



**Terms and Conditions**

# Supplier Terms for Consultancy Services

Provided by QinetiQ Limited

## **1. DEFINITIONS**

"Buyer Resources" has the meaning given in Clause 3.1.1 of these Supplier Terms;

"Call-Off Terms" means the terms and conditions set out in Part B of this Call-Off Contract;

"Deliverables" means the Goods, Documentation and any other documents, articles or other materials, and any data or other information relating to the Services to be provided by the Supplier to the Buyer in accordance with the agreed Service Definition;

"Documentation" means the reports supplied by the Supplier to the Buyer in accordance with the agreed Service Definition;

"Goods" shall mean the goods (if any) to be supplied under this Call-Off Contract, as described in the agreed Service Definition;

"Offer Letter" means the offer letter issued by the Supplier to the Buyer in relation to provision of the Services, as referenced in the Order Form, which forms part of the Call-Off Contract;

"Services" means the consultancy services to be provided by the Supplier as more particularly described in the Service Definition and the Offer Letter, which form part of the Services;

"Service Definition" means the definition of the Supplier's G-Cloud Services provided as part of their Application or, if no such definition has been provided, the definition of the Services as agreed between the parties and referenced in the Order Form;

"System" means the computer system and its internet connection(s) defined by the Buyer on which the Testing is to be conducted; and

"Testing" means all and any security assessments (the Test(s)) which are performed by the Supplier on the Buyer's System.

"Work" means the performance of the Services and/or the supply of Deliverables.

## **2. SUPPLY OF GOODS AND SERVICES**

2.1 The Supplier shall, during the Term, provide the Services and supply the Deliverables to the Buyer on and subject to the terms of this Call-Off Contract.

2.2 The Supplier will perform the Work in accordance with the agreed Service Definition or, if no time period is specified in the agreed Service Definition, within a

reasonable period of time. Time shall not be of the essence in this Call-Off Contract.

2.3 Not used

2.4 The Supplier shall provide the Services in accordance with the Service Definition and the Offer Letter.

2.5 Unless otherwise stated in this Call-Off Contract, all Deliverables shall be delivered by the Supplier EXW (Ex Works) in accordance with Incoterms 2010 at the Supplier's place of business where the Services are performed. The Deliverables shall be at the risk of the Buyer from the time of delivery.

2.6 Where this Call-Off Contract states that ownership of any Deliverable shall pass to the Buyer, such ownership shall not pass until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of that Deliverable from the Buyer.

2.7 The Supplier may at any time make any changes to the Goods or the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the relevant Goods or Services. The Supplier shall within a reasonable time notify the Buyer that such changes have been made. In the event that changes are made to the Goods or Services resulting from safety or other statutory requirements which become effective after the Start Date, then the reasonable charges associated with such change shall be to the Buyer's account and the Supplier shall be entitled to a reasonable extension of time for the delivery of the affected Goods or performance of the affected Services.

2.8 Except to the extent that they form part of the Service Definition or the Offer Letter or are expressly incorporated into this Call-Off Contract, all drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the matters described in them and will not form part of this Call-Off Contract.

## **3. BUYER'S RESPONSIBILITIES**

3.1 The Buyer shall:

3.1.1 provide to the Supplier and to its employees, agents and representatives and all other persons duly authorised by the Supplier at the times stated in this Call-Off Contract or otherwise in a timely manner with full, safe and uninterrupted access

including remote access to the Buyer's personnel, premises, equipment, systems, facilities and software as may reasonably be required for the purpose of performing the Services ("Buyer Resources").

3.1.2 provide the Supplier with all necessary co-operation in relation to this Call-Off Contract and all necessary access to such information as may be required by the Supplier in order to render the Services;

3.1.3 comply with all applicable Laws with respect to its activities under this Call-Off Contract;

3.1.4 carry out all other Buyer responsibilities set out in this Call-Off Contract in a timely and efficient manner;

3.1.5 provide all appropriate instructions, documents, licences, authorisations (including but not limited to authorisations required for compliance with the provisions of the Computer Misuse Act 1990); in a timely manner to enable the Supplier to perform the Services and deliver the Deliverables.

