an amendment to this Contract pursuant to this Clause 29.

### 31. Changes to services

- 31.1 The Parties acknowledge and agree that there will be changes to the scope of the Services during the Contract Period.
- 31.2 The Supplier shall consider any request by the Buyer to increase the number of Milestone Deliverables for a Release, and may be subject to the Change Control Procedure set out at Clause 29, agree to such request.

### 32. Severability

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

### 33. Supplier's status

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

### 34. Entire agreement

- 34.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) between the Parties in relation to such matters.
- 34.1.1 Each of the Parties acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.
- 34.1.2 Nothing in this Clause 33 shall operate to exclude any liability for (or remedy in respect of) fraudulent misrepresentation or Fraud.

### 35. The contracts (rights of third parties) act 1999

- 35.1 Subject to Clause 34.1 a person who is not a Party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.
- 35.2 CCS may enforce any provision of this Contract which is for the benefit of CCS as a third party beneficiary in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 35.3 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 (CRiTPA) shall apply to Clause 41 (**Employment, Tax and National Insurance Liabilities**) to the extent necessary that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier under that



Clause 41 (**Employment, Tax and National Insurance Liabilities**) in its own right pursuant to section 1(1) of CRiTPA.

- 35.4 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Contract or any one or more Clauses or paragraphs of it.

## 36. Notices

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

| Manner of Delivery | Deemed time of delivery                          | Proof of Service  |
|--------------------|--|---|
| Email              | 9.00am on the first Working<br>Day after sending | Dispatched in an emailed pdf<br>form to the correct<br>e-mail address<br>without any error<br>message |

- 36.2.1 For the purposes of Clause 35.2, the address and email address of each Party shall be the address and email address set out in the Order Form.
- 36.2.2 Either Party may change its address for service by serving a notice in accordance with this Clause 35.
- 36.2.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 37. Legislative change

- 37.1 The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Charges as the result of a General Change in Law or Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Contract Commencement Date.



## F - DISPUTES AND LAW

### 38. Dispute resolution

- 38.1.1 Immediately upon either Party notifying the other of a dispute, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in the Order Form.
- 38.1.2 Nothing in this Dispute Resolution Procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 38.1.3 If the dispute cannot be resolved by the Parties pursuant to Clause 37.1.1 within ten (10) Working Days of notice of dispute or such other period that the Buyer may specify or Approve, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 37.1.8 unless:
- 38.1.4 the Buyer considers that the dispute is not suitable for resolution by mediation; or
- 38.1.5 the Supplier does not agree to mediation.
- 38.1.6 If the dispute relates to any technical aspect of the delivery of the Cyber Security Services or the underlying professional advice and guidance or otherwise is of a financial technical nature (as the Parties may agree) and the dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the dispute is referred to expert determination pursuant to the procedure set out in Clause 37.1.9 and an Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the NCSC (or any other association that has replaced NCSC – National Cyber Security Centre).
- 38.1.7 Without prejudice to any other rights of the Buyer under this Contract, the obligations of the Parties under this Contract shall not be suspended, cease or be delayed by the reference of a dispute submitted to mediation and the Supplier and the Supplier Staff shall comply fully with the requirements of this Contract at all times.
- 38.1.8 The procedure for mediation is as follows:
- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall as soon as practicable, and in any event within twelve (12) Working Days from the date of the proposal to appoint a Mediator, or within three (3) Working Days of notice of the Mediator to either Party that that person is unable or unwilling to act, apply to the mediation provider or to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator;
  - (b) the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediation provider specified in Clause (a) to provide guidance on a suitable procedure;
  - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties; and
  - (f) if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.
- 38.1.9 The Expert shall act on the following basis:
- (a) he/she shall act as an Expert and not as an arbitrator and shall act fairly and impartially;
  - (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
  - (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
  - (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
  - (e) the process shall be conducted in private and shall be confidential; and
  - (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## G - LIABILITY AND INSURANCE

### 39. LIABILITY

- 39.1 Neither Party excludes or limits its liability for:
- 39.1.1 death or personal injury; or;
  - 39.1.2 bribery or Fraud by it or its employees; or
  - 39.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 39.1.4 any other liability to the extent it cannot be excluded or limited by Law.
- 39.2 Subject to Clause 38.1, the Supplier's total aggregate liability in respect of the indemnities in Clauses 15.3 (**VAT**), 20.16 (**IPR Claim**), Clause FW-15 (**Conflicts of Interest and Ethical Walls**), Clause FW-43 (**Provision and Protection of Information**), Clause 22.8 (**Confidentiality**), Clause FW-40 (**Prevention of Fraud and Bribery**), Clause FW-41 (**Safeguarding against Fraud**) and Clause 41 (**Employment, Tax and National Insurance Liabilities**) and in each case, whether before or after the making of a demand pursuant to the indemnities therein, shall be unlimited.
- Note to Bidders: The indemnities provided by the Supplier in these Clauses shall remain as unlimited because they are matters over which the Supplier has full control and the potential losses which could be incurred by the Buyer for Supplier breach of those Clauses is unquantifiable and could cause serious reputational damage to the Buyer*
- 39.3 Subject to Clauses 38.1, 38.2, 38.4 and 38.6, each Party's total aggregate liability in respect of all Losses as a result of Defaults or a Material Breach howsoever arising out of or in connection with this Contract shall be limited to:
- 39.3.1 In relation to Losses suffered as a result of Defaults or a Material Breach resulting in direct loss or damage to property (including any technical infrastructure, assets or equipment but

excluding any loss or damage to IPR, Buyer Data or Buyer Personal Data) of the other Party the sum of one million pounds £1,000,000 in each Contract Year in which the Defaults or a Material Breach occurred or is occurring unless otherwise stipulated by the Buyer in a Further Competition Procedure; and

39.3.2 in respect of all other Losses:

- (a) in relation to Losses suffered as a result of Defaults or a Material Breach occurred or occurring in the first six Months, the greater of the sum of five hundred thousand pounds £500,000 or a sum equal to 200% of the Estimated Contract Charges for the first six Months
- (b) in relation to Losses suffered as a result of Defaults or a Material Breach occurred or occurring during the remainder of the Contract Period, the greater of the sum of five hundred thousand pounds £500,000 or an amount equal to 200% of the Contract Charges paid, due or which would have been payable under this Contract in the six 6 Months immediately preceding the event giving rise to the liability; and
- (c) in relation to Losses suffered as a result of Defaults or a Material Breach occurred or occurring after the end of the Contract Period, the greater of the sum of five hundred thousand pounds £500,000 or an amount equal to 200% of the Contract Charges paid, due or which would have been payable under this Contract in the six 6 Months immediately prior to the end of the Contract Period.

