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- the other Party commits a Material Breach of any term of this Call-Off Contract (other than failure to pay any amounts due under this Call-Off Contract) and, if such breach is remediable, fails to remedy that breach within a period of 15 Working Days of being notified in writing to do so;
  - 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
  - a Force Majeure Event occurs for a period of more than 15 consecutive calendar days.

23.7 If a Supplier Insolvency Event occurs, CCS is entitled to terminate this Call-Off Contract.

## **24. Consequences of termination**

24.1 If the Buyer contracts with another Supplier, the Supplier will comply with clause 28.

24.2 The rights and obligations of the Parties in respect of this Call-Off Contract (including any executed SOWs) will automatically terminate upon the expiry or termination of this Call-Off Contract, except those rights and obligations set out in clause 24.6.

24.3 At the end of the Call-Off Contract period (howsoever arising), the Supplier must:

- immediately return to the Buyer:
  - all Buyer Data including all copies of Buyer Software and any other software licensed by the Buyer to the Supplier under this Call-Off Contract;
  - any materials created by the Supplier under this Call-Off Contract where the IPRs are owned by the Buyer;
  - any items that have been on-charged to the Buyer, such as consumables; and
  - all Equipment provided to the Supplier pursuant to clause 41. This Equipment must be handed back to the Buyer in good working order (allowance will be made for reasonable wear and tear).
- immediately upload any items that are or were due to be uploaded to the repository when this Call-Off Contract was terminated (as specified in clause 27);
- cease to use the Buyer Data and, at the direction of the Buyer, provide the Buyer and the replacement Supplier with a complete and uncorrupted version of the Buyer Data in electronic form in the formats and on media agreed with the Buyer and the replacement Supplier;
- destroy all copies of the Buyer Data when they receive the Buyer's written instructions to do so or 12 months after the date of expiry or termination, and

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provide written confirmation to the Buyer that the data has been destroyed, except where the retention of Buyer Data is required by Law;

- vacate the Buyer premises;
- work with the Buyer on any work in progress and ensure an orderly transition of the Services to the replacement supplier;
- return any sums prepaid for Services which have not been delivered to the Buyer by the date of expiry or termination;
- provide all information requested by the Buyer on the provision of the Services so that:
  - the Buyer is able to understand how the Services have been provided;
  - and
  - the Buyer and the replacement supplier can conduct due diligence.

24.4 Each Party will return all of the other Party's Confidential Information. Each Party will confirm that it does not retain the other Party's Confidential Information except where the information must be retained by the Party as a legal requirement or where this Call-Off Contract states otherwise.

24.5 All licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Services will be terminated at the end of the Call-Off Contract period (howsoever arising) without the need for the Buyer to serve notice except where this Call-Off Contract states otherwise.

24.6 Termination or expiry of this Call-Off Contract will not affect:

- any rights, remedies or obligations accrued under this Call-Off Contract prior to termination or expiration;
- the right of either Party to recover any amount outstanding at the time of such termination or expiry;
- the continuing rights, remedies or obligations of the Buyer or the Supplier under clauses:
  - 8 - Payment Terms and VAT
  - 9 - Recovery of Sums Due and Right of Set-Off
  - 11 - Confidentiality
  - 12 - Conflict of Interest
  - 13 - Intellectual Property Rights
  - 24 - Consequences of Expiry or Termination
  - 33 - Liability
  - 34 - Waiver and cumulative remedies
- any other provision of the Framework Agreement or this Call-Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry will survive the termination or expiry of this Call-Off Contract.

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## 25. Supplier's status

25.1 The Supplier is an independent Contractor and no contract of employment or partnership is created between the Supplier and the Buyer. Neither Party is authorised to act in the name of, or on behalf of, the other Party.

## 26. Notices

26.1 Any notices sent must be in writing. For the purpose of this clause, an email is accepted as being in writing.

26.2 The following table sets out the method by which notices may be served under this Call-Off Contract and the respective deemed time and proof of Service:

| Delivery type | Deemed delivery time                       | Proof of Service  |
|---------------|--|---|
| Email         | 9am on the first Working Day after sending | Dispatched in a pdf form to the correct email address without any error message |

26.3 The address and email address of each Party will be the address and email address in the Order Form.

## 27. Exit plan

27.1 The Buyer and the Supplier will agree an exit plan during this Call-Off Contract period to enable the Supplier Deliverables to be transferred to the Buyer ensuring that the Buyer has all the code and documentation required to support and continuously develop the Service with Buyer resource or any third party as the Buyer requires. The Supplier will update this plan whenever there are material changes to the Services. A Statement of Work may be agreed between the Buyer and the Supplier to specifically cover the exit plan.

