

Digital Outcomes and Specialists 3 Framework Agreement - Call-Off Contract

between: Public Health England and Flipside Group

Title: Active 10 Continuous Improvement & Development and a further programme of work

Part A - Order Form

This Order Form is issued in accordance with the Digital Outcomes and Specialists Framework Agreement (RM1043iv).

Summary

| | |
|---|---|
| Buyer | Public Health England |
| Supplier | Flipside Group |
| together "the Parties". | |
| Call-Off Contract title | Active 10 Continuous Improvement & Development and a further programme of work |
| Call-Off Contract description | Delivery of development and continuous improvements to the Active 10 App and potentially other mobile app development projects. |
| <u>Call-Off Contract period</u> | |
| Start date | 18 March 2019 |
| Contract duration | 24 (twenty four) months |
| End date | 17 March 2021 |
| (Optional) Maximum Call-Off Contract Extension Period Up to 25% of the Contract period. | 6 (six) Months |
| Latest Extension Period End Date End date + 25% Contract period | 17 September 2021 |
| Notice period Prior to the initial Call-Off Contract period - to trigger Call-Off Contract Extension | 10 (ten) working days |
| <u>Call-Off Contract value</u> | £2 (two) million |
| Charging method | Capped Time and Materials (CTM) <input checked="" type="checkbox"/> Price per story <input type="checkbox"/> Time and Materials <input type="checkbox"/> Fixed Price <input type="checkbox"/> Other pricing method or a combination of pricing methods agreed by the parties <input type="checkbox"/> |
| Notice period for termination for convenience | 30 (thirty) days |
| Initial SOW package | Schedule 3A |

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Reference Details

| | |
|------------------------------|--|
| Project reference | 59103 |
| Buyer reference | ECM: 6568 |
| Purchase order number | TBD |
| From: | |
| Buyer Name | Public Health England |
| Buyer Address | Wellington House 133-155 Waterloo Road London SE1 8UG |
| To: | |
| Supplier Name | Flipside Group |
| Supplier Address | 116 High Street, Cranleigh, Surrey, GU6 8AJ |
| Supplier Company Number | 3205960 |

Principal Contact Details

| | |
|-------------------------|------------|
| For the Buyer | |
| Name | [REDACTED] |
| Title | [REDACTED] |
| Email | [REDACTED] |
| Phone | [REDACTED] |
| For the Supplier | |
| Name | [REDACTED] |
| Title | [REDACTED] |
| Email | [REDACTED] |
| Phone | [REDACTED] |

Data Protection Officers

| | |
|-------------------------|----------------------------------|
| For the Buyer | |
| Name | [REDACTED] |
| Title | [REDACTED] |
| Email | dataprotectionofficer@phe.gov.uk |
| Phone | [REDACTED] |
| For the Supplier | |
| Name | [REDACTED] |

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| | |
|-------|------------|
| Title | [REDACTED] |
| Email | [REDACTED] |
| Phone | [REDACTED] |

Call-Off Contract Term

| | |
|--|---------------|
| Commencement Date <small>By default, the Start Date</small> | 18 March 2019 |
|--|---------------|

Buyer contractual requirements

| | |
|---|--|
| Digital outcome services required <small>Type of service</small> | Digital Outcomes |
| Warranty period <small>Number of days warranty on the deliverables of this agreement</small> | 90 (ninety) days |
| Location <small>Where the services are to be provided (see DOS Ad)</small> | The work can be performed from any location but is likely to be co-ordinated by staff in PHE's London offices. |
| Staff Vetting <small>Level of clearance or equivalent required</small> | None |
| Standards <small>Any standards, other than GDS Digital Standard, to that the Supplier must follow.</small> | None |
| Limit on Supplier liability insurance | £5 (five) million |

Supplier Information

| | |
|---|------|
| Commercially sensitive information <small>Supplier to complete</small> | None |
| Subcontractors / Partners <small>Supplier to complete</small> | None |

Call-Off Charges and payment

| | |
|--|---|
| Method of payment <small>PCG / BACS etc</small> | BACS |
| Invoice frequency | Monthly |
| Buyer's Invoice Detail requirements | |
| Name | Public Health England Accounts Payable Team |

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| | |
|---|---|
| Person or department where invoices are to be sent | Financial Accounting Services |
| Address Where invoices to be sent | PHE Porton Down Manor Farm Road Salisbury Wiltshire SP4 0JG |
| Other details required e.g. PO Number, Project Number | |

Contract Charges

Supplier's proposed pricing e.g. Rate card from tender

| Role | Day Rate (£) |
|--|--------------|
| Delivery Manager (Project Manager) | |
| Content Designer (Midweight Designer) | |
| User Researcher | |
| IOS Mobile Developer (Senior) | |
| IOS Mobile Developer (Midweight) | |
| Android Developer (Senior) | |
| Android Developer | |
| UX (Senior) | |
| Tester (Senior) | |
| Tester | |
| Technical Architect (Lead Backend Developer) | |

Additional Buyer terms

| | |
|---|---|
| Warranties, representations and acceptance criteria Enter any additional warranties and undertakings | None |
| Supplemental requirements in addition to the call-off terms | None |
| Buyer specific amendments to/refinements of the Call-Off Contract terms | None |
| Specific Terms | |
| 6 Warranties, representations and acceptance criteria | Remains Ninety (90) Days from date of Buyer acceptance of release |
| 22 Managing Disputes | Remains various shown within the Call-Off Contract terms |
| 23 Termination | Remains Fifteen (15) consecutive Calendar Days |
| 29 Help at retendering and handover to replacement supplier | Remains Ten (10) Working days |

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| | |
|---------------------|--|
| 31 Contract Changes | Remains Five (5) Working Days |
| 32 Force Majeure | Remains Fifteen (15) consecutive Calendar Days |
| 34 Liability | Remains various shown within the Call-Off Contract terms |

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Formation of Contract

- 1.1 By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.
- 1.2 The Parties agree that they have read the Order Form (Part A), the Schedules (Part B) and the Call-Off Contract terms and conditions (Part C) and by signing below agree to be bound by this Call-Off Contract.
- 1.3 In accordance with the Further Competition procedure set out in Section 3 of the Framework Agreement, this Call-Off Contract will be formed when the Buyer acknowledges the receipt of the signed copy of the Order Form from the Supplier (the "call-off effective date").
- 1.4 The Call-Off Contract outlines the Deliverables of the agreement. The Order Form outlines any amendment of the terms and conditions set out in Part C. The terms and conditions of the Call-Off Contract Order Form will supersede those of the Call-Off Contract standard terms and conditions.
2. Background to the agreement
 - (A) The Supplier is a provider of digital outcomes and specialists services and undertook to provide such Services under the terms set out in Framework Agreement number RM1043iv (the "Framework Agreement").
 - (B) The Buyer served an Order Form for Services to the Supplier on the Order Date stated in the Order Form.
 - (C) The parties intend that this Call-Off Contract will not itself oblige the Buyer to buy or the Supplier to supply the Services. Specific instructions and requirements will have contractual effect on the execution of an SOW.