3.2 The Buyer represents and warrants that it has the full right, authority and licence to enter into this Call-Off Contract and to supply and disclose the Buyer Resources and that any Buyer Resource and its use by the Supplier for the purpose of performing the Work will not infringe the copyright or other Intellectual Property Rights of any third party.

3.3 Where this Call-Off Contract requires the Supplier to perform work at the Buyer's premises, the Buyer shall:

3.3.1 be responsible for arranging, in good time and at its own expense, all permits, licences or other permissions necessary to enable the Supplier's employees, agents and representatives to gain access to, and perform the work at, such premises; and

3.3.2 provide adequate working space and office facilities (including telephone and data communications) at its premises for use by the Supplier's employees, agents and representatives and take reasonable care to ensure their health and safety.

3.4 Where this Call-Off Contract requires the Buyer to perform work at the Supplier's premises:

3.4.1 the Supplier's employees, agents and representatives shall abide by such regulations, including security and health and safety regulations, as are applicable to their presence on Buyer's premises. A copy of those regulations will be available from Buyer on demand; and

9.2 the Buyer shall have the right to require the removal from its premises of anyone disobeying such regulations and reserves the right to refuse entry to its premises to any person whom it considers unsuitable.

3.5 The Buyer shall, in accordance with statutory health and safety requirements, provide prior written notice to the Supplier of any health or safety hazards associated with any Buyer Resources and/or Buyer facilities used by the Supplier in connection with the performance of the Services.

3.6 The Supplier reserves the right to inspect any Buyer Resources which the Buyer wishes to deliver to any the Supplier premises and to refuse them entry if the Supplier considers them to be unsafe or pose unacceptable risks of injury or damage to persons or property. The Buyer shall meet any reasonable costs incurred by the Supplier resulting from the rejection of such Buyer Resources by the Supplier and the Supplier shall not be liable for any costs or delays to this Call-Off Contract resulting from any decision under this Clause.

3.7 In the event of any failure or delay on the part of the Buyer to supply the Buyer Resources, or if the same are not in accordance with the Contract or are not fit for the purpose provided, then the Supplier shall within a reasonable time notify the Buyer of any delay or defect, including particulars of the same. The Buyer shall as soon as reasonably practicable and at its own expense supply replacement Buyer Resources or make good such defect.

3.8 If the Supplier is delayed in or prevented from performing any part of the Services due to (a) the Buyer's failure or delay in fulfilling any of its responsibilities or obligations under this Call-Off Contract (including without limitation any failure or delay to supply the Buyer Resources) and/ or (b) any act or omission of the Buyer's employees, agents or contractors, then:

3.8.1 the Supplier shall be entitled to an extension of time to any agreed schedule for delivering the Services and the Deliverables by a period of time equivalent to such delay;

3.8.2 the Buyer shall reimburse the Supplier for any additional costs reasonably incurred by the Supplier as a result of the failure and/or delay.

4. REPRESENTATIVES

4.1 The Buyer shall appoint the Buyer Representative to be available to liaise with, and respond to queries from, the Supplier's personnel. The Buyer may change the identity of the Buyer Representative from time to time on giving written notice to the Supplier.

4.2 The Supplier shall appoint the Supplier Representative to be available to liaise with, and respond to queries from the Buyer. The Supplier may change the identity of the Supplier Representative from time to time on giving written notice to the Buyer.

5. ACCEPTANCE OF DELIVERABLES

5.1 The Buyer shall notify the Supplier in writing of any damage to Deliverables or shortfall in quantity as soon as practicable but not later than five (5) days after delivery. In such circumstances the remedies provided in Clause 10.4 shall apply.

5.2 Where the Call-Off Contract requires the Supplier to perform Services at the Buyer's or third party premises, the Buyer shall be responsible for arranging, in good time, all permits, licences or other permissions necessary to enable the Supplier's employees, agents and representatives to gain access to, and perform the Services at, such premises. The Supplier's employees, agents and representatives working on the Buyer's premises shall abide by such regulations detailed in the Call-Off Contract as are applicable to their presence on such premises.

6. CHARGES AND PAYMENT

6.1 In consideration of the provision of the Services and the Deliverables, the Buyer shall pay the Charges set out in the Offer Letter.

