

## **Maple and Oak Consulting Terms and Conditions – Cyber Operations Maturity Assessment**

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

1.1 Maple and Oak Consulting will start providing the Services in accordance with the dates specified in the Order Form.

1.2 Completion dates for Deliverables will be set out in the Order Form agreed with the buyer. Maple and Oak consulting will work to the timeline agreed in the Order Form with the buyer.

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 End Date listed in the SOW is reached
- the final Deliverable, specified in the final SOW, is completed (usually the final workshop and report delivery)

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 Maple and Oak consulting (email) requesting an extension due to staff availability. .

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 Maple and Oak consulting will plan the assessment as outlined in the SOW and agreed with the buyer. Projects may need a combination of both waterfall and agile methods, playing to their respective strengths. The aim would be to work around other commitments that the buyer has.

### **2. Maple and Oak Consulting staff working practices**

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

2.2 Maple and Oak Consulting will ensure that a qualified assessor attends all CSOC interviews and are not removed from the assessment without approval from the buyer.

2.3 Maple and Oak Consulting will promptly replace any Key Staff that the Buyer considers unsatisfactory at no extra charge. Maple and Oak Consulting will promptly replace anyone who resigns with someone who is acceptable to the Buyer. If Maple and Oak Consulting 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 Maple and Oak Consulting will comply with the Buyer's staff vetting procedures for all or part of Maple and Oak Consulting Staff.

### **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 Maple and Oak Consulting 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:

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 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting undertakes to maintain any interface and interoperability between third-party software or Services and software or Services developed by Maple and Oak Consulting.

6.5 Maple and Oak Consulting 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, Maple and Oak Consulting 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 Maple and Oak Consulting within 30 days of receipt of a valid invoice submitted in accordance with the Call-Off Contract.

8.2 Maple and Oak Consulting 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 Maple and Oak Consulting.

## **10. Insurance**

Maple and Oak Consulting will maintain the insurances required by the Buyer including those set out in this Clause.

## 10.1 Subcontractors

10.1.1 Maple and Oak Consulting will ensure that, during the Call-Off Contract, Subcontractors hold third-party public and products liability insurance of the same amounts that Maple and Oak Consulting 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 Maple and Oak Consulting 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, Maple and Oak Consulting will obtain additional insurance policies, or extend existing insurance policies procured under the Framework Agreement.

10.3.2 Maple and Oak Consulting 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 Maple and Oak Consulting 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, Maple and Oak Consulting 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 Maple and Oak Consulting is, or becomes, aware; and
- 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 Maple and Oak Consulting 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, Maple and Oak Consulting 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 Maple and Oak Consulting is legally liable.

#### 10.6 Cancelled, suspended, terminated or unrenewed policies

10.6.1 Maple and Oak Consulting will notify CCS and any Buyers as soon as possible if Maple and Oak Consulting 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, Maple and Oak Consulting 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 Maple and Oak Consulting will be liable for it. Maple and Oak Consulting 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.

11.3 The Buyer may disclose Maple and Oak Consulting'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 Maple and Oak Consulting 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. Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting 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
- has been provided with, or had access to, information which would give Maple and Oak Consulting or an affiliated company an unfair advantage in a Further Competition procedure.

12.4 Where Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting or its licensors, including Maple and Oak Consulting Background IPRs and any IPRs in Maple and Oak Consulting Software.
- the Crown may publish any Deliverable that is software as open source.
- Maple and Oak Consulting 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.
- Maple and Oak Consulting 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), Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting will grant the Buyer (and any replacement Supplier) a perpetual, transferable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use Maple and Oak Consulting 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
- to use any Deliverables.

13.6 The Buyer grants Maple and Oak Consulting 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 Maple and Oak Consulting to provide the Services.

13.7 The Buyer gives no warranty as to the suitability of any IPRs licensed to Maple and Oak Consulting 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 Maple and Oak Consulting 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. Maple and Oak Consulting 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 Maple and Oak Consulting 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, Maple and Oak Consulting 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, Maple and Oak Consulting will submit to the Buyer for approval, all details of any third-party IPRs the Buyer requests.

13.11 Where Maple and Oak Consulting is granted permission to use third-party IPRs in a request for approval, Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting of the provision of the Services or the possession or use by the Buyer of the Services or Deliverables delivered by Maple and Oak Consulting, 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').

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 Maple and Oak Consulting 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 Maple and Oak Consulting 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. Maple and Oak Consulting will at its own expense conduct all negotiations and any litigation arising in connection with the IPR Claim provided always that Maple and Oak Consulting:



- 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 Maple and Oak Consulting is likely to be made) in connection with the Call-Off Contract, Maple and Oak Consulting will, at Maple and Oak Consulting'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 Maple and Oak Consulting is likely to be made) against Maple and Oak Consulting, Maple and Oak Consulting will immediately notify the Buyer in writing.

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

13.20 Maple and Oak Consulting will have no rights to use any of the Buyer's names, logos or trademarks without the Buyer's prior written approval.

13.21 Maple and Oak Consulting 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 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 Maple and Oak Consulting).