SIGNED:

| | Supplier: | Buyer: |
|------------|------------------|---------------|
| Name: | [REDACTED] | [REDACTED] |
| Title: | Glo [REDACTED] | [REDACTED] |
| Signature: | [REDACTED] | [REDACTED] |
| Date: | 17.03.2019 | 13.03.2019 |

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Part B - The Schedules

Schedule 1- Requirements

| Name | Author | Organisation | Version | Date of Issue | Attachment (optional) |
|---|--------|--------------|---------|---------------|-----------------------|
| 125 Mobile App Dev_Active 10_DOS 3 RFP_Final | | Cadence/PHE | Final | 28/01/2019 | |

Schedule 2- Supplier Response

| Name | Author | Organisation | Version | Date of Issue | Attachment (optional) |
|--|----------|--------------|------------|---------------|-----------------------|
| PHE-125 Mobile App-Flipside-Response | Flipside | Flipside | Not stated | 11/02/2019 | |
| 125 Mobile App Developers Active 10 Example Rates flipside | Flipside | Flipside | Not stated | 22/02/2019 | |
| 125 Mobile Development - Active 10 Flipside Response 130219 (Presentation) | Flipside | Flipside | Not stated | 13/02/2019 | |

Schedule 3 – Statement of Work

| Name | Author | Organisation | Version | Date of Issue | Attachment (optional) |
|---|--------|--------------|---------|---------------|-----------------------|
| Schedule 3A SOW 125 Active 10 Live Flipside Grp Final | | Cadence/PHE | Final | 15/03/2019 | |
| | | | | | |
| | | | | | |

Schedule 4 – Contract Change Notices

| Name | Author | Organisation | Version | Date of Issue | Attachment (optional) |
|------|--------|--------------|---------|---------------|-----------------------|
| | | | | | |
| | | | | | |
| | | | | | |

Schedule 9 - Processing, Personal Data and Data Subjects Active 10 etc

At present the Active 10 App and other apps in the product portfolio only records information taken at a device ID level and no personal data is recorded. However, this may change in the future or over the course of this contract duration of 24 months (30 months if the option to extend by 6 months is exercised).

Subject matter of the processing:

The Subject matter of the Processing of Personal Data may include the details of individuals that register on the application(s) produced under this contract and / or with the support of work under this contract. Such details may include but are not limited to personally identifying information and behavioural information including but not limited to location over time.

Duration of the processing:

The duration of processing under this contact shall be up to 30 months.

Nature and purposes of the processing:

The Processing of Personal Data may be needed in order to support people in changing their behaviour using targeted prompts including but not limited to in-app prompts. Data may also be Processed in order to identify individuals so their accounts may be linked to other apps and other third parties; data may also be supplemented with data from said third parties.

Type of Personal Data:

Personal Data may include but is not limited to:

Full name;

date of Birth/age;

location (post code);

location (as tracked by mobile GPS and micro-location data);

Categories of Data Subject:

Data Subjects shall be members of the public that sign up to the application.

Plan for return or destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data:

The data shall be retained by PHE for the duration of the contract and, should there be a public interest to do so, for a time thereafter to be determined, the Personal Data shall not be retained by the Supplier unless mutually agreed otherwise subject always to data protection legislation.

Part C – Terms and conditions

1. Call-Off Contract start date, length and methodology

1.1 The Supplier will start providing the Services in accordance with the dates specified in any Statement of Work (SOW).

1.2 Completion dates for Deliverables will be set out in any SOW.

1.3 Unless the Call-Off Contract period has been increased in accordance with Clause 1.4 or decreased in accordance with Clause 1.5, the term of the Call-Off Contract will end when the first of these occurs:

- the Call-Off Contract period End Date listed in the Order Form is reached
- the final Deliverable, specified in the final SOW, is completed

1.4 The Buyer can extend the term of the Call-Off Contract by amending the Call-Off Contract End Date where:

- an Extension Period was specified in the Order Form
- written notice was given to the Supplier before the expiry of the notice period set out in the Order Form. The notice must state that the Call-Off Contract term will be extended and must specify the number of whole days of the extension.

After this, the term of the Call-Off Contract will end on the last day of the Extension Period listed in the notice (the “Extension Period End Date”).

1.5 If the Call-Off Contract is terminated early, either during the initial Call-Off Contract period, or during any Extension Period, the term of the Call-Off Contract will end on the termination date.

1.6 The Supplier will plan on using an agile process, starting with user needs. The methodology will be outlined in the SOW. Waterfall methodology will only be used in exceptional circumstances, and where it can be shown to best meet user needs. Projects may need a combination of both waterfall and agile methods, playing to their respective strengths.

2. Supplier Staff

2.1 The Supplier Staff will:

- fulfil all reasonable requests of the Buyer
- apply all due skill, care and diligence to the provisions of the Services
- be appropriately experienced, qualified and trained to supply the Services

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- respond to any enquiries about the Services as soon as reasonably possible
- complete any necessary vetting procedures specified by the Buyer

2.2 The Supplier will ensure that Key Staff are assigned to provide the Services for their Working Days (agreed between Supplier and Buyer) and are not removed from the Services during the dates specified in the relevant SOW.

2.3 The Supplier will promptly replace any Key Staff that the Buyer considers unsatisfactory at no extra charge. The Supplier will promptly replace anyone who resigns with someone who is acceptable to the Buyer. If the Supplier cannot provide an acceptable replacement, the Buyer may terminate the Call-Off Contract subject to clause 23.

2.4 Supplier Staff will comply with Buyer requirements for the conduct of staff when on Buyer's premises.

2.5 The Supplier will comply with the Buyer's staff vetting procedures for all or part of the Supplier Staff.

2.6 The Supplier will, on request, provide a copy of the contract of employment or engagement (between the Supplier and the Supplier Staff) for every member of Supplier Staff made available to the Buyer.

3. Swap-out

3.1 Supplier Staff providing the Services may only be swapped out with the prior approval of the Buyer.

4. Staff vetting procedures

4.1 All Supplier Staff will need to be cleared to the level determined by the Buyer prior to the commencement of work.

4.2 The Buyer may stipulate differing clearance levels for different roles during the Call-Off Contract period.

4.3 The Supplier will ensure that it complies with any additional staff vetting procedures requested by the Buyer.

5. Due diligence

5.1 Both parties acknowledge that information will be needed to provide the Services throughout the term of the Call-Off Contract and not just during the Further Competition process. Both parties agree to share such information freely.