6.2 Unless otherwise specified in this Call-Off Contract, the Buyer shall pay to the Supplier the Charges in respect of the Work by bank transfer to a bank account nominated by the Supplier within 30 days of submission of an invoice by the Supplier.

6.3 All payments due from the Buyer shall be made without deduction of any set-offs, taxes, charges and other duties (including any withholding or income taxes).

6.4 If the Buyer fails to pay the Supplier any sum due pursuant to this Call-Off Contract, the Buyer will be liable to pay interest to the Supplier on such sums from the due date for payment calculated by reference to (a) the applicable rate due under the Late

Payment of Commercial Debts (Interest) Act 1998; or (b) an annual rate equivalent to the base lending rate from time to time of Lloyds Bank Plc plus 4 percentage points, whichever is the higher. Such interest shall accrue on a daily basis until payment is made, whether before or after any judgement.

6.5 Whenever under this Call-Off Contract any sum of money shall be recoverable from or payable by the Buyer, the Supplier may deduct the same from any sum then due to the Buyer under this Call-Off Contract or any other contract between the Supplier and the Buyer.

7. BUYER CANCELLATION OR RESCHEDULING

7.1 The Buyer acknowledges that the Services will be carried out on the dates specified in the Call-Off Contract.

7.2 Subject to Clause 7.3, the Buyer may at any time prior to the performance of the Services under the Contract, by notice in writing cancel or reschedule all or some of the Services.

7.3 The Buyer agrees that where it gives notice of cancellation or rescheduling to the Supplier at any time prior to the scheduled commencement of the Services, the Supplier shall in consideration of unavoidable financial loss have the right to charge a percentage of the Charges for the cancelled or rescheduled Services ("the Cancellation Charges") in accordance with the following table:

Working days before scheduled provision of the Services that notice is received by Supplier:	Supplier entitled to charge [%] of Charges for cancelled or rescheduled Services:
≥ 10	0%
9	20%
8	40%
7	60%
6	80%
<5	100

7.4 On receipt of any notice given in accordance with this Clause 7, the Supplier shall cease and/or reschedule performance of the cancelled Services as soon as reasonably practicable.



7.5 The Parties agree that notwithstanding clause 18.3 of the Call-Off Contract the Cancellation Charges are a genuine pre-estimate of the Supplier's loss arising from the rescheduling and/or cancellation of Services and the Supplier shall not be required to submit further evidence to the Buyer in respect of them; and further that they shall be the Buyer's sole financial remedy save for circumstances where the Buyer has exercised its right to terminate due to the Supplier's material breach. The Supplier has taken the Cancellation Charges into account in setting the level of the Charges for the Services.

## **8. VARIATIONS**

8.1 If either Party requests a change to the Work as described in the agreed Service Definition, the Supplier may, at its sole discretion, provide a written estimate to the Buyer of:

8.1.1 the likely time required to implement the change;

8.1.2 any variations to the Charges resulting from the change;

8.1.3 the likely effect of the change on the carrying out of the Work and the terms of this Call-Off Contract.

8.2 If the Supplier agrees to the change and the Buyer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the Parties have agreed in writing the necessary variations to the Charges and any other relevant terms of this Call-Off Contract to take account of the change.

8.3 No amendment to this Call-Off Contract shall be effective unless signed on behalf of both Parties.

## **9. INTELLECTUAL PROPERTY RIGHTS**

9.1 The Buyer owns all data provided by the Buyer to the Supplier and hereby grants to the Supplier a perpetual, irrevocable licence to aggregate such data with other data collected by or for the Supplier for the purpose of carrying out the Services.

9.2 All Intellectual Property Rights generated by the Supplier pursuant to this Call-Off Contract will vest solely in the Supplier, save that the copyright in any Documentation developed by the Supplier under this Call-Off Contract specifically for the Buyer shall vest in the Buyer upon passing of title in the Documentation to the Buyer in accordance with Clause 2.6, and the Supplier hereby assigns such rights to the Buyer.

## **10. WARRANTY AND EXCLUSIVE REMEDY**

10.1 The Supplier makes no warranty that all or any of the Deliverables will be suitable for or to enable the Buyer to achieve any particular purpose even when such purpose has been notified to the Supplier.