Unless a different aggregate limit or percentage is stipulated by the Buyer in a Further Competition Procedure.

*Guidance Note: Buyer to insert liability limits which are appropriate for its requirements and represent the right apportionment of risk between the Buyer and the Supplier. The aim should be to establish liability ceilings reflecting a combination of the best estimate of the losses that the Buyer might suffer in the event of defaults by the Supplier, the likelihood of those losses occurring and the value for money considerations in limiting liability*

39.4 A Party shall not be responsible for any Loss under this Contract if and to the extent that it is caused by the Defaults or a Material Breach of the other (Defaults or a Material Breach on the part of the Supplier and Buyer Cause on the part of the Buyer).

39.5 Subject to Clauses 38.1, 38.2 and 38.6 in no event shall either Party be liable to the other for any:

- 39.5.1 loss of profits;
- 39.5.2 loss of business;
- 39.5.3 loss of revenue;
- 39.5.4 loss of or damage to goodwill;
- 39.5.5 loss of savings (whether anticipated or otherwise); and/or
- 39.5.6 any indirect, special or consequential loss or damage.

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

- 39.6.1 the additional operational and/or administrative costs and expenses arising from any Material Breach;
- 39.6.2 any regulatory losses, fines, expenses or other Losses arising from a breach by the Supplier of any Law.

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

- 39.8 Save as otherwise expressly provided, the obligations of the Buyer under this Contract are obligations of the Buyer in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Buyer in any other capacity, nor shall the exercise by the Buyer of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Buyer to the Supplier.
- 39.9 For the avoidance of doubt any liabilities which are unlimited shall not be taken into account for the purposes of establishing whether the limit in Clause 38.3.1 has been reached.
- 39.10 Nothing in this Clause 38 shall act to reduce or affect a Party's general duty to mitigate its loss.

## H -TERMINATION

### 40. Termination events

- 40.1 The Buyer shall have the right to terminate this Contract for convenience and without cause at any time by giving notice to the Supplier as set out at Clause 39.2 and the Supplier's obligation to provide the Services shall end on the date set out in the Buyer's notice.
- 40.2 Notice Periods
- 40.2.1 The notice period (expressed in Working Days) to be given by the Buyer in respect of Clause 39.1 shall be the number of whole days that is 20% of the total duration of the final SoW to be executed under this Contract, up to a maximum of 30 Working Days. Partial days shall be discounted in the calculation and the duration of the SoW shall be calculated in Working Days. For example, if the duration of the SoW is 10 Working Days: 20% of the SoW is 2 days. The Notice Period = 2 Working Days; or if the duration of the SoW is 62 Working Days, 20% of the SoW is 12.4. The Notice Period = 12 Working Days.
- 40.3 The Parties acknowledge and agree that:
- 40.3.1 the Buyer's right to terminate for convenience and without cause under Clause 39.1 is reasonable in view of the subject matter of this Contract and the consultancy nature of the Services being provided;
- 40.3.2 the Contract Charges paid during the notice period given by the Buyer in accordance with Clause 39.1 are a reasonable form of compensation and are deemed to fully cover any costs or Losses incurred by the Supplier which may arise either directly or indirectly as a result of the Buyer exercising the right to terminate without cause.
- 40.4 The Buyer shall have the right to terminate this Contract at any time with immediate effect by written notice to the other Supplier if:
- 40.4.1 the Supplier commits a Supplier Default and if the Supplier Default is not, in the opinion of the Buyer, capable of remedy; or
- 40.4.2 the Supplier Default is a Material Breach of this Contract.
- 40.5 the Supplier is unable to provide a change proposed by the Buyer;
- 40.6 Either Party may terminate this Contract at any time with immediate effect by written notice to the other Party if:
- 40.6.1 the other Party commits a Material Breach of any term of this Contract (other than failure to pay any amounts due under this Contract) and, if such breach is remediable, fails to remedy that breach within a period of fifteen (15) Working Days of being notified in writing to do so;
- 40.6.2 an Insolvency Event of the other Party occurs, or the other Party ceases or threatens to cease to carry on the whole or any material part of its business; or
- 40.6.3 a Force Majeure Event occurs for a period of more than fifteen (15) consecutive Calendar Days.

- 40.7 Without prejudice to any other right or remedy which a Buyer may have under the Call-Off Agreement or at Law (including the right to terminate under this Clause 39) if any Services are not supplied in accordance with the Call-Off Agreement, then the Buyer may (whether or not any part of the Services has already been delivered) do any of the following at the Buyer's option and in its sole discretion:
- 40.7.1 at the Supplier's expense, give the Supplier the opportunity to remedy any failure in the supply of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply replacement Services and carry out any other necessary work to ensure that the terms of this Call-Off Agreement are fulfilled, in accordance with the Buyer's instructions;
- 40.7.2 carry out, at the Supplier's expense, any work necessary to make the supply of Services comply with this Call-Off Agreement;