5.2 Further to Clause 5.1, both Parties agree that when entering into a Call-Off Contract, they:

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5.2.1 have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party

5.2.2 are confident that they can fulfil their obligations according to the terms of the Call-Off Contract

5.2.3 have raised all due diligence questions before signing the Call-Off Contract

5.2.4 have entered into the Call-Off Contract relying on its own due diligence

6. Warranties, representations and acceptance criteria

6.1 The Supplier will use the best applicable and available techniques and standards and will perform the Call-Off Contract with all reasonable care, skill and diligence, and according to Good Industry Practice.

6.2 The Supplier warrants that all Supplier Staff assigned to the performance of the Services have the necessary qualifications, skills and experience for the proper performance of the Services.

6.3 The Supplier represents and undertakes to the Buyer that each Deliverable will meet the Buyer's acceptance criteria, as defined in the Call-Off Contract Order Form.

6.4 The Supplier undertakes to maintain any interface and interoperability between third-party software or Services and software or Services developed by the Supplier.

6.5 The Supplier warrants that it has full capacity and authority and all necessary authorisations, consents, licences and permissions to perform the Call-Off Contract.

7. Business continuity and disaster recovery

7.1 If required by the Buyer, the Supplier will ensure a disaster recovery approach is captured in a clear disaster recovery plan. All Supplier Staff must also adhere to the Buyer's business continuity and disaster recovery procedure as required in the delivery of the Services for this project.

8. Payment terms and VAT

8.1 The Buyer will pay the Supplier within 30 days of receipt of a valid invoice submitted in accordance with the Call-Off Contract.

8.2 The Supplier will ensure that each invoice contains the information specified by the Buyer in the Order Form.

8.3 The Call-Off Contract Charges are deemed to include all Charges for payment processing. All Invoices submitted to the Buyer for the Services shall be exclusive of any Management Charge.

8.4 All payments under the Call-Off Contract are inclusive of VAT.

9. Recovery of sums due and right of set-off

9.1 If a Supplier owes money to the Buyer or any Crown body, the Buyer may deduct that sum from the total due to the Supplier.

10. Insurance

The Supplier will maintain the insurances required by the Buyer including those set out in this Clause.

10.1 Subcontractors

10.1.1 The Supplier will ensure that, during the Call-Off Contract, Subcontractors hold third-party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £5,000,000.

10.2 Agents and professional consultants

10.2.1 The Supplier will also ensure that all agents and professional consultants involved in the supply of Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the termination or expiry date to the Call-Off Contract to which the insurance relates.

10.3 Additional or extended insurance

10.3.1 If requested by the Buyer, the Supplier will obtain additional insurance policies, or extend existing insurance policies procured under the Framework Agreement.

10.3.2 The Supplier will provide CCS and the Buyer, the following evidence that they have complied with Clause 10.3.1 above:

- a broker's verification of insurance; or
- receipts in respect of the insurance premium; or
- other satisfactory evidence of payment of the latest premiums due.

10.4 Supplier liabilities

10.4.1 Insurance will not relieve the Supplier of any liabilities under the Framework Agreement or the Call-Off Contract.

10.4.2 Without limiting the other provisions of the Call-Off Contract, the Supplier will:

- take all risk control measures relating to the Services as it would be reasonable to expect of a contractor acting in accordance with Good Industry Practice, including the investigation and reports of claims to insurers;
- promptly notify the insurers in writing of any relevant material fact under any insurances of which the Supplier is, or becomes, aware; and

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- hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of placing cover representing any of the insurance to which it is a Party.

10.4.3 The Supplier will not do or omit to do anything, which would entitle any insurer to refuse to pay any claim under any of the insurances.

10.5 Indemnity to principals

10.5.1 Where specifically outlined in the Call-Off Contract, the Supplier will ensure that the third-party public and products liability policy will contain an 'indemnity to principals' clause under which the Buyer will be compensated for both of the following claims against the Buyer:

- death or bodily injury; and
- third-party Property damage arising from connection with the Services and for which the Supplier is legally liable.

10.6 Cancelled, suspended, terminated or unrenewed policies

10.6.1 The Supplier will notify CCS and any Buyers as soon as possible if the Supplier becomes aware that any of the insurance policies have been, or are due to be, cancelled, suspended, terminated or not renewed.

10.7 Premium, excess and deductible payments

10.7.1 Where any insurance requires payment of a premium, the Supplier will:

- be liable for the premium; and
- pay such premium promptly.

10.7.2 Where any insurance is subject to an excess or deductible below the Supplier will be liable for it. The Supplier will not be entitled to recover any sum paid for insurance excess or any deductible from CCS or the Buyer.

11. Confidentiality

11.1 Except where disclosure is clearly permitted by the Call-Off Contract, neither Party will disclose the other Party's Confidential Information without the relevant Party's prior written consent.

11.2 Disclosure of Confidential Information is permitted where information:

- must be disclosed to comply with legal obligations placed on the Party making the disclosure
- belongs to the Party making the disclosure (who is not under any obligation of confidentiality) before its disclosure by the information owner
- was obtained from a third party who is not under any obligation of confidentiality, before receiving it from the disclosing Party
- is, or becomes, public knowledge, other than by breach of this Clause or the Call-Off Contract
- is independently developed without access to the other Party's Confidential Information
- is disclosed to obtain confidential legal professional advice.

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- 11.3 The Buyer may disclose the Supplier's Confidential Information:
- to any central government body on the basis that the information may only be further disclosed to central government bodies;
 - to the UK Parliament, Scottish Parliament or Welsh or Northern Ireland Assemblies, including their committees;
 - if the Buyer (acting reasonably) deems disclosure necessary or appropriate while carrying out its public functions;
 - on a confidential basis to exercise its rights or comply with its obligations under the Call-Off Contract; or
 - to a proposed transferee, assignee or novatee of, or successor in title to, the Buyer.
- 11.4 References to disclosure on a confidential basis will mean disclosure subject to a confidentiality agreement or arrangement containing the same terms as those placed on the Buyer under this Clause.
- 11.5 The Supplier may only disclose the Buyer's Confidential Information to Supplier Staff who are directly involved in the provision of the Services and who need to know the information to provide the Services. The Supplier will ensure that its Supplier Staff will comply with these obligations.
- 11.6 Either Party may use techniques, ideas or knowledge gained during the Call-Off Contract unless the use of these things results in them disclosing the other Party's Confidential Information where such disclosure is not permitted by the Framework Agreement or is an infringement of Intellectual Property Rights.
- 11.7 Information about orders placed by a Buyer (including pricing information and the terms of any Call-Off Contract) may be published by CCS and may be shared with other Buyers. Where Confidential Information is shared with other Buyers, CCS will notify the recipient of the information that its contents are confidential.