## 28. Help at retendering and handover to replacement supplier

28.1 When requested, the Supplier will (at its own expense where the Call-Off Contract has been terminated before end of term due to Supplier cause) help the Buyer to migrate the Services to a replacement Supplier in line with the exit plan (clause 27) to ensure continuity of the Services. Such help may include Supplier demonstrations of the existing code and development documents, software licences used and Buyer approval

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documents. The Supplier will also answer Service and development-related clarification questions.

28.2 Within 10 Working Days of a request by the Buyer, the Supplier will provide any information needed by the Buyer to prepare for any procurement exercise or to facilitate any potential replacement Supplier undertaking due diligence. The exception to this is where such information is deemed to be Commercially Sensitive Information, in which case the Supplier will provide the information in a redacted form.

## 29. Changes to services

29.1 It is likely that there will be changes to the scope of the Services during the Call Off Contract period. Agile projects have a scope that will change over time. The detailed scope (eg as defined in user stories) can evolve and change during the Call Off Contract Period. These changes do not require formal contract changes but do require the Buyer and Supplier to agree these changes.

29.2 Any changes to the high-level scope of the Services must be agreed between the Buyer and Supplier. The Supplier will consider any request by the Buyer to change the scope of the Services, and may agree to such request.

## 30. Contract changes

30.1 All changes to this Call-Off Contract which cannot be accommodated informally as described in clause 29 will require a Contract Change Note.

30.2 Either Party may request a contract change by completing and sending a draft Contract Change Note in the form in Schedule 4 of 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 will bear the costs of preparation of the Contract Change Note. Neither Party will unreasonably withhold or delay consent to the other Party's proposed changes to this Call-Off Contract.

30.3 Due to the agile-based delivery methodology recommended by the Framework Agreement, it may not be possible to exactly define the consumption of Services over the duration of the Call-Off Contract in a static Order Form. The Supplier should state the initial value of all Services that are likely to be consumed under the Call-Off Contract.

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## **31. Force Majeure**

31.1 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Call-Off Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure event. Each Party will use all reasonable endeavours to continue to perform its obligations under this Call-Off Contract for the length of a Force Majeure event. If a Force Majeure event prevents a Party from performing its obligations under this Call-Off Contract for more than 15 consecutive calendar days, the other Party may terminate this Call-Off Contract with immediate effect by notice in writing.

## **32. Entire agreement**

32.1 This Call-Off Contract constitutes the entire agreement between the Parties relating to the matters dealt within it. It supersedes any previous agreement between the Parties relating to such matters.

32.2 Each Party agrees that in entering into this Call-Off Contract it does not rely on, and will have no remedy relating to, any agreement or representation (whether negligently or innocently made) other than as expressly described in this Call-Off Contract.

32.3 Nothing in this clause will exclude any liability for (or remedy relating to) fraudulent misrepresentation or fraud.

32.4 Each of the Parties agrees that in entering into this Call-Off Contract it does not rely on, and will have no remedy relating to, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as described in this Call-Off Contract.

## **33. Liability**

33.1 Neither Party excludes or limits its liability for:

- death or personal injury;
- bribery or fraud by it or its employees;
- 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
- any liability to the extent it cannot be excluded or limited by Law.

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33.2 In respect of the indemnities in Clause 13 (Intellectual Property Rights) the Supplier's total liability will be unlimited. Buyers are not limited in the number of times they can call on this indemnity.

33.3 Subject to the above, each Party's total aggregate liability relating to all Losses due to a Default in connection with this agreement:

- resulting in direct loss or damage to physical Property (including any technical infrastructure, assets or Equipment) of the other Party, will be limited to the sum of £1,000,000 in each Call-Off Contract year in which the Default occurs, unless otherwise stipulated by the Buyer in a Further Competition procedure
- subject to the first bullet point in this clause 33.3 which occur in the first 6 months, will be limited to the greater of the sum of £500,000 or a sum equal to 200% of the estimated Call-Off Contract Charges for the first six months
- subject to the first bullet point in this clause 33.3 which occur during the remainder of the Call-Off Contract period, will be limited to the greater of the sum of £500,000 or an amount equal to 200% of the Call-Off Contract Charges paid, due or which would have been payable under this Call-Off Contract in the 6 months immediately preceding the event giving rise to the liability
- subject to the first bullet point in this clause 33.3 which occur after the end of the Call-Off Contract period, will be limited to the greater of the sum of £500,000 or an amount equal to 200% of the Call-Off Contract Charges paid, due or which would have been payable under this Call-Off Contract in the 6 months immediately before the end of the Call-Off Contract period.

33.4 Subject to clause 33.1, in no event will either Party be liable to the other for any:

- loss of profits;
- loss of business;
- loss of revenue;
- loss of or damage to goodwill;
- loss of savings (whether anticipated or otherwise); or
- any indirect, special or consequential loss or damage.