## 41. Consequences of expiry or termination for any reason

- 41.1 Save for those rights and obligations set out Clause 40.2.4, upon the expiry or termination of this Contract, the rights and obligations of the Parties in respect of this Contract (including any executed SoWs) shall automatically terminate.
- 41.2 Consequences of expiry or termination of the Contract for any reason:
- 41.2.1 At the end of the Contract Period (howsoever arising), the Supplier shall:
- (a) immediately return to the Buyer:
    - (i) all Buyer Data including all copies of Buyer documentation and any other software licensed by the Buyer to the Supplier under this Contract;
    - (ii) any materials created by the Supplier under this Contract, the IPRs in which are owned by the Buyer;
    - (iii) any items that have been on-charged to the Buyer, such as consumables;
    - (iv) all Property (including materials, documents, information and access keys) provided to the Supplier under FW-10 (**Property**). Such Property shall be handed back to the Buyer in good working order (allowance shall be made for reasonable wear and tear);
  - (b) immediately upload any items that are or were due to be uploaded to the Repository but for the expiry or termination of this Contract (as more particularly specified in Clause 19);
  - (c) cease to use the Buyer Data and, at the direction of the Buyer, provide the Buyer and/or the Replacement Supplier with a complete and uncorrupted version of the Buyer Data in electronic form in the formats and on media agreed with the Buyer and/or the Replacement Supplier;
  - (d) except where the retention of Buyer Data is required by Law, on the earlier of the receipt of the Buyer's written instructions or twelve (12) Months after the date of expiry or termination, destroy all copies of the Buyer Data and promptly provide written confirmation to the Buyer that the data has been destroyed;
  - (e) vacate the Buyer Premises;
  - (f) assist and co-operate with the Buyer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and provide such assistance and co-operation as the Buyer may require in relation to any work in progress or stories which remain on the product backlog;
  - (g) return to the Buyer any sums prepaid in respect of Services not provided by the date of expiry or termination (howsoever arising); and



- (h) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Buyer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Buyer or the Replacement Supplier to conduct due diligence;
- 41.2.2 Each Party will return to the other Party all Confidential Information of the other Party and will certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question as a requirement under the Law or where this Contract expressly provides for otherwise.
- 41.2.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Services shall be terminated with effect at the end of the Contract Period (howsoever arising) without the need for the Buyer to serve Notice.
- 41.2.4 Save as otherwise expressly provided in this Contract:
  - (a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
  - (b) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Buyer or the Supplier under Clauses 15 (Payment and VAT), 16 (Recovery of Sums Due), 1 (Intellectual Property Rights), FW-43 (Provision and Protection of Information), 22 (Confidentiality), FW-44 (Official Secrets Acts), 38 (Liability), 40 (Consequences of Expiry or Termination For Any Reason), FW-40 (Prevention of Fraud and Bribery), 23 and FW-47 (Records and audit access), FW-41 (Safeguarding against Fraud), FW-15 (Conflicts of Interest and Ethical Walls), 34 (THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999), 41 (Employment, Tax and National Insurance Liabilities) and 42 (Governing Law and Jurisdiction) and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Contract.

## 42. Employment, tax and national insurance liabilities

- 42.1 The Parties agree that :
  - 42.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Staff Transfer shall apply as follows:
    - (a) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Staff Transfer shall apply;
    - (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Staff Transfer shall apply;
    - (c) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Staff Transfer shall apply; and
    - (d) Part C of Staff Transfer shall not apply;

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- 42.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Staff Transfer shall apply and Parts A and B of Staff Transfer shall not apply; and
- 42.1.3 Part D of Staff Transfer shall apply on the expiry or termination of the Services or any part of the Services;
- 42.2 The Supplier shall both during and after the Contract Period indemnify the Buyer against all Employee Liabilities that may arise as a result of any claims brought against the Buyer by any person where such claim arises from any act or omission of the Supplier or any Supplier Staff.
- 42.3 Where the Supplier or any Supplier Staff are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
- 42.3.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 42.3.2 indemnify the Buyer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Staff.
- 42.4 In the event that any one of the Supplier Staff is a Worker who receives consideration relating to the Services, then, in addition to its obligations under Clause 41.3, the Supplier shall ensure that its contract with the Worker contains the following requirements:
- 42.4.1 that the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 41.3, or why those requirements do not apply to it. In such case, the Buyer may specify the information which the Worker must provide and the period within which that information must be provided;
- 42.4.2 that the Worker's contract may be terminated at the Buyer's request if:
- (a) the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer under Clause 41.4.1; and/or
- (b) the Worker provides information which the Buyer considers is inadequate to demonstrate how the Worker complies with Clause 41.3 or confirms that the Worker is not complying with those requirements; and
- 42.4.3 that the Buyer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.



## 43. Governing law and jurisdiction

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

## 44. Promoting tax compliance

- 44.1 If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 44.1.1 notify the Buyer in writing of such fact within five (5) Working Days of its occurrence; and
- 44.1.2 promptly provide to the Buyer:
- (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Buyer may reasonably require.
- 44.2 In the event that the Supplier fails to comply with this Clause 43 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Buyer are acceptable, then the Buyer reserves the right to terminate this Call-Off Contract for Material Breach.

## J – ADDITIONAL TERMS

### 45. Relevant convictions

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

## 47. Additional staffing security

- 47.1 This Clause 45 shall apply if the Buyer has so stipulated in the Order Form.
- 47.2 The Supplier shall comply with the Staff Vetting Procedures in respect of all or part of the Supplier Staff (as specified by the Buyer) and/or any other relevant instruction, guidance or procedure issued by the Buyer that will be used to specify the level of staffing security required and to vet the Supplier Staff (or part of the Supplier Staff).
- 47.3 The Supplier confirms that, at the Commencement Date, the Supplier Staff were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures and/or any other relevant instruction, guidance or procedure as specified by the Buyer.

## 48. Call off guarantor

- 48.1 This Clause 46 shall apply if the Buyer requires a Call-Off Guarantor.
- 48.2 RM3764ii Deed of Guarantor (as set out in the Agreement) to be used.

## 49. Collaboration agreement

- 49.1 If the Buyers has an environment where the service is provided by multiple suppliers, across multiple agreements; a Service Integration and collaboration piece will be necessary. Where this applies the Supplier will need to enter into a Collaboration Agreement. Please see : <http://ccs-agreements.cabinetoffice.gov.uk/Cyber-security-services-2>
- 49.2 Service levels will also need to be created to enable service management across different service components and suppliers. Shared service levels and unique services are held within the Optional Service Levels - <http://ccs-agreements.cabinetoffice.gov.uk/Cyber-security-services-2>
- 49.3 The Collaboration Agreement shall be entered into on the Commencement Date (or as otherwise agreed between the Parties).