12. Conflict of Interest

- 12.1 The Supplier will take all appropriate steps to ensure that Supplier Staff are not in a position where there is or may be an actual conflict between the financial or personal interests of the Supplier Staff and another Supplier where both are providing the Services to the Buyer under any Call-Off Contract in accordance with the Framework Agreement.
- 12.2 Any breach of this Clause will be deemed to be a Material Breach.
- 12.3 A conflict of interest may arise in situations including where a member of the Supplier Staff:
- is related to someone in another Supplier team who both form part of the same team performing the Services under the Framework Agreement;
 - has a business interest in another Supplier who is part of the same team performing the Services under the Framework Agreement;
 - is providing, or has provided, Services to the Buyer for the discovery phase; or

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- has been provided with, or had access to, information which would give the Supplier or an affiliated company an unfair advantage in a Further Competition procedure.

12.4 Where the Supplier identifies a risk of a conflict or potential conflict, they will (before starting work under the Call-Off Contract, unless otherwise agreed with the Buyer) inform the Buyer of such conflicts of interest and how they plan to mitigate the risk. Details of such mitigation arrangements are to be sent to the Buyer as soon as possible. On receiving this notification, the Buyer will, at its sole discretion, notify the Supplier if the mitigation arrangements are acceptable or whether the risk or conflict remains a Material Breach.

13. Intellectual Property Rights

13.1 Unless otherwise specified in the Call-Off Contract:

- the Buyer will not have any right to the Intellectual Property Rights (IPRs) of the Supplier or its licensors, including the Supplier Background IPRs and any IPRs in the Supplier Software.
- the Crown may publish any Deliverable that is software as open source.
- the Supplier will not, without prior written approval from the Buyer, include any Supplier Background IPR or third party IPR in any Deliverable in such a way to prevent its publication;
 - and failure to seek prior approval gives the Buyer right and freedom to use all Deliverables.
- the Supplier will not have any right to the Intellectual Property Rights of the Buyer or its licensors, including:
 - the Buyer Background IPRs;
 - the Project-Specific IPRs;
 - IPRs in the Buyer Data.

13.2 Where either Party acquires, by operation of Law, right to IPRs that is inconsistent with the allocation of rights set out above, it will assign in writing such IPRs as it has acquired to the other Party on the request of the other Party (whenever the request is made).

13.3 Except where necessary for the performance of the Call-Off Contract (and only where the Buyer has given its prior approval), the Supplier will not use or disclose any of the Buyer Background IPRs, Buyer Data or the Project-Specific IPRs to or for the benefit of any third party.

13.4 The Supplier will not include any Supplier Background IPRs or third-party IPRs in any release or Deliverable that is to be assigned to the Buyer under the Call-Off Contract, without approval from the Buyer.

13.5 The Supplier will grant the Buyer (and any replacement Supplier) a perpetual, transferable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use the Supplier Background IPRs for any purpose connected with the receipt of the Services that is additional to the rights granted to the Buyer under the Call-Off Contract and to enable the Buyer:

- to receive the Services;
- to make use of the Services provided by the replacement Supplier; and

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- to use any Deliverables.
- 13.6 The Buyer grants the Supplier a non-exclusive, non-assignable, royalty-free licence to use the Buyer Background IPRs, the Buyer Data and the Project-Specific IPRs during the term of the Call-Off Contract for the sole purpose of enabling the Supplier to provide the Services.
- 13.7 The Buyer gives no warranty as to the suitability of any IPRs licensed to the Supplier hereunder. Any such licence:
- may include the right to grant sub-licences to Subcontractors engaged in providing any of the Services (or part thereof) provided that any such Subcontractor has entered into a confidentiality undertaking with the Supplier on the same terms as in clause 11 (Confidentiality) and that any such subcontracts will be non-transferable and personal to the relevant Subcontractor; and
 - is granted solely to the extent necessary for the provision of the Services in accordance with the Call-Off Contract. The Supplier will ensure that the Subcontractors do not use the licensed materials for any other purpose.
- 13.8 At the end of the term of the Call-Off Contract, the Buyer grants to the Supplier a licence to use the Project-Specific IPRs (excluding any information which is the Buyer's Confidential Information or which is subject to the Data Protection Act (DPA)) on the terms of the Open Government Licence v3.0.
- 13.9 Subject to the above Clause, the Supplier will ensure that no unlicensed software or open source software (other than the open source software specified by the Buyer) is interfaced with or embedded within any Buyer Software or Deliverable.
- 13.10 Before using any third-party IPRs related to the supply of the Services, the Supplier will submit to the Buyer for approval, all details of any third-party IPRs the Buyer requests.
- 13.11 Where the Supplier is granted permission to use third-party IPRs in a request for approval, the Supplier will ensure that the owner of such third-party IPRs grants to the Buyer a licence on the terms informed to the Buyer in the request for approval.
- 13.12 If the third-party IPR is made available on terms equivalent to the Open Government Licence v3.0, the request for approval will be agreed and the Supplier will buy licences under these terms. If not, and the Buyer rejects the Request for Approval, then the Call-Off Contract will need to be varied in accordance with Clause 30 'Changes to Services'.
- 13.13 The Supplier will, on written demand, fully indemnify the Buyer and the Crown for all losses which it may incur at any time as a result of any claim (whether actual alleged asserted and/or substantiated and including third party claims) that the rights granted to the Buyer in accordance with the Call-Off Contract or the performance by the Supplier of the provision of the Services or the possession or use by the Buyer of the Services or Deliverables delivered by the Supplier, including the publication of any Deliverable that is software as open source, infringes or allegedly infringes a third party's Intellectual Property Rights (an 'IPR Claim').

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13.14 Clause 13.13 will not apply if the IPR Claim arises from:

- designs supplied by the Buyer;
- the use of data supplied by the Buyer which is not required to be verified by the Supplier under any provision of the Call-Off Contract; or
- other material provided by the Buyer necessary for the provision of the Services.

13.15 The indemnity given in Clause 13.13 will be uncapped.

13.16 The Buyer will notify the Supplier in writing of the IPR Claim made against the Buyer and the Buyer will not make any admissions which may be prejudicial to the defence or settlement of the IPR Claim. The Supplier will at its own expense conduct all negotiations and any litigation arising in connection with the IPR Claim provided always that the Supplier:

- consults the Buyer on all substantive issues which arise during the conduct of such litigation and negotiations;
- takes due and proper account of the interests of the Buyer;
- considers and defends the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Buyer into disrepute; and
- does not settle or compromise the IPR Claim without the prior approval of the Buyer (such decision not to be unreasonably withheld or delayed).

