



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 – Customer Responsibilities
- Schedule 4 – Non-Disclosure Agreement.
- Schedule 5 – Statement of Works
- Schedule 6 – Contract Change Note

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Background

- (A) The Authority 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 such Services under the terms set out in the Framework Agreement number RM3764ii (“Framework Agreement”).
- (C) The Customer is entitled to enter into this Contract pursuant to the terms of the Framework Agreement and has completed an RM3764ii Call-Off Contract – Part A Order Form (“Order Form”) in respect of the Services.
- (D) The Customer sent the Contract for Services to the Supplier on the Date stated in the Call-Off Contract “Date sent to the supplier”.
- (E) The Supplier confirmed its agreement to and acceptance of the terms of the Call-Off Contract and the Parties hereby duly execute this Contract.
- (F) The Parties wish to establish a Call-Off Contract (Note: There is no commitment at Call-Off level, this sets scope, duration and value. The commitment from the Customer to the Supplier, will come at the Statement of Work level on an iterative basis.) Which reflects National Cyber Security Centre Policies), that will be adopted by the Parties in the delivery of the Services. The intention of the Parties is that the Contract can be terminated by the Customer at short notice without liability for costs of termination and similarly, the Contract will automatically expire if the Parties do not agree to execute a further Statement of Work (SoW).
- (G) 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 an 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 In relation to this Call-Off Contract the capitalised expressions shall have the meanings set out in Clause 47 (**Glossary**) unless the context otherwise requires .
- 1.2 If a capitalised expression does not have an interpretation in Clause 47 (**Glossary**), it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

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. References to “Contract” are, unless otherwise provided, references to this Contract;
- 2.1.10 references to a Framework Agreement (FW) Clause or paragraph shall mean a reference to the Framework 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 Clause 47 (**Glossary**) of this Contract or in FRAMEWORK SCHEDULE 4 – DEFINITIONS AND INTERPRETATIONS shall be interpreted in accordance with the provisions in this Clause 2 (**Interpretation**) 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 Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Framework Agreement, except Part B of Framework Schedule 1 (Cyber Security Services);
 - (b) SoW;
 - (c) the Order Form;
 - (d) the RM3764ii Standard Terms (excluding the SoW),
 - (e) Part B of Framework 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 Customer 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 Customer accepts the deliverables within the SoW. Customer Acceptance Criteria will be defined and agreed prior to SoW Completion Date as may be specified by the Customer 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 Customer will be exempt, any warranty provision is the responsibility and risk of the Customer.

5. **PREMISES**

- 5.1 Any Customer's Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such Customer's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this 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 Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier 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 Customer 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 Customer retains the right at any time to use any Customer'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 customer Acceptance Criteria.

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 Customer;
 - 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 Customer 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 Customer).
- 7.3 The Customer may also require the Supplier to remove and/or replace any Key Personnel that the Customer (acting reasonably) considers in any respect to be unsatisfactory. The Customer shall not be liable for the cost of removing or replacing any such Key Personnel.
- 7.4 The Customer may, by written notice to the Supplier, refuse to admit and/ or withdraw permission to remain on the Customer's Premises any member of the Supplier Staff or any person employed or engaged by any member of the Supplier Staff whom the Customer 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 Customer, be undesirable.
- 7.5 Supplier Staff engaged within the boundaries of the Customer's Premises shall comply with such rules, regulations and requirements as may be in force from time to time for the conduct of Customer personnel when at or within the boundaries of those Customer'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 Customer 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 Customer and provide the Customer 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 Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 7.6.3 If requested by the Customer 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 Customer.
- 7.6.4 The Customer 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 Customer 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 customers; 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 Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 7.6.2; and
 - (ii) any further information requested by the Customer pursuant to Clause 7.6.3,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 the Authority 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 the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority 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.

7.9 The Customer may require the Supplier to terminate:

7.9.1 a Sub-Contract where:

- (a) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer'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 Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or

- 7.10 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 Customer within the Customer Requirements (as stated within the SoW)
- 8.2 In addition to the planning, delivery and retrospective meetings set out in the Customer 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 Customer (unless otherwise agreed with the Customer).
- 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)

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.

10. REPORTS

- 10.1 The Supplier shall provide the Customer with a report of its performance for the applicable stages of consultancy delivery (or as may be otherwise specified by the Customer in a SoW) including for example; the following details:
 - 10.1.1 Cost savings
 - 10.1.2 Time savings
 - 10.1.3 Meeting milestone commitments
 - 10.1.4 Customer Satisfaction
 - 10.1.5 Performance Improvement
 - 10.1.6 Quality Improvement
 - 10.1.7 Risk Reduction
 - 10.1.8 Return on investment

11. EXIT PLAN

- 11.1 Within 10 working days of end of the first SoW or starting a project the Supplier shall provide and agree with the Customer with a detailed Exit Plan. The Exit Plan shall:
 - 11.1.1 detail the requirements of both parties in relation to the continuation of the Services after Call-Off Contract expiry or termination; and
 - 11.1.2 be fully maintained throughout this Call-Off Contract; and
 - 11.1.3 as a minimum be revised and form part of the Acceptance Criteria for every SoW.
- 11.2 The Exit Plan shall set out: the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Customer 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 Customer), 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, customer owned cyber service, development documentation etc. to enable the service to be continuously developed.

- 11.3 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 Customer at termination or expiry of the Call-Off Contract.