33.5 The Supplier will be liable for the following types of loss which will be regarded as direct and will be recoverable by the Buyer:

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

33.6 No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by, or on behalf of, the Buyer to any document or information provided

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by the Supplier in its provision of the Services, and no failure of the Buyer to discern any defect in, or omission from, any such document or information will exclude or limit the obligation of the Supplier to carry out all the obligations of a professional Supplier employed in a client and Buyer relationship.

33.7 Unless otherwise expressly provided, the obligations of the Buyer under this Call-Off Contract are obligations of the Buyer in its capacity as a Contracting counterparty and nothing in this Call-Off Contract will be an obligation on, or in any other way constrain the Buyer in any other capacity, nor will the exercise by the Buyer of its duties and powers in any other capacity lead to any liability under this Call-Off Contract on the part of the Buyer to the Supplier.

33.8 Any liabilities which are unlimited will not be taken into account for the purposes of establishing whether any limits relating to direct loss or damage to physical Property within this clause have been reached.

33.9 Nothing in this clause will exclude any liability for (or remedy relating to) fraud.

#### **34. Waiver and cumulative remedies**

34.1 The rights and remedies provided by this agreement may be waived only in writing by the Buyer or the Supplier representatives in a way that expressly states that a waiver is intended, and such waiver will only be operative regarding the specific circumstances referred to.

34.2 Unless a right or remedy of the Buyer is expressed to be exclusive, the exercise of it by the Buyer is without prejudice to the Buyer's other rights and remedies. Any failure to exercise, or any delay in exercising, a right or remedy by either Party will not constitute a waiver of that right or remedy, or of any other rights or remedies.

#### **35. Fraud**

35.1 The Supplier will notify the Buyer if it suspects that any fraud has occurred, or is likely to occur. The exception to this is if while complying with this, it would cause the Supplier or its employees to commit an offence.

35.2 If the Supplier commits any fraud relating to a Framework Agreement, this Call-Off Contract or any other Contract with the government:

- the Buyer may terminate the Call-Off Contract
- CCS may terminate the Framework Agreement

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- CCS and/or the Buyer may recover in full from the Supplier whether under Clause 35.3 below or by any other remedy available in law.

35.3 The Supplier will, on demand, compensate CCS and/or the Buyer, in full, for any loss sustained by CCS and/or the Buyer at any time (whether such loss is incurred before or after the making of a demand following the indemnity hereunder) in consequence of any breach of this clause.

### **36. Prevention of bribery and corruption**

36.1 The Supplier will not commit any Prohibited Act.

36.2 The Buyer and CCS will be entitled to recover in full from the Supplier and the Supplier will, on demand, compensate CCS and/or the Buyer in full from and against:

- the amount of value of any such gift, consideration or commission; and
- any other loss sustained by CCS and/or the Buyer in consequence of any breach of this clause.

### **37. Legislative change**

37.1 The Supplier will neither be relieved of its obligations under this Call-Off Contract nor be entitled to increase the Call-Off Contract prices as the result of a general change in Law or a Specific Change in Law without prior written approval from the Buyer.

### **38. Publicity, branding, media and official enquiries**

38.1 The Supplier will take all reasonable steps to not do anything which may damage the public reputation of the Buyer. The Buyer may terminate this Call-Off Contract for Material Breach where the Supplier, by any act or omission, causes material adverse publicity relating to or affecting the Buyer or the Call-Off Contract. This is true whether or not the act or omission in question was done in connection with the performance by the Supplier of its obligations hereunder.

### **39. Non Discrimination**

39.1 The Supplier will notify CCS and relevant Buyers immediately of any legal proceedings issued against it by any Supplier Staff on the grounds of discrimination.

### **40. Premises**

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40.1 Where either Party uses the other Party's premises, such Party is liable for all Loss or damage it causes to the premises. Such Party is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.

40.2 The Supplier will use the Buyer's premises solely for the Call-Off Contract.

40.3 The Supplier will vacate the Buyer's premises upon termination or expiry of the Call-Off Contract.

40.4 This clause does not create an tenancy or exclusive right of occupation.

40.5 While on the Buyer's premises, the Supplier will:

- ensure the security of the premises;
- comply with Buyer requirements for the conduct of personnel;
- comply with any health and safety measures implemented by the Buyer;
- comply with any instructions from the Buyer on any necessary associated safety measures ; and
- notify the Buyer immediately in the event of any incident occurring on the premises where that incident causes any personal injury or damage to Property which could give rise to personal injury.

40.6 The Supplier will ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Buyer on request.

40.7 All Equipment brought onto the Buyer's premises will be at the Supplier's risk. Upon termination or expiry of the Call-Off Contract, the Supplier will remove such Equipment.