13.17 If an IPR Claim is made (or in the reasonable opinion of the Supplier is likely to be made) in connection with the Call-Off Contract, the Supplier will, at the Supplier's own expense and subject to the prompt approval of the Buyer, use its best endeavours to:

- modify the relevant part of the Services or Deliverables without reducing their functionality or performance, or substitute Services or Deliverables of equivalent functionality or performance, to avoid the infringement or the alleged infringement, provided that there is no additional cost or burden to the Buyer;
- buy a licence to use and supply the Services or Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Buyer; and
- promptly perform any responsibilities and obligations to do with the Call-Off Contract.

13.18 If an IPR Claim is made (or in the reasonable opinion of the Supplier is likely to be made) against the Supplier, the Supplier will immediately notify the Buyer in writing.

13.19 If the Supplier does not comply with provisions of this Clause within 20 Working Days of receipt of notification by the Supplier from the Buyer under clause 13.16 or receipt of the notification by the Buyer from the Supplier under clause 13.18 (as appropriate), the Buyer may terminate the Call-Off Contract for Material Breach and the Supplier will, on demand, refund the Buyer with all monies paid for the Service or Deliverable that is subject to the IPR Claim.

13.20 The Supplier will have no rights to use any of the Buyer's names, logos or trademarks without the Buyer's prior written approval.

13.21 The Supplier will, as an enduring obligation throughout the term of the Call-Off Contract where any software is used in the provision of the Services or information uploaded, interfaced or exchanged with the CCS or Buyer systems, use software and the most up-to-date antivirus definitions from an industry-accepted antivirus software

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vendor. It will use the software to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between CCS or the Buyer, and the Supplier).

13.22 If Malicious Software is found, the Supplier will co-operate with the Buyer to reduce the effect of the Malicious Software. If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, the Supplier will use all reasonable endeavours to help the Buyer to mitigate any losses and restore the provision of the Services to the desired operating efficiency as soon as possible.

13.23 Any costs arising from the actions of the Buyer or Supplier taken in compliance with the provisions of the above clause, and clause 20.3, will be dealt with by the Buyer and the Supplier as follows:

- by the Supplier, where the Malicious Software originates from the Supplier Software or the Buyer Data while the Buyer Data was under the control of the Supplier, unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier.
- by the Buyer if the Malicious Software originates from the Buyer Software or the Buyer Data, while the Buyer Data was under the control of the Buyer.

13.24 All Deliverables that are software shall be created in a format, or able to be converted into a format, which is suitable for publication by the Buyer as open source software, unless otherwise agreed by the Buyer.

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

14. Data Protection and Disclosure

14.1 The Supplier shall comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Framework Agreement or under the Call-Off Contract.

14.2 Where the Supplier is processing Buyer Data or Other Contracting Bodies' Personal Data, the Supplier shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Authority and Other Contracting Bodies' Personal Data (and to guard against unauthorised or unlawful processing or accidental loss, destruction of or damage to the Buyer Data and the Other Contracting Bodies' Personal Data).

14.3 The Supplier shall provide the Buyer and/or Other Contracting Body with such information as the Buyer and/or Other Contracting Body may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA including;

- to promptly notify the Buyer and/or Other Contracting Body of any breach of the security measures to be put in place pursuant to this Clause; and

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- to ensure that it does not knowingly or negligently do or omit to do anything which places the Buyer and/or Other Contracting Body in breach of its obligations under the DPA and
- not to cause or permit to be processed, stored, accessed or otherwise transferred outside the European Economic Area any Buyer Data or Other Contracting Body Personal Data supplied to it by the Buyer or Other Contracting Body without approval.

15. Buyer Data

- 15.1 The Supplier will not remove any proprietary notices relating to the Buyer Data.
- 15.2 The Supplier will not store or use Buyer Data except where necessary to fulfil its obligations.
- 15.3 If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested and in the format specified by the Buyer.
- 15.4 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.
- 15.5 The Supplier will ensure that any system which holds any Buyer Data complies with the security requirements prescribed by the Buyer.
- 15.6 The Supplier will ensure that any system on which the Supplier holds any protectively marked Buyer Data will be accredited as specific to the Buyer and will comply with:
- the government security policy framework and information assurance policy;
 - guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems; and
 - the relevant government information assurance standard(s).
- 15.7 Where the duration of the Call-Off Contract exceeds one year, the Supplier will review the accreditation status at least once a year to assess whether material changes have occurred which could alter the original accreditation decision in relation to Buyer Data. If any changes have occurred, the Supplier will re-submit such system for accreditation.
- 15.8 If at any time the Supplier suspects that the Buyer Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Supplier will notify the Buyer immediately and will at its own cost comply with any remedial action proposed by the Buyer.
- 15.9 The Supplier will provide, at the request of CCS or the Buyer, any information relating to the Supplier's compliance with its obligations under the Data Protection Act. The Supplier will also ensure that it does not knowingly or negligently fail to do something that places CCS or any Buyer in breach of its obligations of the Data Protection Act. This is an absolute obligation and is not qualified by any other provision of the Call-Off Contract.
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15.10 The Supplier agrees to use the appropriate organisational, operational and technological processes and procedures to keep the Buyer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.

16. Document and source code management repository

16.1 The Supplier will comply with any reasonable instructions given by the Buyer as to where it will store documents and source code, both finished and in progress, during the term of the Call-Off Contract.

16.2 The Supplier will ensure that all items that are uploaded to any repository contain sufficient detail, code annotations and instructions so that a third-party developer with the relevant technical abilities within the applicable role would be able to understand how the item was created and how it works together with the other items in the repository within a reasonable timeframe.

17. Records and audit access

17.1 The Supplier will allow CCS (and CCS's external auditor) to access its information and conduct audits of the Services provided under the Call-Off Contract and the provision of Management Information (subject to reasonable and appropriate confidentiality undertakings).

18. Freedom of Information (FOI) requests

18.1 The Supplier will transfer any Request for Information to the Buyer within 2 Working Days of receipt.

18.2 The Supplier will provide all necessary help reasonably requested by the Buyer to enable the Buyer to respond to the Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations.

18.3 To the extent it is permissible and reasonably practical for it to do so, CCS will make reasonable efforts to notify the Supplier when it receives a relevant FOIA or EIR request so that the Supplier may make appropriate representations.

19. Standards and quality

19.1 The Supplier will comply with any standards in the Call-Off Contract and Section 4 (How Services will be delivered) of the Framework Agreement, and with Good Industry Practice.

20. Security

20.1 If requested to do so by the Buyer, the Supplier will, within 5 Working Days of the date of the Call-Off Contract, develop, obtain Buyer's approval of, maintain and observe a Security Management Plan and an Information Security Management System (ISMS) which, after Buyer approval, will apply during the term of the Call-Off

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Contract. Both the ISMS and the Security Management Plan will comply with the security policy of the Buyer and protect all aspects of the Services, and all processes associated with the delivery of the Services.