C - CONTRACT CHARGES AND PAYMENT

12. CONTRACT CHARGES

- 12.1 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);
- 12.1.1 Capped Time and Materials;
 - 12.1.2 Milestone deliverables;
 - 12.1.3 Time and Materials;
 - 12.1.4 Fixed Price;
- or using such other pricing mechanism or combination of pricing mechanism thereof as may be agreed by the Parties.
- 12.2 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 Customer 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**).
- 12.3 The Customer 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.
- 12.4 If at any time during this Contract Period the Supplier reduces its Framework Prices as shown in Schedule 8 – Charging Structure of the Framework Agreement for any Services which are provided under the Framework Agreement (whether or not such Services are offered in a catalogue (if any) which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Contract Charges for such Services under this Contract by the same amount.
- 12.5 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 Framework Schedule 8 (Charging Structure) and do not exceed the prices set out therein.
- 12.6 Contract Charges:

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

13. EURO

- 13.1.1 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 Customer.
- 13.1.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 13.1.1 by the Supplier.

14. EXPENSES

- 14.1 Unless agreed by the Parties otherwise in a SoW, the Supplier shall be not entitled to be reimbursed by the Customer (in accordance with the Customer'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 Customers T&S Policy.

15. PAYMENT AND VAT

- 15.1 The Customer 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.
- 15.2 The Supplier shall ensure that each Invoice (whether submitted electronically or in a paper form, as the Customer may specify) (Where a Customer is a Central Government Body, the Customer's right to request paper invoicing shall be subject to PPN 11/15) contains the information specified by the Customer 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 Customer; is supported by any other documentation reasonably required by the Customer to substantiate the Invoice (including VAT breakdowns, timesheets and associated Milestone Deliverables, details of Expenses etc.) and all Invoices submitted to the Customer for the Services shall be exclusive of any Management Charge.
- 15.3 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.
- 15.4 The Supplier shall fully indemnify the Customer and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 15.3 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

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 Customer incurs liability as a result of the Supplier's failure, it should be indemnified to the full extent of that liability.

16. RECOVERY OF SUMS DUE

- 16.1 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under this Contract or under any other Call-Off Contract or other agreement between the Supplier and the Customer.
- 16.2 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.
- 16.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 16.4 All payments due under this Clause 16.4 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.

17. BUSINESS CONTINUITY AND DISASTER RECOVERY (BCDR)

- 17.1 At the Supplier's request, the Customer shall provide the Supplier with a copy of its BCDR Plan.
- 17.2 The Supplier develop a BCDR Plan and shall ensure that it is linked and integrated with the Customer'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 Customer BCDR Plan from the Customer; and the Supplier shall ensure that its Sub-Contractor's BCDR Plans are integrated with the Supplier's BCDR Plan.
- 17.3 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**).

18. ASSISTANCE AT RETENDERING

- 18.1 The Supplier shall, where so requested by the Customer, at its own expense provide assistance to the Customer 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 Customer approval documents and Supplier assistance to answer service and development related clarification questions.
- 18.2 The Supplier shall ensure that all items that are uploaded to the Repository (where applicable), by the Supplier pursuant to Clause 19 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.
- 18.3 Subject to the DPA, the Supplier shall within ten 10 Working Days of a request by the Customer, provide to the Customer, any information which is reasonably required by the Customer 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).

19. DOCUMENT AND SERVICE MANAGEMENT REPOSITORY

- 19.1 The Supplier shall, at the end of each SoW (unless otherwise agreed with the Customer) 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 Customer.

D - PROTECTION OF INFORMATION

20. INTELLECTUAL PROPERTY RIGHTS (IPR)

- 20.1 Save as expressly granted elsewhere under this Contract:
- 20.1.1 the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including the Supplier Background IPRs and the Supplier Software; and
 - 20.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:
 - (a) the Customer Background IPRs;
 - (b) the Project Specific IPRs; and
 - (c) IPRs in the Customer Data;
- 20.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 21.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 20.3 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 Customer shall have the sole and absolute right to grant or deny) use or disclose any of the Customer Background IPR, Customer Data or the Project Specific IPRs to or for the benefit of any third party.
- 20.4 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 Customer under this Contract without Approval from the Customer. The default position is that this IPR should be assigned to the Customer on terms equivalent to the Open Government Licence terms unless otherwise agreed with the Customer.
- 20.5 The Supplier hereby grants, or shall procure the direct grant, to the Customer (and to any Replacement Supplier) of a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use the Supplier Background IPRs for any purpose connected with the receipt of the Services that is incidental to the exercise of the rights granted to the Customer under this Contract and to enable the Customer:
- 20.5.1 to receive the Services; and
 - 20.5.2 to make use of the Services provided by the Replacement Supplier.
- 20.6 The Customer hereby grants to the Supplier a non-exclusive, non-assignable, royalty-free licence to use the Customer Background IPRs, the Customer Data and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the Supplier to perform its obligations under this Contract and provide the Services. The Customer gives no warranty as to the suitability for the Supplier's purpose of any IPRs licensed to the Supplier hereunder. Such licence:
- 20.6.1 includes the right to grant sub-licences to Sub-Contractors engaged in providing or delivering any of the Services (or part thereof) provided that any such Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 22 (**Confidentiality**) and that any such Sub-contracts shall be non-transferable and personal to the relevant Sub-contractor; and
 - 20.6.2 is granted solely to the extent necessary for the provision of the Services in accordance with this Contract. The Supplier shall not, and shall procure that the Sub-Contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Customer;
- 20.7 At the end of the Contract Period, the Customer grants to the Supplier a licence to use the Project Specific IPRs (excluding any Information which is the Customer's Confidential information or which is subject to the DPA) on the terms set out in the Open Government Licence.