## 50. Staff Transfer

- 50.1 For this Clause please refer to the Staff Transfer support Parts A-D and supporting annexes..
- 50.2 Interpretation:  
Where a provision in this Clause imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

## STAFF TRANSFER PART A

### TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF SERVICES

#### 1. Relevant transfers

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

#### 2. Buyer indemnities

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

- 2.1.5 a failure of the Buyer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Buyer other than a Transferring Buyer Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.7 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Buyer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Buyer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Buyer as a Transferring Buyer Employee claims, or it is determined in relation to any person who is not identified by the Buyer as a Transferring Buyer Employee, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Buyer; and
- 2.3.2 the Buyer may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such other reasonable steps as the Buyer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Buyer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Buyer shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:

- (a) any claim for:
    - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
  - (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Buyer within 6 months of the Call Off Commencement Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Buyer nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### 3. Supplier indemnities and obligations

- 3.1 Subject to Paragraph 3.2 the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of:
- 3.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date;
  - 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Customer Employees; and/or
    - (b) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
  - 3.1.3 any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - 3.1.4 any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Customer Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Buyer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
  - 3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring Buyer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer in writing;

- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Buyer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Buyer to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Buyer's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Buyer and the Supplier.

## 4. Information

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



## 6. Principles of good employment practice

- 6.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 6.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in:
  - 6.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 6.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 6.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 6.2.4 the New Fair Deal.
- 6.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

## 7. Pensions

- 7.1 The Supplier shall, and/or shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.



## STAFF TRANSFER ANNEX TO PART A: PENSIONS

### 1. Participation

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Buyer:
  - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Buyer if the Supplier breaches any obligations it has under the Admission Agreement;
  - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Buyer in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
  - 1.2.4 agree that the Buyer may terminate this Call Off Contract in the event that the Supplier breaches the Admission Agreement:
    - (a) and that breach is not capable of being remedied; or
    - (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that the Buyer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

### 2. Future service benefits

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Buyer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

## 4. Funding

- 4.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 4.2 The Supplier shall indemnify and keep indemnified the Buyer on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

## 5. Provision of information

The Supplier and the Buyer respectively undertake to each other:

- 5.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 5.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

## 6. Indemnity

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

## 7. Employer obligation

- 7.1 The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

## 8. Subsequent transfers

The Supplier shall:

- 8.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 8.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Buyer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 8.3 for the applicable period either:
- 8.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Call Off Contract, to terminate the Agreement or any part of the Services; or
- 8.3.2 after the date which is two (2) years prior to the date of expiry of this Call Off Contract,
- 8.3.3 ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Buyer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Buyer (such approval not to be unreasonably withheld). Save that

this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **9. Bulk transfer**

- 9.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:
  - 9.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
  - 9.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
  - 9.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and
  - 9.1.4 indemnify the Buyer on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

## STAFF TRANSFER PART B

### TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

#### 1. Relevant transfers

- 1.1 The Buyer and the Supplier agree that:
  - 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
  - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.
- 1.2 Subject to Paragraph 6, the Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Buyer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

#### 2. Former supplier indemnities

- 2.1 Subject to Paragraphs 2.2 and 6, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:
  - 2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
  - 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
    - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
  - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
    - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory

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

indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

2.7.1 shall not apply to:

- (a) any claim for:
  - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

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

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

### 3. Supplier indemnities and obligations

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

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

- (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their



- resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer and/or the Former Supplier in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

## 5. Information

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 6, the Buyer shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

## 6. Principles of good employment practice

- 6.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
  - 6.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 6.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 6.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 6.1.4 the New Fair Deal.
- 6.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

## 7. Procurement obligations

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

## 8. Pensions

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex.

## STAFF TRANSFER ANNEX TO PART B: PENSIONS

### 1. Participation

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Buyer:
  - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Buyer if the Supplier breaches any obligations it has under the Admission Agreement;
  - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Buyer in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
  - 1.2.4 agree that the Buyer may terminate this Call Off Contract for material default in the event that the Supplier breaches the Admission Agreement:
    - (a) and that breach is not capable of being remedied; or
    - (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that the Buyer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

### 2. Future service benefits

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Buyer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### 3. Funding

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Buyer on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

### 4. Provision of information

The Supplier and the Buyer respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

### 5. Indemnity

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

### 6. Employer obligation

The Supplier shall comply with the requirements of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

### 7. Subsequent transfers

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Buyer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.3 for the applicable period either
- 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Call Off Contract, to terminate the Agreement or any part of the Services; or
- 7.3.2 after the date which is two (2) years prior to the date of expiry of this Call Off Contract, ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Buyer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Buyer (such approval not to be unreasonably withheld). Save that

this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **8. Bulk transfer**

- 8.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:
  - 8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
  - 8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
  - 8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and
  - 8.1.4 indemnify the Buyer on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

## STAFF TRANSFER PART C

### NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

#### 1. Procedure in the event of transfer

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

#### 2. Indemnities

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Buyer shall:
  - 2.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Buyer referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
  - 2.1.2 subject to paragraph 3, procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re-employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor



(as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.

- 2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.

- 2.4 The indemnities in Paragraph 2.1:

- 2.4.1 shall not apply to:

- 2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to the Buyer and, if applicable, Former Supplier within 6 months of the Call Off Commencement Date.

### 3. Procurement obligations

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

- (a) any claim for:
  - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,  
in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure

## STAFF TRANSFER PART D

### EMPLOYMENT EXIT PROVISIONS

#### 1. Pre-service transfer obligations

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
  - 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
  - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Call Off Contract;
  - 1.1.3 the date which is twelve (12) months before the end of the Term; and
  - 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any six (6) month period),  
it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer.
- 1.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Sub-Contractor:
  - 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 1.4 The Supplier warrants, for the benefit of the Buyer, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Buyer (not to be unreasonably withheld or delayed):
  - 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
  - 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
  - 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
  - 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
  - 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process, and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.
- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Buyer any information the Buyer may reasonably require relating to the manner in which Services are organised, which shall include:
- 1.6.1 the numbers of employees engaged in providing the Services;
- 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
- 1.6.3 the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule 7 or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule 7 (as appropriate); and
- 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
- 1.7.1 the most recent month's copy pay slip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

## 2. Employment regulations exit provisions

- 2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Call Off Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.

- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (b) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Buyer and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of

- this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Buyer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
- 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the Buyer shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- 2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Buyer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
- 2.7.2 such offer has been made but not accepted; or
- 2.7.3 the situation has not otherwise been resolved
- the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
- (a) any claim for:



- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or
  - (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-Contractor; and
  - 2.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Buyer and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, where a Relevant Transfer occurs the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
  - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or



- (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
- 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
- (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

## K - DEFINITIONS

### 51. Glossary

In this Contract the following words shall have the following meanings:

|   |  |
|---|--|
| <b>Admission Agreement</b>                            | An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Services;  |
| <b>Accepted/Acceptance</b>                            | has the meaning set out in the test criteria within the Methodology/SoW;   |
| <b>Acceptance Criteria</b>                            | in respect of each deliverable and each SoW, means the criteria, as validated and approved by the Buyer and agreed with the Supplier, to determine whether the Service delivered by the Supplier has met the requirements of that deliverable and or SoW;  |
| <b>Accepted Deliverable</b>                           | has the meaning set out in the test criteria within the Methodology/SoW;   |
| <b>Activities</b>                                     | means cyber security service activities undertaken during a SoW;   |
| <b>Acquired Rights Directive</b>                      | means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time; |
| <b>Affected Party</b>                                 | means the Party whose obligations under the Contract are affected by the Force Majeure Event   |
| <b>Agreement</b>                                      | Means the Framework Agreement.   |
| <b>Agreement Prices</b>                               | means the price(s) applicable to the provision of the Services set out in Agreement Schedule 1;  |
| <b>Agreement Schedule</b>                             | means a schedule to the Framework Agreement;   |
| <b>Affiliates</b>                                     | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;   |
| <b>Approval</b>                                       | means the prior written consent of the Buyer and "Approve" and "Approved" shall be construed accordingly;  |
| <b>Auditor</b>  | any auditor appointed by the Audit Commission;   |
| <b>Authority</b>                                      | means <b>THE MINISTER FOR THE CABINET OFFICE</b> as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9 <sup>th</sup> Floor, The Capital, Old Hall Street, Liverpool, L3 9PP;  |
| <b>Business Continuity and Disaster Recovery Plan</b> | means plans which sets out the processes and arrangements to ensure continuity and restoration of the Services in the event of a Disaster as further set out at Clause 17;   |
| <b>Buyer</b>  | means public sector Buyer full name as defined within the Call-Off Contract Order Form the " <b>Buyer</b> ", entering into this Contract   |
| <b>Buyer Background IPRs</b>                          | shall mean all Intellectual Property Rights vested in or licensed to the Buyer prior to or independently of the performance by the Supplier of its obligations under this Contract and including, for the avoidance of doubt, including, for the avoidance of doubt, guidance, specifications,     |

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|  | instructions, toolkits, plans, data, drawings, databases, patents, patterns, software, models and designs, technical specifications, user manuals, operating manuals, process definitions and procedures and other documentation and any modifications, amendments, updates and new releases of the same;  |
| <b>Buyer Cause</b>                         | means any breach by the Buyer of its obligations under this Contract including the RM3764ii Call-Off Contract Part B – The Schedules ( <b>Buyer Responsibilities</b> ) (unless caused or contributed to by the Supplier or as the result of any act or omission by the Buyer to which the Supplier has given its prior consent);   |
| <b>Buyer Data</b>                          | means: <ul style="list-style-type: none"> <li>a. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Buyer's Confidential Information, and which:</li> <li>b. are supplied to the Supplier by or on behalf of the Buyer; or</li> <li>c. the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</li> </ul> any Personal Data for which the Buyer is the Data Controller; |
| <b>Buyer's Confidential Information</b>    | means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Buyer, including all IPRs (including all Buyer Background IPRs and Project Specific IPRs), together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;   |
| <b>Buyer Representative</b>                | means a representative of the Buyer who is authorised to make decisions on behalf of the Buyer;  |
| <b>Buyer Responsibilities</b>              | means the responsibilities of the Buyer set out in the Order Form and any other responsibilities of the Buyer agreed in writing between the Parties from time to time;   |
| <b>Buyer Software</b>                      | means software which is owned by or licensed to the Buyer which is or will be used by the Supplier for the purposes of providing the Services;   |
| <b>Buyer's T&amp;S Policy</b>              | means the rates and policies for travel and subsistence expenses as set by the Buyer and as may be amended from time to time;  |
| <b>Cyber Security Consultancy</b>          | means the certified scheme being run by NCSC:<br><a href="https://www.ncsc.gov.uk/articles/become-certified-cyber-security-consultancy">https://www.ncsc.gov.uk/articles/become-certified-cyber-security-consultancy</a>   |
| <b>Cyber Security Consultancy Standard</b> | means the standards relating the certified cyber security consultancy scheme: <a href="https://www.ncsc.gov.uk/documents/cyber-security-consultancy-standard">https://www.ncsc.gov.uk/documents/cyber-security-consultancy-standard</a>  |
| <b>Calendar Day</b>                        | means any day of the year;   |
| <b>Call-Off Contract</b>                   | Means the agreement between the Buyer and the Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the RM3764ii Call-Off Terms together with Part A (Order Form) and Part B (The Schedules and SoWs);   |
| <b>Capped Time and Materials</b>           | means the capped time and materials pricing mechanism for the Services as may be agreed by the Parties and set out in the SoW;   |

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| <b>Central Government Body</b>            | means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:<br>a) Government Department;<br>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);<br>c) Non-Ministerial Department; or<br>d) Executive Agency; |
| <b>Change Control Procedure</b>           | has the meaning set out at Clause 29.1;   |
| <b>Change in Law</b>                      | means any Change in Law which impacts on the supply of the Services and performance of the RM3764ii Call-Off Terms which comes into force after the Commencement Date;  |
| <b>Change of Control</b>                  | means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;  |
| <b>Collaboration Agreement</b>            | means an agreement between the Buyer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Buyer's Services and to ensure that the Buyer receives an efficient end-to-end Service; such agreement to be in the form set out in the Optional Call-Off Schedule Collaboration Agreement;  |
| <b>Collaboration Policy</b>               | means the Buyer's policy as set out at Annex 2 to Optional Call-Off Collaboration Agreement;  |
| <b>Collaboration Supplier</b>             | means a Agreement Supplier or the Buyer contractor, that has entered into a Collaboration Agreement as set out in the Optional Call-Off Schedule Collaboration Agreement;   |
| <b>Commencement Date</b>                  | means the date of commencement of this Contract as set out in the Order Form;   |
| <b>Commercially Sensitive Information</b> | means the Confidential information listed in the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;  |
| <b>Comparable Supply</b>                  | means the supply of Services to another Buyer of the Supplier that are the same or similar to the Services;   |
| <b>Completion Date</b>                    | means the date of completion of an SoW as set out in the RM3764ii Call-Off Part B – The Schedule ( <b>Statement of Works</b> )  |
| <b>Contract</b>                           | means this Call-Off agreement between the Buyer and Supplier (entered into pursuant to the provisions of the Agreement) consisting of the Order Form, SoW(s) and the RM3764ii Call-Off Terms;   |
| <b>Contract Charges</b>                   | means the prices (exclusive of any applicable VAT) payable to the Supplier by the Buyer under this Contract, as set out in each SoW, for the full and proper performance by the Supplier of its obligations under this Contract and under each SoW;   |
| <b>Contract Expiry Date</b>               | has the meaning set out at Clause 3.1.2 of this Contract.   |
| <b>Contract Year</b>                      | means a consecutive period of 12 Months commencing on the Commencement date;  |