- 20.2 The Supplier will use software and the most up-to-date antivirus definitions available from an industry accepted antivirus software vendor to minimise the impact of Malicious Software.
- 20.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, the Supplier will help the Buyer to mitigate any losses and will restore the Services to their desired operating efficiency as soon as possible.
- 20.4 The Supplier will immediately notify CCS of any breach of security in relation to CCS's Confidential Information (and the Buyer in relation to any breach regarding Buyer Confidential Information). The Supplier will recover such CCS and Buyer Confidential Information however it may be recorded.
- 20.5 Any system development by the Supplier must also comply with the government's '10 Steps to Cyber Security' guidance, as amended from time to time and currently available at: <https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>
- 20.6 The Buyer will specify any security requirements for this project in the Order Form.

21. Incorporation of terms

- 21.1 Upon the execution of a Statement of Work (SOW), the terms and conditions agreed in the SOW will be incorporated into the Call-Off Contract that the terms of the SOW are agreed under.

22. Managing disputes

- 22.1 When either Party notifies the other of a dispute, both Parties will attempt in good faith to negotiate a settlement as soon as possible.
- 22.2 Nothing in this prevents a Party from seeking any interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 22.3 If the dispute cannot be resolved, either Party will be entitled to refer it to mediation in accordance with the procedures below, unless:
- the Buyer considers that the dispute is not suitable for resolution by mediation;
 - the Supplier does not agree to mediation.
- 22.4 The procedure for mediation is as follows:
- A neutral adviser or mediator will be chosen by agreement between the Parties. If the Parties cannot agree on a mediator within 10 Working Days after a request by one Party to the other, either Party will as soon as possible, apply to the mediation provider or to the Centre for Effective Dispute Resolution

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(CEDR) to appoint a mediator. This application to CEDR must take place within 12 Working Days from the date of the proposal to appoint a mediator, or within 3 Working Days of notice from the mediator to either Party that they are unable or unwilling to act.

- The Parties will meet with the mediator within 10 Working Days of the mediator's appointment to agree a programme for the exchange of all relevant information and the structure for negotiations to be held. The Parties may at any stage seek help from the mediation provider specified in this clause to provide guidance on a suitable procedure.
- Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- If the Parties reach agreement on the resolution of the dispute, the agreement will be recorded in writing and will be binding on the Parties once it is signed by their duly authorised representatives.
- Failing agreement, either Party may invite the mediator to provide a non-binding but informative opinion in writing. Such an opinion will be provided without prejudice and will not be used in evidence in any proceedings relating to the Call-Off Contract without the prior written consent of both Parties.
- If the Parties fail to reach agreement in the structured negotiations within 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.

22.5 Either Party may request by written notice that the dispute is referred to expert determination if the dispute relates to:

- any technical aspect of the delivery of the digital services;
- the underlying technology; or
- is otherwise of a financial or technical nature.

22.6 An expert will be appointed by written agreement between the Parties, but if there's a failure to agree within 10 Working Days, or if the person appointed is unable or unwilling to act, the expert will be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).

22.7 The expert will act on the following basis:

- they will act as an expert and not as an arbitrator and will act fairly and impartially;
- the expert's determination will (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- the expert will decide the procedure to be followed in the determination and will be requested to make their determination within 30 Working Days of their appointment or as soon as reasonably practicable and the Parties will help and provide the documentation that the expert needs for the determination;
- any amount payable by one Party to another as a result of the expert's determination will be due and payable within 20 Working Days of the expert's determination being notified to the Parties
- the process will be conducted in private and will be confidential;

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- the expert will determine how and by whom the costs of the determination, including their fees and expenses, are to be paid.

22.8 Without prejudice to any other rights of the Buyer under the Call-Off Contract, the obligations of the Parties under the Call-Off Contract will not be suspended, ceased or delayed by the reference of a dispute submitted to mediation or expert determination and the Supplier and the Supplier Staff will comply fully with the Requirements of the Call-Off Contract at all times.

23. Termination

23.1 The Buyer will have the right to terminate the Call-Off Contract at any time by giving the notice to the Supplier specified in the Order Form. The Supplier's obligation to provide the Services will end on the date set out in the Buyer's notice.

23.2 The minimum notice period (expressed in Working Days) to be given by the Buyer to terminate under this Clause will be the number of whole days that represent 20% of the total duration of the current SOW to be performed under the Call-Off Contract, up to a maximum of 30 Working Days.

23.3 Partial days will be discounted in the calculation and the duration of the SOW will be calculated in full Working Days.

23.4 The Parties acknowledge and agree that:

- the Buyer's right to terminate under this Clause is reasonable in view of the subject matter of the Call-Off Contract and the nature of the Service being provided.
- the Call-Off Contract Charges paid during the notice period given by the Buyer in accordance with this Clause are a reasonable form of compensation and are deemed to fully cover any avoidable costs or losses incurred by the Supplier which may arise either directly or indirectly as a result of the Buyer exercising the right to terminate under this Clause without cause.
- Subject to clause 34 (Liability), if the Buyer terminates the Call-Off Contract without cause, they will indemnify the Supplier against any commitments, liabilities or expenditure which result in any unavoidable Loss by the Supplier, provided that the Supplier takes all reasonable steps to mitigate such Loss. If the Supplier holds insurance, the Supplier will reduce its unavoidable costs by any insurance sums available. The Supplier will submit a fully itemised and costed list of such Loss, with supporting evidence of unavoidable Losses incurred by the Supplier as a result of termination.

23.5 The Buyer will have the right to terminate the Call-Off Contract at any time with immediate effect by written notice to the Supplier if:

- the Supplier commits a Supplier Default and if the Supplier Default cannot, in the opinion of the Buyer, be remedied; or
- the Supplier commits any fraud.

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- 23.6 Either Party may terminate the Call-Off Contract at any time with immediate effect by written notice to the other if:
- the other Party commits a Material Breach of any term of the Call-Off Contract (other than failure to pay any amounts due under the 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, the Buyer is entitled to terminate the Call-Off Contract.

24. Consequences of termination

24.1 If the Buyer contracts with another Supplier, the Supplier will comply with Clause 29.

24.2 The rights and obligations of the Parties in respect of the Call-Off Contract (including any executed SOWs) will automatically terminate upon the expiry or termination of the relevant 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 the Call-Off Contract;
 - any materials created by the Supplier under the 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. 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 the 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 (whichever is the earlier), and 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;

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- 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 the 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 the Call-Off Contract states otherwise.

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

- any rights, remedies or obligations accrued under the 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 Termination
 - 28 - Staff Transfer
 - 34 - Liability
 - 35 - Waiver and cumulative remedies
- any other provision of the Framework Agreement or the 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 the Call-Off Contract.