- 20.8 Subject to Clause 20.9 and Clause 20.10 the Supplier shall ensure that no unlicensed software or open source software (other than the Open Source Ordered Software) is interfaced with or embedded within any Customer Software or Project Specific IPRs.
- 20.9 Prior to using any third party IPRs in connection with the supply of the Services, the Supplier shall submit all details of such third party IPRs as the Customer may request to the Customer for Approval (“Request for Approval”).
- 20.10 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 Customer a licence upon the terms informed to the Customer in the Request for Approval.
- 20.11 If the third party IPR is made available on terms equivalent to the Open Government Licence the Request for Approval will be agreed and the Supplier will procure licences under these terms. If not, and the Customer rejects the Request for Approval, then a formal Change of Contract will be required.
- 20.12 The Supplier shall, during and after the Contract Period, fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all Losses which the Customer or the Crown may suffer or incur at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) as a result of any claim (whether actual alleged asserted and/or substantiated and including third party claims) that the rights granted to the Customer pursuant to this Contract and/or the performance by the Supplier of the provision of the Services and/or the possession or use by the Customer of the Services or Deliverables delivered by the Supplier (as appropriate) infringes or allegedly infringes a third party’s Intellectual Property Rights (“Claim”) except where the Claim arises from:
- 20.12.1 designs supplied by the Customer; or
- 20.12.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of this Contract.
- Note to Bidders: This indemnity shall remain as uncapped because the potential liability and losses which could be incurred by the Customer 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 Customer’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.*
- 20.13 The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 20.13.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
- 20.13.2 shall take due and proper account of the interests of the Customer;
- 20.13.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
- 20.13.4 shall not settle or compromise the Claim without Approval (such decision to Approve or not shall not be unreasonably withheld or delayed).
- 20.14 If a Claim is made in connection with this Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to Approval (such decision to Approve or not shall not be unreasonably withheld or delayed), use its best endeavours to:
- 20.14.1 modify the relevant part of the Services and/or the Deliverables without reducing the functionality or performance of the same, or substitute alternative Services and/or deliverables of equivalent functionality or performance, so as to avoid the infringement or the alleged infringement, provided that there is no additional cost or burden to the Customer; or

- 20.14.2 procure a licence to use and supply the Services and/or Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer; and/or
- 20.14.3 in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations
and in the event that the Supplier is unable to comply with Clauses 20.14.1 or 20.14.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate this Contract for Material Breach and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Service and/or Deliverable that is subject to the Claim.
- 20.15 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without prior Approval.
- 20.16 The Supplier shall, as an enduring obligation throughout the Term and the Call-Off Contract Period where any Software is used in the provision of the Services or information uploaded/interfaced/exchanged with Authority or Customer systems, use software and the most up to date anti-virus definitions available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Authority or Customer, and the Supplier).
- 20.17 Notwithstanding Clause 20.16, if Malicious Software is found, the Supplier shall co-operate with the Customer to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist the Customer to mitigate any losses and to restore the provision of the Services to its desired operating efficiency as soon as possible.
- 20.18 Any cost arising out of the actions of the Customer and/or Supplier taken in compliance with the provisions of Clause 20.17, shall be borne between the Customer and the Supplier as follows:
- 20.18.1 by the Supplier, where the Malicious Software originates from the Supplier Software or the Customer Data whilst the Customer Data was under the control of the Supplier, unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
- 20.18.2 by the Customer if the Malicious Software originates from the Customer Software or the Customer Data, whilst the Customer Data was under the control of the Customer.
21. **SECURITY REQUIREMENTS AND PROTECTION OF DATA**
- 21.1 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 Customer for Approval, in accordance with this Clause 21 to apply during the Contract Period.
- 21.2 The Supplier shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will be submitted for Approval by the Customer, tested in accordance with the Methodology, periodically updated and audited in accordance with ISO/IEC 27001.
- 21.3 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the Customer, aim to protect all aspects of the Services and all processes associated with the delivery of the Services and shall comply with the Security Policy.
- 21.4 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 Customer shall be entitled to audit) that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 21.5 Customer Data shall be dealt with in the following way:
- 21.5.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

- 21.5.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call-Off Contract or as otherwise Approved by the Customer.
- 21.5.3 To the extent that the Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified by the Customer from time to time in writing.
- 21.5.4 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of the Customer Data and preventing the corruption or loss of Customer Data.
- 21.5.5 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the security requirements set out by the Customer under this Call-Off Contract.
- 21.5.6 The Supplier shall ensure that any system on which the Supplier holds any Customer Data which is protectively marked shall be accredited using such accreditation policy or system as specified by the Customer (such as the HMG Security Policy framework and Information Assurance Policy, taking into account guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems, and/or relevant HMG Information Assurance Standard(s), as in force from time to time) and, where the 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 Customer Data. If any such changes have occurred then the Supplier shall resubmit such system for accreditation.
- 21.5.7 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Supplier's Default so as to be unusable, the Customer may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Customer Data (as 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 Customer; and/or
 - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.
- 21.5.8 If at any time the Supplier suspects or has reason to believe that the Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 21.5.9 The Supplier shall, at all times during and after the Term and during and after the Call-Off Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether 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 Customer's instructions.

22. CONFIDENTIALITY

- 22.1 Except to the extent set out in this Clause 22 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 22.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 22.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

- 22.2 Clause 22.1 shall not apply to the extent that:
- 22.2.1 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure;
 - 22.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 22.2.3 such information was obtained from a third party without obligation of confidentiality, before receiving it from the disclosing Party;
 - 22.2.4 such information is or becomes public knowledge (otherwise than by breach of this Clause 22);
 - 22.2.5 such information is independently developed without access to the other Party's Confidential Information;
 - 22.2.6 is used for the purpose of obtaining professional advice.