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| <b>Contract Period</b>                    | means the period commencing on the Contract Commencement Date and ending on the Contract Expiry Date;   |
| <b>Contracting Body/Bodies</b>            | means the Buyer, CCS and any other bodies listed in paragraph VI.3 of the OJEU Notice;  |
| <b>Conviction</b>                         | means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.); |
| <b>Data Controller</b>                    | shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;   |
| <b>Data Processor</b>                     | shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;   |
| <b>Data Protection Legislation or DPA</b> | means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;   |
| <b>Data Subject</b>                       | shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;   |
| <b>Day Rate</b>                           | means the maximum day rate in the Agreement Schedule 8 (Charging Structure) and displayed on the catalogue excluding travel and subsistence to the named Buyer location(s)  |
| <b>Default</b>                            | means any breach of the obligations of the Supplier (excluding a Material Breach) or any other default, act, omission, negligence or negligent statement of the Supplier or the Supplier Staff in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Buyer;  |
| <b>Defect</b>                             | has the meaning as specified in the test criteria set out in the methodology and/or SoW;  |
| <b>Deliverable</b>                        | means a tangible work product, outcome, consultancy or related material or item that is to be achieved or delivered to the Buyer by the Supplier as part of the Services;   |
| <b>Delivery Stage</b>                     | means the stage in which the Service is to be delivered as set out in the SoW;  |
| <b>Delivery Team</b>                      | means the Supplier's Staff responsible for the delivery of the Services;  |
| <b>Disaster</b>                           | the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of it will be unavailable for period of three 3 hours or which is reasonably anticipated will mean that the Services or a material part will be unavailable for that period;  |
| <b>DOTAS</b>                              | means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in  |



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|  | Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;   |
| <b>Eligible Employee</b>                     | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;   |
| <b>Equipment</b>                             | means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under the Contract;  |
| <b>Employment Liabilities</b>                | means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following: <ul style="list-style-type: none"> <li>a. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li>b. unfair, wrongful or constructive dismissal compensation;</li> <li>c. compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</li> <li>d. compensation for less favourable treatment of part-time workers or fixed term employees;</li> <li>e. outstanding debts and unlawful deduction of wages, including any PAYE and National Insurance Contributions;</li> <li>f. claims whether in tort, contract or statute or otherwise;</li> <li>g. any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation);</li> </ul> |
| <b>Environmental Information Regulations</b> | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;   |
| <b>Exit Plan</b>                             | means the Plan provided by the Supplier, and Approved by the Buyer detailing exit requirements and timescale, established within 10 working days of the start of a project and maintained and updated for every SoW. Exit Plan review/update will form part of the Acceptance Criteria for every SoW.  |
| <b>Expert</b>                                | means the person appointed by the Parties in accordance with Clause 37.1.6;  |
| <b>Fair Deal Employees</b>                   | those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of Staff Transfer applies, any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor   |



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|                               | legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);   |
| <b>Fixed Price</b>            | means the fixed prices for Services as may be agreed by the Parties and set out in the SoW;   |
| <b>FOIA</b>                   | means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;   |
| <b>Force Majeure Event</b>    | <p>means any event, occurrence or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> <li>• acts, events, omissions, happenings or non- happenings beyond the reasonable control of the affected party;</li> <li>• riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>• acts of government, local government or regulatory bodies;</li> <li>• fire, flood, any disaster and any failure or shortage of power or fuel;</li> <li>• an industrial dispute affecting a third party for which a substitute third party is not reasonably available;</li> <li>• provide always that: <ul style="list-style-type: none"> <li>- any industrial dispute relating to the Supplier, the Staff or any other failure in the Supplier or the Sub-Contractor's supply chain; and</li> <li>- any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;</li> </ul> </li> <li>• shall not constitute a Force Majeure;</li> </ul> |
| <b>Former Supplier</b>        | <p>means a party providing services to the Buyer similar or the same as the Services and which is being replaced by the Supplier;</p> <p>or in relation to Staff Transfer means a supplier supplying services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);</p>  |
| <b>Framework Agreement</b>    | Means the Framework Agreement relating to Cyber Security Services – RM3764ii - between CCS and the Supplier;  |
| <b>Fraud</b>                  | means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;   |
| <b>Good Industry Standard</b> | means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;   |
| <b>General Change in Law</b>  | means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;   |
| <b>Glossary</b>               | means the defined terms set out in the Glossary.  |

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| <b>Halifax Abuse Principle</b>              | means the principle explained in the CJEU Case C-255/02 Halifax and others;   |
| <b>Insolvency Event</b>                     | <p>means, in respect of the Supplier or Framework Guarantor or Call-Off Guarantor (as applicable):</p> <ul style="list-style-type: none"> <li>a. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c. a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>d. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> <li>f. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>g. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</li> <li>h. where the Supplier or Framework Guarantor or Call-Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</li> </ul> <p>any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction.</p> |
| <b>Intellectual Property Rights or IPRs</b> | <p>means</p> <ul style="list-style-type: none"> <li>a. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations whether registerable or not;</li> <li>b. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</li> </ul> <p>all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off.</p>   |
| <b>Invoice</b>                              | means a VAT invoice issued by the Supplier to the Buyer in respect of any Value Added Tax properly payable on the Contract Charges;   |