10.2 The Supplier makes no warranty that all or any of the Deliverables will not infringe the rights of any third party.

10.3 The Parties acknowledge that the Goods to be supplied under this Call-Off Contract are manufactured by a third party and the Supplier does not therefore give any warranty, guarantee or assurance of any kind as to their quality, fitness for purpose or otherwise, but shall, where reasonably possible, extend to the Buyer the benefit of any warranty, guarantee or indemnity given by the party supplying the goods to the Supplier.

10.4 Subject to Clause 10.5 below, if any defect or fault is found to exist in the Deliverables resulting from the performance of the Services not in conformance with the warranty in Clause 10.1, the Supplier shall at its option either (i) re-perform the relevant Services or part thereof; and/or repair or replace any Deliverables (or the defective part) or (ii) refund such proportion of the Charges paid to the Supplier by the Buyer for the Services as is reasonable, PROVIDED THAT, if the Supplier so requests, the Buyer shall, at the Buyer's expense, return any Deliverables or the part which is defective to Supplier. The Buyer shall reimburse Supplier's costs of inspecting any Deliverables and returning them to the Buyer (at the Buyer's risk) where no defect is found or any defect has arisen in circumstances listed in Clause 10.5.

10.5 The Supplier shall have no liability of any kind for breach of its warranty in clause 4.1 of the Framework Agreement where such breach is due to the Buyer failing to give written notice of the alleged breach to Supplier within the times specified in Clause 5.1 delivery of the affected Services or Deliverable or, having given such notice:

10.5.1 fails to give the Supplier a reasonable opportunity to examine any such Deliverables concerned; or

10.5.2 fails (having been asked to do so by Supplier) to return, at the Buyer's cost, such Deliverables for examination at Suppliers place of business; or

10.5.3 continues to make full or substantially full use of such Services or Deliverables; or

10.5.4 failure by the Buyer to comply with its obligations under the Call-Off Contract; or

10.5.5 any defect in, or failure of, the Buyer's (or a third party's) System;

10.6.6 failure by the Buyer to follow the Supplier's reasonable oral or written instructions in connection with the performance of the Services.

10.6 THE BUYER ACKNOWLEDGES AND ACCEPTS THAT THE WARRANTIES AT CLAUSES 4.1 OF THE FRAMEWORK AGREEMENT AND CLAUSE 29.3 OF THE CALL-OFF TERMS ARE ITS SOLE AND ENTIRE WARRANTIES IN CONNECTION WITH THE SUPPLY TO IT BY THE SUPPLIER OF THE DELIVERABLES AND THE PERFORMANCE BY THE SUPPLIER OF ANY WORK TO BE CARRIED OUT UNDER THIS CALL-OFF CONTRACT. ALL OTHER WARRANTIES, CONDITIONS, TERMS, REPRESENTATIONS, STATEMENTS, UNDERTAKINGS AND OBLIGATIONS WHICH MAY OTHERWISE BE IMPLIED (BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) IN RELATION TO SUCH SUPPLY ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

## **11. LIMITATION OF LIABILITY**

11.1 Clauses 4.2 to 4.7 of the Framework Agreement, clause 24.1 of the Call-Off Terms and Clause 11 of these Supplier Terms set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer arising under or in connection with this Call-Off Contract in respect of:

11.1.1 any breach of this Call-Off Contract; and

11.1.2 any representation, statement or tortious act or omission including negligence and any other basis of liability.

11.2 Subject to clause 4.2 of the Framework Agreement and Clause 7 of these Supplier Terms, the Supplier shall not be liable to the Buyer whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for any injury, loss, damage, cost or expense to the extent caused by the negligence, wilful misconduct or other fault of the Buyer, its employees, agents or contractors or a breach by the Buyer of this Call-Off Contract.

11.3 Each Party agrees that its only liability

in respect of the representations and warranties that are set out in this Call-Off Contract (whether made innocently or negligently) shall be for breach of contract.

## **12. NOT USED**

## **13. TERMINATION**

13.1 The Supplier shall be entitled to terminate this Call-Off Contract on giving three (3) months' written notice to the Buyer.