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

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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 the 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 the 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. Staff Transfer

28.1 The Parties agree that nothing in the Call-Off Contract or the provision of the Services is expected to give rise to a transfer of employment to which the Employment Regulations apply.

28.2 The Supplier will fully indemnify the Buyer against all Supplier Staff Liabilities which arise as a result of any claims brought against the Buyer due to any act or omission of the Supplier or any Supplier Staff.

28.3 The indemnity given in Clause 28.2 will be uncapped.

29. Help at retendering and handover to replacement supplier

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

29.2 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.

30. Changes to services

30.1 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 (e.g. 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.

30.2 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.

31. Contract changes

31.1 All changes to the Call-Off Contract which cannot be accommodated informally as described in Clause 30 will require a Contract Change Note.

31.2 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 Notice**') 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 Notice. Neither Party will unreasonably withhold or delay consent to the other Party's proposed changes to the Call-Off Contract.

31.3 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.

32. Force Majeure

32.1 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under the 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 the Call-Off Contract for the length of a Force Majeure event. If a Force Majeure event prevents a Party from performing its obligations under the Call-Off Contract for more than 15 consecutive calendar days, the other Party may terminate the Call-Off Contract with immediate effect by notice in writing.

33. Entire agreement

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- 33.1 The 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.
- 33.2 Each of the Parties agrees that in entering into the 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 the Call-Off Contract.
- 33.3 Nothing in this Clause or Clause 34 will exclude any liability for (or remedy relating to) fraudulent misrepresentation or fraud.

34. Liability

- 34.1 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.
- 34.2 In respect of the indemnities in Clause 13 (Intellectual Property Rights) and Clause 28 (Staff Transfer) the Supplier's total liability will be unlimited. Buyers are not limited in the number of times they can call on this indemnity.
- 34.3 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 34.3 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 34.3 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 the 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 34.3 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 the Call-Off Contract in the 6 months immediately before the end of the Call-Off Contract period.
- 34.4 Subject to clause 34.1, in no event will either Party be liable to the other for any:
- loss of profits;
 - loss of business;
 - loss of revenue;

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

34.5 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.

34.6 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 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.

34.7 Unless otherwise expressly provided, the obligations of the Buyer under the Call-Off Contract are obligations of the Buyer in its capacity as a Contracting counterparty and nothing in the 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 the Call-Off Contract on the part of the Buyer to the Supplier.

34.8 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.

35. Waiver and cumulative remedies

35.1 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.

35.2 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.

36. Fraud

36.1 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.

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

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- the Buyer may terminate the Call-Off Contract
- CCS may terminate the Framework Agreement
- CCS and/or the Buyer may recover in full from the Supplier whether under Clause 36.3 below or by any other remedy available in law.

36.3 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.

37. Prevention of bribery and corruption

37.1 The Supplier will not commit any Prohibited Act.

37.2 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

38. Legislative change

38.1 The Supplier will neither be relieved of its obligations under the 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.

39. Publicity, branding, media and official enquiries

39.1 The Supplier will take all reasonable steps to not do anything which may damage the public reputation of the Buyer. The Buyer may terminate the 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.

40. Non-Discrimination

40.1 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.

41. Premises

41.1 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.

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

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

41.4 This Clause does not create a tenancy or exclusive right of occupation.

41.5 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.

41.6 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.

41.7 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.

42. Equipment

42.1 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.

42.2 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.

43. Law and jurisdiction

43.1 The 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.

44. Defined Terms

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| 'Assurance' | The verification process undertaken by CCS as described in section 5 of the Framework Agreement |
| 'Background IPRs' | For each Party: <ul style="list-style-type: none">• IPRs owned by that Party before the date of the Call-Off Contract, including IPRs contained in any of the Party's know-how, documentation, processes and procedures;• IPRs created by the Party independently of the Call-Off Contract; and/or• For the Buyer, Crown Copyright which is not |

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| | <p>available to the Supplier otherwise than under the Call-Off Contract; but excluding IPRs owned by that Party subsisting in Buyer Software or Supplier Software</p> |
| 'Buyer' | <p>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</p> |
| 'Buyer Background IPRs' | <p>Background IPRs of the Buyer</p> |
| 'Buyer's Confidential Information' | <p>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</p> <p>Any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential')</p> |
| 'Buyer Data' | <p>Data that is owned or managed by the Buyer, including Personal Data gathered for user research, e.g. recordings of user research sessions and lists of user research participants</p> |
| 'Buyer Software' | <p>Software owned by or licensed to the Buyer (other than under or pursuant to this Call Off Contract), which is or will be used by the Supplier for the purposes of providing the Services</p> |
| 'Call-Off Contract' | <p>The 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> |
| 'Charges' | <p>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</p> |
| 'Commercially Sensitive Information' | <p>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</p> |
| 'Comparable Supply' | <p>The supply of services to another customer of the Supplier that are the same or similar to any of the</p> |

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| | Services |
| 'Confidential Information' | <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"> 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 any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential') |
| 'Contracting Bodies' | 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 |
| 'Control' | Control as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly |
| 'Crown' | 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 |
| 'Default' | <ul style="list-style-type: none"> any breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) 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 the Framework Agreement or this Call-Off Contract <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> |
| 'Deliverable' | 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 |
| 'Digital Marketplace' | The government marketplace where Services will be bought (https://www.digitalmarketplace.service.gov.uk/) |
| 'Employment Regulations' | The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations |

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| | implementing 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 |
| 'Equipment' | 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 loaned from CCS or the Buyer) in the performance of its obligations under the Call-Off Contract |
| 'Extension Period' | The period (expressed in Working Days) that the initial Call-Off Contract term is extended by following notice given by the Buyer to the Supplier in accordance with Clause 1.4, such period not to exceed the number of whole days that represent 25% of the initial Call-Off Contract period. |
| 'FoIA' | The Freedom of Information Act 2000 and any subordinate legislation made under the Act occasionally together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation |
| 'Framework Agreement' | The Framework Agreement between CCS and the Supplier for the provision of the Services dated [x] |
| 'Further Competition' | The Further Competition procedure as described in Section 3 (how Services will be bought) of the Framework Agreement. |
| 'Good Industry Practice' | Standards and procedures conforming to the Law and the application of skill, care and foresight which would be expected from a person or body who has previously been engaged in a similar type of undertaking under similar circumstances. The person or body must adhere to the technology code of practice (https://www.gov.uk/service-manual/technology/code-of-practice.html) and the government service design manual (https://www.gov.uk/service-manual) |
| 'Group' | A company plus any subsidiary or holding company. 'Holding company' and 'Subsidiary' are defined in section 1159 of the Companies Act 2006 |
| 'Group of Economic Operators' | A partnership or consortium not (yet) operating through a separate legal entity. |
| 'Holding Company' | As described in section 1159 and Schedule 6 of the Companies Act 2006 |
| 'Information' | As described under section 84 of the Freedom of Information Act 2000, as amended from time to time |
| 'Insolvency Event' | may be: <ul style="list-style-type: none"> • a voluntary arrangement |