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| <b>ISMS</b>                         | means an information security management system as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the Services;  |
| <b>Key Personnel</b>                | means the Supplier Staff named in the SoW as such;  |
| <b>Know How</b>                     | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier's or the Buyer's possession before the Commencement Date;  |
| <b>KPIs</b>                         | means those metrics and/or key performance indicators as identified in the Agreement, Methodology and SoW (as applicable) which are to have contractual effect during the execution of an SoW;  |
| <b>Law(s)</b>                       | means any act of parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;  |
| <b>Lean</b>                         | a methodology which is based on the principles of eliminating waste, amplifying learning, deciding as late as possible, delivering as fast as possible, empowering the team, improving the system, respect and creating knowledge;  |
| <b>Losses</b>                       | means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;   |
| <b>Management Charge</b>            | means the sum payable by the Supplier to CCS in accordance with Clause FW-23 ( <b>Management Charge</b> ) of the Agreement;   |
| <b>Management Information or MI</b> | means the management information specified in Schedule FW-22 (Provision of Management Information)  |
| <b>Material Breach</b>              | means: <ul style="list-style-type: none"> <li>a. a breach by the Supplier referred to by this definition in any of the following Clauses: Clause 4 and FW-21 (<b>Warranties and Representations</b>), FW-15 (<b>Conflicts of Interest and Ethical Walls</b>), Clause 25 (<b>Disruption</b>), Clause 7.1 (<b>Supplier Staff</b>), Clause 20 (<b>IPR</b>), FW-43 (<b>Provision and Protection of Information</b>), Clause 22 (<b>Confidentiality</b>), FW-25 (<b>Publicity, Branding Media and Official Enquiries</b>), FW-44 (<b>Official Secrets Acts</b>), FW-40 (<b>Prevention of Fraud and Bribery</b>), FW-41 (<b>Safeguarding against Fraud</b>) and FW-15 (<b>Conflicts of Interest and Ethical Walls</b>) and Clause 41.7 (<b>Employment, Tax and National Insurance Liabilities</b>).</li> <li>b. any breach of this Contract which is set out in this Contract as being a material breach;</li> <li>c. any breach of this Contract which is set out as a material breach of this Contract in the Agreement;</li> <li>d. any material breach of this Contract under the Law; and/or</li> </ul> a breach which prevents the Buyer from discharging a statutory duty. |
| <b>Maximum Price</b>                | has the meaning given to it in the SoW;   |

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| <b>Mediator</b>                          | has the meaning given to it at Clause 37.1.8;  |
| <b>Methodology</b>                       | means the description of the manner in which the Services are to be provided by the Supplier as set out in the Buyer Requirements and the Requirements Schedule;   |
| <b>Metrics</b>                           | means the metrics to be used to measure the KPIs during the execution of an SoW, the type and basis of measure being as specified in the Methodology and/or applicable SoW;  |
| <b>Milestone</b>                         | an event or task described agreed by the Parties which the Supplier must be complete by the relevant Milestone Date;   |
| <b>Milestone Achievement Certificate</b> | has the meaning given in the Buyer Requirements Methodology and/or the SoW (where applicable);   |
| <b>Milestone Date</b>                    | the date set against relevant Milestones as may agreed by the Parties and set out in the SoW;  |
| <b>Milestone Deliverables</b>            | means a specific deliverables within a SoW   |
| <b>Milestone Deliverables Shortfall</b>  | means the number of Milestone deliverables to be delivered by the Supplier for a SoW (as set out in the SoW) minus the number of Milestone deliverables Accepted by the Release Completion Date for that SoW;  |
| <b>Months</b>                            | means a calendar month;  |
| <b>New Fair Deal</b>                     | the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;   |
| <b>NCSC</b>                              | means National Cyber Security Centre.  |
| <b>Notified Sub-Contractor</b>           | a Sub-Contractor identified in the Annex to Staff Transfer to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;  |
| <b>Occasion of Tax Non-Compliance</b>    | <p>means:</p> <ul style="list-style-type: none"> <li>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> </ul> <p>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Call-Off Commencement Date or to a civil penalty for fraud or evasion;</p> |
| <b>Open Source Ordered Software</b>      | means any open source software ordered by the Buyer;   |

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| <b>Open Government Licence</b>   | means the licence granted by the Government for the use and re-use of public sector information as set out at <a href="http://www.nationarchives.gov.uk/doc/open-government-licence/">http://www.nationarchives.gov.uk/doc/open-government-licence/</a> and as may be amended from time to time;  |
| <b>Operating Level Agreement</b> | means the agreement established between the Collaboration Suppliers in accordance with paragraph 10 of Part A of Optional Call-Off Schedule Optional Service Levels.  |
| <b>Order</b>                     | means the order for the provision of the Cyber Security Services placed by the Buyer with the Supplier in accordance with the Agreement and under the terms of this Contract;   |
| <b>Order Form</b>                | means the form on which an Order is placed for the provision of the Cyber Security Services placed by the Buyer with the Supplier in accordance with the Agreement and under the terms of this Contract;  |
| <b>Party, Parties</b>            | Party means the Buyer and the Supplier; and "Parties" shall mean both;  |
| <b>Personal Data</b>             | shall have the same meaning as set out in the Data Protection Act 1998;   |
| <b>Premises</b>                  | means the location where the Services are to be principally performed as set out in the Order Form;   |
| <b>Professional Working Day</b>  | means a Working Day of no fixed length and being as long as to permit all scheduled work to be completed. Usually an eight-hour day unless agreed otherwise, but it means that the Supplier will not be paid overtime if it is longer than eight hours.   |
| <b>Project</b>                   | means the delivery of the Services in accordance with this Contract;  |
| <b>Project Specific IPRs</b>     | <p>means:</p> <ul style="list-style-type: none"> <li>a. IPRs in or arising out of the provision of the Services under this Contract and all updates and amendments to the same created or arising during the Contract Period; and/or</li> <li>b. any materials, data and other works of any kind whatsoever created or compiled in the course of the performance of this Contract in which IPRs may subsist; and/or</li> <li>c. the IPRs in any modifications, updates and developments to the Buyer Background IPRs; and/or</li> <li>d. any Personal Data provided or available to the Supplier for the purposes of this Contract; and/or</li> </ul> <p>any delivery documentation, database rights, data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible or other media, and which are supplied to the Supplier by or on behalf of the Buyer; or the Supplier is required to receive, commission, generate, develop, process, store or transmit pursuant to this Contract (except for IPRs in modifications, updates and developments to the Supplier Background IPRs and excluding any Supplier Background IPR or Supplier Software);</p> |
| <b>Property</b>                  | means the property, other than real property and IPR, issued or made available to the Supplier by the Buyer in connection with this Contract;   |
| <b>Reimbursable Expenses</b>     | has the meaning set out at Clause 14;   |