- 22.3 The Customer may disclose the Confidential Information of the Supplier:

- 22.3.1 to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- 22.3.2 to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- 22.3.3 to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 22.3.4 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;
- 22.3.5 on a confidential basis for the purpose of the exercise of its rights under this Call-Off Contract; or
- 22.3.6 to a proposed transferee, assignee or novatee of, or successor in title to the Customer,

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

- 22.4 The Supplier may only disclose the Customer'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.
- 22.5 The Supplier shall not, and shall procure that the Supplier Staff shall not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- 22.6 At the written request of the Customer, the Supplier shall procure that those members of Supplier Staff identified in a Customer's written request sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 22.7 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 Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Supplier is taking appropriate steps to comply with this Clause 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.
- 22.8 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.
- 22.9 The Supplier shall, at all times during and after the Contract Period, indemnify the Customer and keep the Customer fully indemnified against all Losses incurred by, awarded against or agreed to be paid by the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) arising from any breach of the Supplier's obligations under Clauses 22.1 to 22.6 except and to the extent that such liabilities have resulted directly from the Customer's instructions.
- 22.10 In the event that the Supplier fails to comply with Clauses 22.1 to 22.6, the Customer reserves the right to terminate this Contract for Material Breach.
- 22.11 Subject to Clause 22.3, the Customer 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

23. RECORDS AND AUDIT ACCESS

- 23.1.1 The Customer shall use reasonable endeavours to ensure that the conduct of each audit carried out pursuant to FW-47 (Records and audit access) of the Framework 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 Customer.
- 23.1.2 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 Framework Agreement unless the audit reveals a Material Breach by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

24. FORCE MAJEURE

- 24.1.1 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.
- 24.1.2 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.
- 24.1.3 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 24.1.1 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.
- 24.1.4 Subject to Clause 24.1.1 the Supplier shall not have the right to any payment from the Customer under this Contract where the Supplier is unable to provide the Services and/or Deliverables because of a Force Majeure Event.

25. DISRUPTION

- 25.1.1 The Supplier shall immediately inform the Customer 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.
- 25.1.2 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.
- 25.1.3 If the Supplier's proposals referred to in Clause 25.1.2 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Contract for Material Breach.

26. **WAIVER**

- 26.1.1 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.
- 26.1.2 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.
- 26.1.3 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.

27. **CUMULATIVE REMEDIES**

- 27.1 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.

28. **FURTHER ASSURANCES**

- 28.1 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.

29. **CHANGES TO CONTRACT**

- 29.1 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 ("**Change Control Procedure**").
- 29.2 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 RM3764ii Call-Off Contract Part B - The Schedules (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.
- 29.3 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.
- 29.4 Where the Customer 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 Customer may terminate this Contract with immediate effect.
- 29.5 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.
- 29.6 A Contract Change Note that is signed by both Parties shall constitute an amendment to this Contract pursuant to this Clause 29.

30. **CHANGES TO SERVICES**

- 30.1 The Parties acknowledge and agree that there will be changes to the scope of the Services during the Contract Period.
- 30.2 The Supplier shall consider any request by the Customer 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.

31. **SEVERABILITY**

- 31.1.1 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.
- 31.1.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

32. **SUPPLIER'S STATUS**

- 32.1 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.

33. **ENTIRE AGREEMENT**

- 33.1 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.
- 33.1.1 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.
- 33.1.2 Nothing in this Clause 33 shall operate to exclude any liability for (or remedy in respect of) fraudulent misrepresentation or Fraud.

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

- 34.1 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.
- 34.2 The Authority may enforce any provision of this Contract which is for the benefit of the Authority as a third party beneficiary in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 34.3 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.

34.4 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.

35. **NOTICES**

35.1 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".

35.2 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 Day after sending	Dispatched in an emailed pdf form to the correct e-mail address without any error message

35.2.1 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.

35.2.2 Either Party may change its address for service by serving a notice in accordance with this Clause 35.

35.2.3 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.

36. **LEGISLATIVE CHANGE**

36.1 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 Effective Date.

F - DISPUTES AND LAW

37. DISPUTE RESOLUTION

- 37.1.1 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.
- 37.1.2 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.
- 37.1.3 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 Customer may specify or Approve, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 37.1.8 unless:
- 37.1.4 the Customer considers that the dispute is not suitable for resolution by mediation; or
- 37.1.5 the Supplier does not agree to mediation.
- 37.1.6 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).
- 37.1.7 Without prejudice to any other rights of the Customer 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.
- 37.1.8 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.
- 37.1.9 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

38. LIABILITY

38.1 Neither Party excludes or limits its liability for:

- 38.1.1 death or personal injury; or;
- 38.1.2 bribery or Fraud by it or its employees; or
- 38.1.3 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
- 38.1.4 any other liability to the extent it cannot be excluded or limited by Law.

38.2 Subject to Clause 38.1, the Supplier's total aggregate liability in respect of the indemnities in Clauses 15.3 (**VAT**), 20.12 (**IPR Claim**), Clause FW-13 (**Conflicts of Interest and Ethical Walls**), Clause FW-40 (**Provision and Protection of Information**), Clause 22.8 (**Confidentiality**), Clause FW-37 (**Prevention of Fraud and Bribery**), Clause FW-38 (**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 Customer for Supplier breach of those Clauses is unquantifiable and could cause serious reputational damage to the Customer.

- 38.3 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 howsoever arising out of or in connection with this Contract shall be limited to:
- 38.3.1 In relation to Losses suffered as a result of defaults resulting in direct loss or damage to property (including any technical infrastructure, assets or equipment but excluding any loss or damage to IPR, Customer Data or Customer Personal Data) of the other Party the sum of one million pounds £1,000,000 in each Contract Year in which the defaults occurred or is occurring unless otherwise stipulated by the Customer in a Further Competition Procedure; and
- 38.3.2 in respect of all other Losses:
- (a) in relation to Losses suffered as a result of defaults 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 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 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 Customer in a Further Competition Procedure.
- 38.4 A Party shall not be responsible for any Loss under this Contract if and to the extent that it is caused by the default of the other (Default on the part of the Supplier and Customer Cause on the part of the Customer).
- 38.5 Subject to Clauses 38.1, 38.2 and 38.6 in no event shall either Party be liable to the other for any:
- 38.5.1 loss of profits;
- 38.5.2 loss of business;
- 38.5.3 loss of revenue;
- 38.5.4 loss of or damage to goodwill;
- 38.5.5 loss of savings (whether anticipated or otherwise); and/or
- 38.5.6 any indirect, special or consequential loss or damage.
- 38.6 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 Customer) be recoverable by the Customer:
- 38.6.1 the additional operational and/or administrative costs and expenses arising from any Material Breach;
- 38.6.2 any regulatory losses, fines, expenses or other Losses arising from a breach by the Supplier of any Law.
- 38.7 No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by or on behalf of the Customer to any document or information provided by the Supplier in its provision of the Services, and no failure of the Customer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to carry out all the obligations of a professional supplier employed in a client/customer relationship.