13.2 Where the Supplier terminates this Call-Off Contract under Clause 13 of these Supplier Terms or under clause 18.5 or clause 18.6 of the Call-Off Terms, the Buyer shall within seven (7) days pay to the Supplier:

13.2.1 all outstanding payments invoiced by the Supplier under this Call-Off Contract at the date of termination;

13.2.2 in addition a fair and reasonable price for work done or in progress but not invoiced for at the date of termination;

13.2.3 all costs (including overheads) and liabilities incurred by the Supplier arising out of or resulting from termination, including but not limited to suppliers' and sub-contractors' cancellation charges; and

13.2.4 a sum in respect of the profits which the Supplier would have made under this Call-Off Contract but for its termination.

13.3 Without prejudice to clause 19.4 of the Call-Off Terms, ending or expiry of this Call-Off Contract will not affect the continuing rights, remedies or obligations of the Buyer or the Supplier under the provisions of the following Clauses of these Supplier Terms: 11 (Intellectual Property Rights), 10 (Warranty and Exclusive Remedy), 11 (Limitation of Liability), 12 (Data Protection) and 15 (Publicity).

## **14. FORCE MAJEURE**

14.1 In the event that a Force Majeure prevents or delays a Party from performing its obligations under this Call-Off Contract, the affected Party will take reasonable steps to mitigate the effect of the delay. Performance of this Call-Off Contract shall be suspended for such time as the delay continues.

14.2 If this Call-Off Contract is terminated for Force Majeure pursuant to clause 23.1 of the Call-Off Terms, the Parties shall, subject to the provisions of clause 19.4 of the Call-Off Terms, be released from all obligations under this Call-Off Contract and the Buyer shall pay to the Supplier within seven (7) days:

14.2.1 all outstanding payments invoiced by the Supplier under this Call-Off Contract at the date of termination;

14.2.2 any amount due pursuant to Clause 3.8 of these Supplier Terms; and

14.2.3 in addition a fair and reasonable price for work done or in progress but not invoiced for at the date of termination.

14.3 For the avoidance of doubt "Force Majeure Event" shall for the purposes of this Call-Off Contract include the failure of any telecommunication facility including but not limited to telephone or internet connection; or the postponement of any trial or test as a result of unsafe conditions.

## **15. PUBLICITY**

15.1 Neither the Buyer nor the Supplier shall without the prior written consent of the other Party:

15.1.1 make use of the other Party's name;

15.1.2 make use of the name of any of the other Party's personnel, customers or agents;

15.1.3 make use of any information obtained under this Call-Off Contract for publicity purposes; or

15.1.4 refer to the other Party or this Call-Off Contract in any advertisement or public announcement or notice except to the extent required by Law or any competent regulatory body.

## **16. COMPLIANCE WITH WEEE REGULATIONS**

16.1 The Supplier is a registered member of a UK Government approved compliance scheme for the purposes of the Waste Electrical and Electronic Equipment Regulations 2006 ("WEEE Regulations"). To the extent that the WEEE Regulations apply to any Goods supplied by the Supplier under this Call-Off Contract, the Supplier shall be responsible for the cost of the collection, treatment, recovery and disposal of any Goods deemed by Law to be waste (or any items for which the Goods are replacements) solely to the extent expressly required by the WEEE Regulations.

## **17. NON-SOLICITATION**

17.1 The Buyer undertakes during the Term and for 12 months thereafter not to solicit or make an offer of employment (or an offer for services) to any employee, officer or agent of the Supplier engaged in performance of the Work under this Call-Off Contract.

## **18. NOTICES**

18.1 Notices served on the Supplier under this Call-Off Contract shall be sent to the Company Secretary at the Supplier's registered office and copied to the principal contact of the Supplier shown on the Order Form or to such other address or individuals as the Supplier may substitute by notice to the Buyer from time to time. Notices served on the Buyer shall be sent to the principal contact of the Buyer shown in the Order Form or to such other address or individuals as the Buyer may substitute by notice to the Supplier from time to time.

18.2 Without prejudice to clause 20.1 of the Call-Off Terms, a notice given under or in connection with this Call-Off Contract may be delivered by hand or sent by first class post or recorded delivery post.

18.3 Notice shall be deemed given:

18.3.1 if delivered by hand: on the day of delivery;

18.3.2 if sent by first class post or recorded delivery post: two Working Days after posting or sending by such courier exclusive of the day of posting or sending.

## **19. COUNTERPARTS**

19.1 This Call-Off Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.