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| | <ul style="list-style-type: none"> ● a winding-up petition ● the appointment of a receiver or administrator ● an unresolved statutory demand ● a Schedule A1 moratorium |
| 'Intellectual Property Rights' or 'IPR' | <p>means:</p> <p>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;</p> <p>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> <p>c) 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> |
| 'Key Staff' | Means the Supplier Staff named in the SOW as such |
| 'KPI Target' | The acceptable performance level for a key performance indicator (KPI) |
| 'Law' | Any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body |
| 'Loss' | 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 'Losses' will be interpreted accordingly |
| 'Lot' | A subdivision of the Services which are the subject of this procurement as described in the OJEU Contract Notice |
| 'Malicious Software' | Any software program or code intended to destroy, or cause any undesired effects. It could be introduced wilfully, negligently or without the Supplier having knowledge of its existence. |
| 'Management Charge' | The sum paid by the Supplier to CCS being an amount of 1.0% of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the |

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| | duration of the Framework Agreement and thereafter, until the expiry or termination of any Call-Off Contract |
| 'Management Information' | The Management Information (MI) specified in section 6 of the Framework Agreement |
| 'Management Information (MI) Failure' | If any of the below instances occur, CCS may treat this as an 'MI Failure': <ul style="list-style-type: none"> • there are omissions or errors in the Supplier's submission • the Supplier uses the wrong template • the Supplier's report is late • the Supplier fails to submit a report |
| 'Material Breach' (Framework Agreement) | A breach by the Supplier of the following Clauses in the Framework Agreement: <ul style="list-style-type: none"> • Subcontracting • Non-Discrimination • Conflicts of Interest and Ethical Walls • Warranties and Representations • Provision of Management Information • Management Charge • Prevention of Bribery and Corruption • Safeguarding against Fraud • Data Protection and Disclosure • Intellectual Property Rights and Indemnity • Confidentiality • Official Secrets Act • Audit |
| 'Material Breach' (Call-Off Contract) | A single serious breach of or persistent failure to perform as required in the Call-Off Contract |
| 'OJEU Contract Notice' | The advertisement for this procurement issued in the Official Journal of the European Union |
| 'Order Form' | An order in the form set out in Part A of the Call-Off Contract for Digital Outcome and Specialist Services placed by a Buyer with the Supplier |
| 'Other Contracting Bodies' | All Contracting Bodies, or Buyers, except CCS |
| 'Party' | <ul style="list-style-type: none"> • for the purposes of the Framework Agreement; CCS or the Supplier • for the purposes of the Call-Off Contract; the Supplier or the Buyer, and 'Parties' will be interpreted accordingly |
| 'Personal Data' | As described in the Data Protection Act 1998 (http://www.legislation.gov.uk/ukpga/1998/29/contents) |
| 'Prohibited Act' | To directly or indirectly offer, promise or give any person working for or engaged by a buyer or CCS a financial or other advantage to: <ul style="list-style-type: none"> • induce that person to perform improperly a relevant function or activity • reward that person for improper performance of a relevant function or activity |

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| | <ul style="list-style-type: none"> ● commit any offence: <ul style="list-style-type: none"> ○ under the Bribery Act 2010 ○ under legislation creating offences concerning Fraud ○ at common Law concerning Fraud ○ committing or attempting or conspiring to commit Fraud |
| 'Project-Specific IPRs' | <ul style="list-style-type: none"> ● Intellectual Property Rights in items, including Deliverables, created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Call-Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or ● Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under the Call-Off Contract; <p>but not including the Supplier Background IPRs</p> |
| 'Property' | The property, other than real property and IPR, issued or made available to the Supplier by the Buyer in connection with a Call-Off Contract |
| 'Regulations' | The Public Contracts Regulations 2015 (at http://www.legislation.gov.uk/ukSI/2015/102/contents/made) and the Public Contracts (Scotland) Regulations 2012 (at http://www.legislation.gov.uk/ssi/2012/88/made), as amended from time to time |
| 'Regulatory Bodies' | Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in the Framework Agreement or the Call-Off Contract |
| 'Reporting Date' | The seventh day of each month following the month to which the relevant MI relates. A different date may be chosen if agreed between the Parties |
| 'Request for Information' | A request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations |
| 'Self Audit Certificate' | The certificate in the form as set out in Framework Agreement Schedule 1 - Self Audit Certificate, to be provided to CCS by the Supplier in accordance with Framework Agreement Clause 7.6. |
| 'Services' | Digital outcomes, digital specialists, user research studios or user research participants to be provided by the Supplier under a Call-Off Contract |
| 'Specific Change in Law' | A change in the Law that relates specifically to the business of CCS and which would not affect a Comparable Supply |

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| 'Statement of Requirements' | A statement issued by CCS or any Buyer detailing its Services requirements issued in the Call-Off Contract |
| 'Statement of Work' (SOW) | The document outlining the agreed body of works to be undertaken as part of the Call-Off Contract between the Buyer and the Supplier. This may include (but is not limited to) the Statement of Requirements, the Deliverable(s), the completion dates, the charging method. Multiple SOWs can apply to one Call-Off Contract |
| 'Subcontractor' | Each of the Supplier's Subcontractors or any person engaged by the Supplier in connection with the provision of the digital services as may be permitted by Clause 9.18 of the Framework Agreement or the Call-Off Contract |
| 'Supplier' | The Supplier of Digital Outcomes and Specialists services who successfully bid for Call-Off Contracts as outlined in the Contract Notice within the Official Journal of the European Union (OJEU Notice). The identifying details of the Supplier to be bound by the terms of the Call-Off Contract are set out in the Order Form. |
| 'Supplier Background IPRs' | Background IPRs of the Supplier |
| 'Supplier Software' | Software which is proprietary to the Supplier and which is or will be used by the Supplier for the purposes of providing the Services |
| 'Supplier Staff' | All persons employed by the Supplier including the Supplier's agents and consultants used in the performance of its obligations under the Framework Agreement or the Call-Off Contract |
| 'Supplier Staff Liabilities' | Any claims, actions, proceedings, orders, demands, complaints, Losses and any awards or compensation reasonably incurred in connection with any claim or investigation related to employment |
| 'Working Day' | Any day other than a Saturday, Sunday or public holiday in England and Wales, from 9am to 5pm unless otherwise agreed with the Buyer and the Supplier in the Call-Off Contract |

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