- 38.8 Save as otherwise expressly provided, the obligations of the Customer under this Contract are obligations of the Customer 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 Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Customer to the Supplier.
- 38.9 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.
- 38.10 Nothing in this Clause 38 shall act to reduce or affect a Party's general duty to mitigate its loss.

H - TERMINATION

39. TERMINATION EVENTS

- 39.1 The Customer 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 Customer's notice.
- 39.2 Notice Periods
- 39.2.1 The notice period (expressed in Working Days) to be given by the Customer 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.
- 39.3 The Parties acknowledge and agree that:
- 39.3.1 the Customer'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;
- 39.3.2 the Contract Charges paid during the notice period given by the Customer 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 Customer exercising the right to terminate without cause.
- 39.4 The Customer shall have the right to terminate this Contract at any time with immediate effect by written notice to the other Supplier if:
- 39.4.1 the Supplier commits a Supplier Default and if the Supplier Default is not, in the opinion of the Customer, capable of remedy; or
- 39.4.2 the Supplier Default is a Material Breach of this Contract.
- 39.5 the Supplier is unable to provide a change proposed by the Customer;
- 39.6 Either Party may terminate this Contract at any time with immediate effect by written notice to the other Party if:
- 39.6.1 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;
- 39.6.2 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
- 39.6.3 a Force Majeure Event occurs for a period of more than fifteen (15) consecutive Calendar Days.

- 39.7 Without prejudice to any other right or remedy which a Customer 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 Customer may (whether or not any part of the Services has already been delivered) do any of the following at the Customer's option and in its sole discretion:
- 39.7.1 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 Customer's instructions;
- 39.7.2 carry out, at the Supplier's expense, any work necessary to make the supply of Services comply with this Call-Off Agreement;
40. **CONSEQUENCES OF EXPIRY OR TERMINATION FOR ANY REASON**
- 40.1 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.
- 40.2 Consequences of expiry or termination of the Contract for any reason:
- 40.2.1 At the end of the Contract Period (howsoever arising), the Supplier shall:
- (a) immediately return to the Customer:
 - (i) all Customer Data including all copies of Customer documentation and any other software licensed by the Customer to the Supplier under this Contract;
 - (ii) any materials created by the Supplier under this Contract, the IPRs in which are owned by the Customer;
 - (iii) any items that have been on-charged to the Customer, 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 Customer 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 Customer Data and, at the direction of the Customer, provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Supplier;
 - (d) except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or twelve (12) Months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed;
 - (e) vacate the Customer Premises;
 - (f) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and provide such assistance and co-operation as the Customer may require in relation to any work in progress or Stories which remain on the Product Backlog;
 - (g) return to the Customer 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 Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence;
- 40.2.2 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.
- 40.2.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Customer 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 Customer to serve Notice.
- 40.2.4 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 Customer or the Supplier under Clauses 15 (**Payment and VAT**), 16 (**Recovery of Sums Due**), 20 (**Intellectual Property Rights**), FW-40 (**Provision and Protection of Information**), 22 (**Confidentiality**), FW-41 (**Official Secrets Acts**), 38 (**Liability**), 40 (**Consequences of Expiry or Termination For Any Reason**), FW-37 (**Prevention of Fraud and Bribery**), 23 and FW-47 (**Records and audit access**), FW-38 (**Safeguarding against Fraud**), FW-13 (**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.
41. **EMPLOMENT TAX AND NATIONAL INSURANCE LIABILITIES**
- 41.1 The Customer and the Supplier acknowledge and agree that the commencement and subsequent expiry or termination of this Contract are not events that are intended to give rise to any Relevant Transfers to which TUPE will apply, either in relation to any employees of the Customer or Former Supplier transferring to the employment of the Supplier at commencement; or Supplier Staff transferring from the Supplier to the Customer or a Replacement Supplier at expiry or termination.
- 41.2 The Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising (including either before or after the making of a demand pursuant to the indemnity hereunder) by reason of any circumstances whereby the Customer is alleged or determined, whether during the Contract Period or arising from termination or expiry of this Contract, to have been assumed or imposed with:
- 41.2.1 the liability or responsibility for the Supplier or any of the Supplier Staff as an employer; and/or
- 41.2.2 any liability or responsibility to HM Revenue or Customs as an employer to the Supplier or the Supplier Staff
- 41.3 Where the Supplier is liable to be taxed in the UK in respect of consideration received under this Contract, it shall at all times comply with other statutes and regulations relating to tax in