## **41. Equipment**

41.1 Any Equipment brought onto the premises will be at the Supplier's own risk and the Buyer will have no liability for any Loss of, or damage to, any Equipment.

41.2 Upon termination or expiry of the Call-Off Contract, the Supplier will remove the Equipment, and any other materials, leaving the premises in a safe and clean condition.

## 42. Law

and

## jurisdiction

42.1 This Call-Off Contract will be governed by the Laws of England and Wales. Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England and Wales.

## 43. Defined Terms

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|---|---|
| <b>'Application'</b>                      | The response submitted by the Supplier to the Invitation to Tender  |
| <b>'Assurance'</b>                        | The verification process undertaken by CCS as described in section 5 of the Framework Agreement   |
| <b>'Background IPRs'</b>                  | For each Party: <ul style="list-style-type: none"><li>• IPRs owned by that Party before the date of this Call-Off Contract, including IPRs contained in any of the Party's know-how, documentation, processes and procedures;</li><li>• IPRs created by the Party independently of this Call-Off Contract; and/or</li><li>• For the Buyer, Crown Copyright which is not available to the Supplier otherwise than under this Call-Off Contract;</li></ul> but excluding IPRs owned by that Party subsisting in Buyer Software or Supplier Software |
| <b>'Buyer'</b>                            | A UK public sector body, or Contracting Body, as described in the OJEU Contract Notice, that can execute a competition and a Call-Off Contract within the Framework Agreement   |
| <b>'Buyer Background IPRs'</b>            | Background IPRs of the Buyer  |
| <b>'Buyer's Confidential Information'</b> | All Buyer Data and any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Suppliers of the Buyer, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above<br><br>Any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked  |

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|---|---|
|   | 'confidential')   |
| <b>'Buyer Data'</b>                         | Data that is owned or managed by the Buyer, including Personal Data gathered for user research, eg recordings of user research sessions and lists of user research participants   |
| <b>'Buyer Software'</b>                     | Software owned by or licensed to the Buyer (other than under or pursuant to this Agreement), which is or will be used by the Supplier for the purposes of providing the Services  |
| <b>'Call-Off Contract'</b>                  | <p>This legally binding agreement (entered into following the provisions of the Framework Agreement) for the provision of Services made between a Buyer and the Supplier</p> <p>This may include the key information summary, Order Form, requirements, Supplier's response, Statement of Work (SOW), Contract Change Notice (CNN) and terms and conditions as set out in the Call-Off Contract Order Form</p>            |
| <b>'Charges'</b>                            | The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under the Call-Off Contract, as set out in the applicable SOW(s), in consideration of the full and proper performance by the Supplier of the Supplier's obligations under the Call-Off Contract and the specific obligations in the applicable SOW  |
| <b>'Commercially Sensitive Information'</b> | Information, which CCS has been notified about, (before the start date of the Framework Agreement) or the Buyer (before the Call-Off Contract start date) with full details of why the Information is deemed to be commercially sensitive   |
| <b>'Comparable Supply'</b>                  | The supply of services to another customer of the Supplier that are the same or similar to any of the Services  |
| <b>'Confidential Information'</b>           | <p>CCS's Confidential Information or the Supplier's Confidential Information, which may include (but is not limited to):</p> <ul style="list-style-type: none"> <li>any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above</li> </ul> |

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|------------------------------|--|
|                              | <ul style="list-style-type: none"> <li>any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential')</li> </ul>   |
| <b>'Contracting Bodies'</b>  | The Buyer and any other person as listed in the OJEU Contract Notice or Regulation 2 of the Public Contracts Regulations 2015, as amended from time to time, including CCS   |
| <b>'Control'</b>             | Control as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly  |
| <b>'Crown'</b>               | The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf   |
| <b>'Default'</b>             | <ul style="list-style-type: none"> <li>any breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term)</li> <li>any other default, act, omission, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff in connection with or in relation to this Framework Agreement or this Call-Off Contract</li> </ul> <p>Unless otherwise specified in this Call-Off Contract the Supplier is liable to CCS for a Default of the Framework Agreement and in relation to a Default of the Call-Off Contract, the Supplier is liable to the Buyer</p> |
| <b>'Deliverable'</b>         | A tangible work product, professional service, outcome or related material or item that is to be achieved or delivered to the Buyer by the Supplier as part of the Services as defined in the Order Form and all subsequent Statement of Work  |
| <b>'Digital Marketplace'</b> | The government marketplace where Services will be bought<br><a href="https://www.digitalmarketplace.service.gov.uk/">(https://www.digitalmarketplace.service.gov.uk/)</a>  |
| <b>'Equipment'</b>           | The Supplier's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or  |