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| <b>Relevant Tax Authority</b>     | means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;  |
| <b>Relevant Conviction</b>        | means a Conviction that is relevant to the nature of the Services to be provided or as specified by the Buyer in the Order Form or elsewhere in the Contract;   |
| <b>Relevant Transfer</b>          | means a transfer of employment to which Employment Regulations applies;   |
| <b>Relevant Transfer Date</b>     | in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;  |
| <b>Replacement Services</b>       | means any services which are substantially similar to any of the Services and which the Buyer receives following the expiry or termination of this Contract, whether those Services are provided by the Buyer internally and/or by any third party;   |
| <b>Replacement Sub-Contractor</b> | a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);   |
| <b>Replacement Supplier</b>       | means any third party provider of Replacement Services appointed by the Buyer from time to time or where the Buyer is providing Replacement Services for its own account, shall also include the Buyer;   |
| <b>Repository</b>                 | means a secure document management repository and archive provided and maintained by the Buyer (or such other Crown Body as may be notified to the Supplier by the Buyer);  |
| <b>Retrospective</b>              | means lessons learned and/or project completion review;   |
| <b>RM3764ii Call-Off Terms</b>    | means the terms and conditions, set out in this Part C;   |
| <b>Security Management Plan</b>   | the Supplier's security plan prepared pursuant to Clause 21;  |
| <b>Security Policy</b>            | means the Buyer's security policy and procedures in force from time to time, including the Cabinet Office Security Policy framework (available from the Cabinet Office Security Policy Division) and any specific security requirements set out by the Buyer in this Contract;  |
| <b>Services</b>                   | means the Cyber Security Services provided by the Supplier under this Contract as set out in RM3764ii Call-Off Contract Part B -The Schedules - Requirements and more particularly set out in the SoW(s);   |
| <b>Schedules</b>                  | means the schedules to this Contract as set out in Part B of this Call-Off Contract;  |
| <b>Schemes</b>                    | the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014; |



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| <b>Service Transfer</b>         | any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;   |
| <b>Service Transfer Date</b>    | the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;   |
| <b>Solution</b>                 | means the solution to be delivered by the Supplier to meet the Acceptance Criteria for the deliverables that form the subject of that SoW; and the output of any Solution may take the form of the delivery of Services and/or Milestone Deliverables and/or the provision of Services;   |
| <b>Specific Change in Law</b>   | means a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply   |
| <b>Staffing Information</b>     | <p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>(a) their ages, dates of commencement of employment or engagement, gender and place of work;</li> <li>(b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;</li> <li>(c) the identity of the employer or relevant contracting party;</li> <li>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;</li> <li>(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;</li> <li>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);</li> <li>(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;</li> <li>(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and</li> <li>(j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;</li> </ul> |
| <b>Staff Vetting Procedures</b> | means any Buyer's procedures and departmental policies for the vetting of Supplier Staff as set out by the Buyer in the Order Form or elsewhere in this Contract;   |
| <b>Stage</b>                    | means each discrete stage of delivery;  |
| <b>Standards</b>                | <p>means:</p> <ul style="list-style-type: none"> <li>a. any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced</li> </ul>  |

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|   | <p>operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</p> <p>b. any standards detailed in the specification in Agreement Schedule 1 (Cyber Security Services) or Agreement Schedule 6 (Standards and Security);</p> <p>c. NCSC Standards – all services must meet their standards at the end of each SoW as part of the Buyer Acceptance Criteria;</p> <p>d. any standards detailed by the Buyer in this Contract or as agreed between the Parties from time to time;</p> <p>any relevant Government codes of practice and guidance applicable from time to time.</p> |
| <b>Statement of Work(s) or SoW(s)</b>                 | means a statement of work as executed by the Parties, in respect of the services being delivered; and where multiple statement of works have been entered into by the Parties shall be a reference to the SoW which is applicable to the relevant Services;   |
| <b>Sub-Contract</b>                                   | means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the provision of the Services or any part thereof;  |
| <b>Sub-Contractor</b>                                 | means any third party engaged by the Supplier from time to time under a Sub-Contract permitted pursuant to the Agreement and this Contract, or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;  |
| <b>Supplier</b>                                       | means the Supplier's full name as defined in the Order Form the <b>"Supplier"</b>   |
| <b>Supplier Background IPR</b>                        | <p>shall mean all Intellectual Property Rights vested in or licensed to the Supplier prior to entering into the Call-Off.</p> <p>For the avoidance of doubt includes but is not limited to, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, software, models and designs, technical specifications, user manuals, operating manuals, process definitions and procedures and other documentation and any modifications, amendments, updates and new releases of the same</p>  |
| <b>Supplier's Final Supplier Personnel List</b>       | a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;  |
| <b>Supplier Software</b>                              | means software which is proprietary to the Supplier or its Affiliates which is used or supplied by the Supplier in the provision of the Services;   |
| <b>Supplier's Provisional Supplier Personnel List</b> | a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;   |
| <b>Supplier Staff</b>                                 | means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and   |

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|   | Sub-Contractors) used in the performance of its obligations under this Contract;   |
| <b>Time and Materials</b>                     | means the pricing mechanism for the Services as may be agreed by the Parties and set out at paragraph 5.3 in the SoW;  |
| <b>Transferring Customer Employees</b>        | those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date;  |
| <b>Transferring Former Supplier Employees</b> | in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and  |
| <b>Transferring Supplier Employees</b>        | those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.  |
| <b>TUPE</b>                                   | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive;   |
| <b>VAT</b>                                    | means value added tax in accordance with the provisions of the Value Added Tax Act 1994;   |
| <b>Worker</b>                                 | means any one of the Supplier Personnel which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 0712 – Tax Arrangements of Public Appointees <a href="https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees">https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees</a> applies in respect of the Services; |
| <b>Working Days</b>                           | means any day other than a Saturday or Sunday or public holiday in England and Wales.  |