- respect of that consideration insofar as they apply to the Supplier's business structure (including the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) in respect of income tax where applicable).
- 41.4 Where the Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under this Contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 41.5 The Customer may, at any time during the term of this contract, request the Supplier to provide information which demonstrates how the Supplier complies with Clauses 41.3 and 41.4 above or why those Clauses do not apply to it.
- 41.6 A request under Clause 41.5 above may specify the information which the Supplier must provide and the period within which that information must be provided.
- 41.7 The Customer may terminate this Contract for Material Breach if-
- 41.7.1 in the case of a request mentioned in Clause 41.5 above-
- (a) the Supplier fails to provide information in response to the request within a reasonable time, or
- (b) the Supplier provides information which is inadequate to demonstrate either how the Supplier complies with Clauses 41.3 and 41.4 above or why those Clauses do not apply to it;
- 41.7.2 in the case of a request mentioned in Clause 41.6 above, the Supplier fails to provide the specified information within the specified period, or
- 41.7.3 it receives information which demonstrates that, at any time when Clauses 41.3 and 41.4 apply to the Supplier, the Supplier is not complying with those Clauses.
- 41.8 The Customer may supply any information which it receives under Clause 41.5 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 41.9 In the event that any one of the Supplier Staff is a Worker, and that particular Worker is liable to be taxed in the UK in respect of any consideration it receives relating to the Services, then the Supplier shall ensure that its contract with the Worker includes the following requirements:
- 41.9.1 that the Worker must comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration;
- 41.9.2 that the Worker must comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to national insurance contributions in respect of that consideration;
- 41.9.3 that the Customer may, at any time during the Contract Period, request that the Worker provide information which demonstrates how the Worker complies with the above requirements 41.9.1 and 41.9.2, or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided;
- 41.9.4 that the Worker's contract may be terminated at the Customer's request if:
- (a) the Worker fails to provide information requested by the Customer within the time specified by the Customer; and/or
- (b) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with requirements 41.9.1 or 41.9.2 or confirms that the Worker is not complying with those requirements; and.

41.9.5 that the Customer 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.

42. **GOVERNING LAW AND JURISDICTION**

42.1 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.

43. **PROMOTING TAX COMPLIANCE**

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

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

43.1.2 promptly provide to the Customer:

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

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

43.2 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 Customer are acceptable, then the Customer reserves the right to terminate this Call-Off Contract for Material Breach.

J – ADDITIONAL TERMS

44. **RELEVANT CONVICTIONS**

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

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

44.3 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 Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):

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

44.3.2 conduct thorough questioning regarding any Relevant Convictions; and

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

44.3.4 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.

45. **ADDITIONAL STAFFING SECURITY**

- 45.1 This Clause 45 shall apply if the Customer has so stipulated in the Order Form.
- 45.2 The Supplier shall comply with the Staff Vetting Procedures in respect of all or part of the Supplier Staff (as specified by the Customer) and/or any other relevant instruction, guidance or procedure issued by the Customer that will be used to specify the level of staffing security required and to vet the Supplier Staff (or part of the Supplier Staff).
- 45.3 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 Customer.

46. **CALL OFF GUARANTOR**

- 46.1 This Clause 46 shall apply if the Customer requires a Call-Off Guarantor
- 46.2 RM3764ii Deed of Guarantor to be used

K - DEFINITIONS

47. GLOSSARY

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

Accepted/Acceptance	has the meaning set out in the test criteria within the Methodology/SoW;
Acceptance Criteria	in respect of each deliverable and each SoW, means the criteria, as validated and approved by the Customer and agreed with the Supplier, to determine whether the Service delivered by the Supplier has met the requirements of that deliverable and or SoW;
Accepted Deliverable	has the meaning set out in the test criteria within the Methodology/SoW;
Activities	means cyber security service activities undertaken during a SoW;
Acquired Rights Directive	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
Affected Party	means the Party whose obligations under the Contract are affected by the Force Majeure Event
Affiliates	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
Approval	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
Auditor	any auditor appointed by the Audit Commission;
Authority	means THE MINISTER FOR THE CABINET OFFICE as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9 th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP;
Business Continuity and Disaster Recovery Plan	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;
NCSC	means National Cyber Security Centre.
Cyber Security Consultancy	means the certified scheme being run by NCSC: http://www.cesg.gov.uk/servicecatalogue/service_assurance/consultancy/Pages/consultancy.aspx
Cyber Security Consultancy Standard	means the standards relating the certified cyber security consultancy scheme: http://www.cesg.gov.uk/servicecatalogue/service_assurance/consultancy/Pages/consultancy.aspx
Calendar Day	means any day of the year;
RM3764ii Call-Off Terms	means the terms and conditions, set out in this Part C entered into by the Parties (excluding the Order Form) in respect of the provision of the Cyber Security Services together with Part B - The Schedules and SoWs hereto;

Capped Time and Materials	means the capped time and materials pricing mechanism for the Services as may be agreed by the Parties and set out in the SoW;
Central Government Body	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
Change Control Procedure	has the meaning set out at Clause 29.1;
Change in Law	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;
Change of Control	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
Commencement Date	means the date of commencement of this Contract as set out in the Order Form;
Commercially Sensitive Information	means the Confidential information listed in the Order Form (if any) comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
Comparable Supply	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
Completion Date	means the date of completion of an SoW as set out in the RM3764ii Call-Off Part B – The Schedule (Statement of Works)
Contract	means this Call-Off agreement between the Customer and Supplier (entered into pursuant to the provisions of the Framework Agreement) consisting of the Order Form, SoW(s) and the RM3764ii Call-Off Terms;
Contract Charges	means the prices (exclusive of any applicable VAT) payable to the Supplier by the Customer 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;
Contract Expiry Date	has the meaning set out at Clause 3.1.2 of this Contract.
Contract Year	means a consecutive period of 12 Months commencing on the Commencement date;
Contract Period	means the period commencing on the Contract Commencement Date and ending on the Contract Expiry Date;
Contracting Body/Bodies	means the Customer, the Authority and any other bodies listed in paragraph VI.3 of the OJEU Notice;
Controller	takes the meaning given in the Data Protection Legislation
Conviction	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the

	Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);
Customer	means public sector customer full name as defined within the Call-Off Contract Order Form the “ Customer ”, entering into this Contract
Customer Background IPRs	shall mean all Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Supplier of its obligations under this Contract and including, for the avoidance of doubt, including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, software, models and designs, technical specifications, user manuals, operating manuals, process definitions and procedures and other documentation and any modifications, amendments, updates and new releases of the same;
Customer Cause	means any breach by the Customer of its obligations under this Contract including the RM3764ii Call-Off Contract Part B – The Schedules (Customer Responsibilities) (unless caused or contributed to by the Supplier or as the result of any act or omission by the Customer to which the Supplier has given its prior consent);
Customer Data	means: <ul style="list-style-type: none"> a. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer’s Confidential Information, and which: b. are supplied to the Supplier by or on behalf of the Customer; or c. the Supplier is required to generate, process, store or transmit pursuant to this Contract; or any Personal Data for which the Customer is the Controller;
Customer’s Confidential Information	means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all IPRs (including all Customer Background IPRs and Project Specific IPRs), together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
Customer Representative	means a representative of the Customer who is authorised to make decisions on behalf of the Customer;
Customer Responsibilities	means the responsibilities of the Customer set out in the Order Form and any other responsibilities of the Customer agreed in writing between the Parties from time to time;
Customer Software	means software which is owned by or licensed to the Customer which is or will be used by the Supplier for the purposes of providing the Services;
Customer’s T&S Policy	means the rates and policies for travel and subsistence expenses as set by the Customer and as may be amended from time to time;

Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data Breach.
Data Protection Legislation	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
Data Protection Impact Assessment	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Officer	takes the meaning given in the Data Protection Legislation.
Data Subject	takes the meaning given in the Data Protection Legislation.
Data Subject Access Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
Day Rate	means the maximum day rate in the Framework Schedule 8 (Charging Structure) and displayed on the catalogue excluding travel and subsistence to the named customer location(s)
Default	means any breach of the obligations of the Supplier (including but not limited to Material Breach) or any other default, act, omission, negligence or negligent statement of the Supplier or the 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 Customer;
Defect	has the meaning as specified in the test criteria set out in the Methodology and/or SoW;
Deliverable	means a tangible work product, outcome, consultancy or related material or item that is to be achieved or delivered to the Customer by the Supplier as part of the Services;
Delivery Stage	means the stage in which the Service is to be delivered as set out in the SoW;
Delivery Team	means the Supplier's Staff responsible for the delivery of the Services;
Disaster	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;
DOTAS	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
DPA 2018	means the Data Protection Act 2018

Effective Date	means the date of formation of this Contract in accordance with the Order Form and Framework Schedule 4 (Call-Off Procedure);
Equipment	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract;
Employment Liabilities	means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following: <ul style="list-style-type: none"> a. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; b. unfair, wrongful or constructive dismissal compensation; c. compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; d. compensation for less favourable treatment of part-time workers or fixed term employees; e. outstanding debts and unlawful deduction of wages, including any PAYE and National Insurance Contributions; f. claims whether in tort, contract or statute or otherwise; g. any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation);
Environmental Information Regulations	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
Exit Plan	means the Plan provided by the Supplier, and Approved by the Customer 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.
Expert	means the person appointed by the Parties in accordance with Clause 37.1.6;
Fixed Price	means the fixed prices for Services as may be agreed by the Parties and set out in the SoW;
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
Force Majeure Event	means any event, occurrence or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:

	<ol style="list-style-type: none"> 1. acts, events, omissions, happenings or non- happenings beyond the reasonable control of the affected party; 2. riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; 3. acts of government, local government or regulatory bodies; 4. fire, flood, any disaster and any failure or shortage of power or fuel; 5. an industrial dispute affecting a third party for which a substitute third party is not reasonably available; <p>provide always that:</p> <ul style="list-style-type: none"> - any industrial dispute relating to the Supplier, the Staff or any other failure in the Supplier or the Sub-Contractor's supply chain; and - 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; <p>shall not constitute a Force Majeure;</p>
Former Supplier	means a party providing services to the Customer similar or the same as the Services and which is being replaced by the Supplier;
Framework Agreement	Means the Framework Agreement relating to Cyber Security Services – RM3764ii - between the Authority and the Supplier;
Framework Prices	means the price(s) applicable to the provision of the Services set out in Framework Schedule 8 (Charging Structure);
Framework Schedule	means a schedule to the Framework Agreement;
Fraud	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
GDPR	the General Data Protection Regulation (Regulation (EU) 2016/679)
Good Industry Standard	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;
General Change in Law	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
Glossary	means the glossary of defined terms set out at I – DEFINITIONS (Glossary)
Halifax Abuse Principle	means the principle explained in the CJEU Case C-255/02 Halifax and others;
Insolvency Event	<p>means, in respect of the Supplier or Framework Guarantor or Call-Off Guarantor (as applicable):</p> <ol style="list-style-type: none"> a. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

	<ul style="list-style-type: none"> b. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c. a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or d. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or e. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or f. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or g. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or h. where the Supplier or Framework Guarantor or Call-Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or <p>any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction.</p>
<p>Intellectual Property Rights or IPRs</p>	<p>means</p> <ul style="list-style-type: none"> a. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, 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; b. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and <p>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>
<p>Invoice</p>	<p>means a VAT invoice issued by the Supplier to the Customer in respect of any Value Added Tax properly payable on the Contract Charges;</p>
<p>ISMS</p>	<p>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;</p>

Key Personnel	means the Supplier Staff named in the SoW as such;
Know How	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier's or the Customer's possession before the Commencement Date;
KPIs	means those metrics and/or key performance indicators as identified in the Framework Agreement, Methodology and SoW (as applicable) which are to have contractual effect during the execution of an SoW;
Law(s)	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;
Lean	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;
LED	Law Enforcement Directive (Directive (EU) 2016/680)
Losses	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
Management Charge	means the sum payable by the Supplier to the Authority in accordance with Clause FW-23 (Management Charge) of the Framework Agreement;
Management Information or MI	means the management information specified in Framework Schedule FW-22 (Provision of Management Information)
Material Breach	<p>means:</p> <ol style="list-style-type: none"> a. a breach by the Supplier referred to by this definition in any of the following Clauses: Clause 4 and FW-21 (Warranties and Representations), FW-15 (Conflicts of Interest and Ethical Walls), Clause 25 (Disruption), Clause 7.1 (Supplier Staff), Clause 20 (IPR), FW-43 (Provision and Protection of Information), Clause 22 (Confidentiality), FW-25 (Publicity, Branding Media and Official Enquiries), FW-44 (Official Secrets Acts), FW-40 (Prevention of Fraud and Bribery), FW-41 (Safeguarding against Fraud) and FW-15 (Conflicts of Interest and Ethical Walls) and Clause 41.7 (Employment, Tax and National Insurance Liabilities). b. any breach of this Contract which is set out in this Contract as being a material breach; c. any breach of this Contract which is set out as a material breach of this Contract in the Framework Agreement; d. any material breach of this Contract under the Law; and/or <p>a breach which prevents the Customer from discharging a statutory duty.</p>
Maximum Price	has the meaning given to it in the SoW;

Mediator	has the meaning given to it at Clause 37.1.8;
Methodology	means the description of the manner in which the Services are to be provided by the Supplier as set out in the Customer Requirements and the Requirements Schedule;
Metrics	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;
Milestone	an event or task described agreed by the Parties which the Supplier must be complete by the relevant Milestone Date;
Milestone Achievement Certificate	has the meaning given in the Customer Requirements Methodology and/or the SoW (where applicable);
Milestone Date	the date set against relevant Milestones as may agreed by the Parties and set out in the SoW;
Months	means a calendar month;
Occasion of Tax Non-Compliance	<p>means:</p> <ul style="list-style-type: none"> a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or <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>
Open Source Ordered Software	means any open source software ordered by the Customer;
Open Government Licence	means the licence granted by the Government for the use and re-use of public sector information as set out at http://www.nationarchives.gov.uk/doc/open-government-licence/ and as may be amended from time to time;
Order	means the order for the provision of the Cyber Security Services placed by the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Contract;
Order Form	means the form on which an Order is placed for the provision of the Cyber Security Services placed by the Customer with the Supplier in accordance with the Framework Agreement and under the terms of this Contract;
Party, Parties	Party means the Customer and the Supplier; and “Parties” shall mean both;

Personal Data	takes the meaning given in the Data Protection Legislation
Personal Data Breach	takes the meaning given in the Data Protection Legislation
Premises	means the location where the Services are to be principally performed as set out in the Order Form;
Processor	takes the meaning given in the Data Protection Legislation.
Professional Working Day	means a Working Day of no fixed length and being as long as to permit all scheduled work to be completed
Project	means the delivery of the Services in accordance with this Contract;
Project Specific IPRs	<p>means:</p> <ul style="list-style-type: none"> 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 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 c. the IPRs in any modifications, updates and developments to the Customer Background IPRs; and/or d. any Personal Data provided or available to the Supplier for the purposes of this Contract; and/or <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 Customer; 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>
Property	means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with this Contract;
Protective Measures	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
Reimbursable Expenses	has the meaning set out at Clause 14;
Relevant Tax Authority	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
Relevant Conviction	means a Conviction that is relevant to the nature of the Services to be provided or as specified by the Customer in the Order Form or elsewhere in the Contract;
Relevant Transfer	means a transfer of employment to which TUPE applies;

Replacement Services	means any services which are substantially similar to any of the Services and which the Customer receives following the expiry or termination of this Contract, whether those Services are provided by the Customer internally and/or by any third party;
Replacement Supplier	means any third party provider of Replacement Services appointed by the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
Repository	means a secure document management repository and archive provided and maintained by the Customer (or such other Crown Body as may be notified to the Supplier by the Customer);
Retrospective	means lessons learned and/or project completion review;
Security Management Plan	the Supplier's security plan prepared pursuant to Clause 21;
Security Policy	means the Customer'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 Customer in this Contract;
Services	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);
Schedules	means the schedules to this Contract as set out in Part B of this Call-Off Contract;
Solution	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;
Specific Change in Law	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply
Staff Vetting Procedures	means any Customer's procedures and departmental policies for the vetting of Supplier Staff as set out by the Customer in the Order Form or elsewhere in this Contract;
Stage	means each discrete stage of delivery;
Standards	means: <ul style="list-style-type: none"> a. any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b. any standards detailed in the specification in Framework Schedule 1 (Cyber Security Services) or Framework Schedule 6 (Standards and Security); c. NCSC Standards – all services must meet their standards at the end of each SoW as part of the Customer Acceptance Criteria;

	<p>d. any standards detailed by the Customer 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>
Milestone Deliverables	means a specific deliverables within a SoW
Milestone Deliverables Shortfall	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;
Statement of Work(s) or SoW(s)	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;
Sub-Contract	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the provision of the Services or any part thereof;
Sub-Contractor	means any third party engaged by the Supplier from time to time under a Sub-Contract permitted pursuant to the Framework 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;
Sub-processor	any third party appointed to process Personal Data on behalf of the Supplier under this Framework Agreement
Supplier	means the Supplier's full name as defined in the Order Form the " Supplier "
Supplier Background IPR	<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>
Supplier Software	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;
Supplier Staff	means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors) used in the performance of its obligations under this Contract;
Time and Materials	means the pricing mechanism for the Services as may be agreed by the Parties and set out at paragraph 5.3 in the SoW;

TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive;
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
Worker	means any one of the Supplier Personnel which the Customer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 0712 – Tax Arrangements of Public Appointees https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees applies in respect of the Services;
Working Days	means any day other than a Saturday or Sunday or public holiday in England and Wales.