13.22 If Malicious Software is found, Maple and Oak Consulting 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, Maple and Oak Consulting 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 Maple and Oak Consulting as follows:

- by Maple and Oak Consulting, where the Malicious Software originates from Maple and Oak Consulting Software or the Buyer Data while the Buyer Data was under the control of Maple and Oak Consulting, unless Maple and Oak Consulting can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to Maple and Oak Consulting.
- 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, Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting is processing Buyer Data or Other Contracting Bodies' Personal Data, Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting 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
- 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 Maple and Oak Consulting will not remove any proprietary notices relating to the Buyer Data.

15.2 Maple and Oak Consulting will not store or use Buyer Data except where necessary to fulfil its obligations.

15.3 If Buyer Data is processed by Maple and Oak Consulting, Maple and Oak Consulting will supply the data to the Buyer as requested and, in the format, specified by the Buyer.

15.4 Maple and Oak Consulting will preserve the integrity of Buyer Data processed by Maple and Oak Consulting and prevent its corruption and loss.

15.5 Maple and Oak Consulting will ensure that any system which holds any Buyer Data complies with the security requirements prescribed by the Buyer.

15.6 Maple and Oak Consulting will ensure that any system on which Maple and Oak Consulting 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, Maple and Oak Consulting 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, Maple and Oak Consulting will re-submit such system for accreditation.

15.8 If at any time Maple and Oak Consulting suspects that the Buyer Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then Maple and Oak Consulting will notify the Buyer immediately and will at its own cost comply with any remedial action proposed by the Buyer.

15.9 Maple and Oak Consulting will provide, at the request of CCS or the Buyer, any information relating to Maple and Oak Consulting's compliance with its obligations under the Data Protection Act. Maple and Oak Consulting 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.

15.10 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting will transfer any Request for Information to the Buyer within 2 Working Days of receipt.

18.2 Maple and Oak Consulting 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 Maple and Oak Consulting when it receives a relevant FOIA or EIR request so that Maple and Oak Consulting may make appropriate representations.

## **19. Standards and quality**

19.1 Maple and Oak Consulting 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, Maple and Oak Consulting 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 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 Maple and Oak Consulting 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, Maple and Oak Consulting will help the Buyer to mitigate any losses and will restore the Services to their desired operating efficiency as soon as possible.

20.4 Maple and Oak Consulting 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). Maple and Oak Consulting will recover such CCS and Buyer Confidential Information however it may be recorded.

20.5 Any system development by Maple and Oak Consulting 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;
- Maple and Oak Consulting 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 (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;
- 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 Maple and Oak Consulting and Maple and Oak Consulting 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 Maple and Oak Consulting. Maple and Oak Consulting'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 Maple and Oak Consulting 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 Maple and Oak Consulting against any commitments, liabilities or expenditure which result in any unavoidable Loss by Maple and Oak Consulting, provided that Maple and Oak Consulting takes all reasonable steps to mitigate such Loss. If Maple and Oak Consulting holds insurance, Maple and Oak Consulting will reduce its unavoidable costs by any insurance sums available. Maple and Oak Consulting will submit a fully itemised and costed list of such Loss, with supporting evidence of unavoidable Losses incurred by Maple and Oak Consulting 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 Maple and Oak Consulting if:

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

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, Maple and Oak Consulting 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), Maple and Oak Consulting must:

- immediately return to the Buyer:
  - all Buyer Data including all copies of Buyer Software and any other software licensed by the Buyer to Maple and Oak Consulting under the Call-Off Contract;
  - any materials created by Maple and Oak Consulting 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 Maple and Oak Consulting. 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;
- 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 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting is an independent Contractor and no contract of employment or partnership is created between Maple and Oak Consulting 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 the Call-Off Contract and the respective deemed time and proof of Service:

<b>Delivery type</b>	<b>Deemed delivery time</b>	<b>Proof of Service</b>
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 Maple and Oak Consulting will agree an exit plan during the Call-Off Contract period to enable Maple and Oak Consulting 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. Maple and Oak Consulting will update this plan whenever there are material changes to the Services. A Statement of Work may be agreed between the Buyer and Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting 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, Maple and Oak Consulting 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. Maple and Oak Consulting will also answer Service and development-related clarification questions.

29.2 Within 10 Working Days of a request by the Buyer, Maple and Oak Consulting 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 Maple and Oak Consulting 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 (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.

30.2 Any changes to the high-level scope of the Services must be agreed between the Buyer and Supplier. Maple and Oak Consulting 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. Maple and Oak Consulting 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**

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

34.5 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting.

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 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting or its employees to commit an offence.

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

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

36.3 Maple and Oak Consulting 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 Maple and Oak Consulting will not commit any Prohibited Act.

37.2 The Buyer and CCS will be entitled to recover in full from Maple and Oak Consulting and Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting, 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 Maple and Oak Consulting of its obligations hereunder.

#### **40. Non Discrimination**

40.1 Maple and Oak Consulting 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 Maple and Oak Consulting will use the Buyer's premises solely for the Call-Off Contract.

41.3 Maple and Oak Consulting will vacate the Buyer's premises upon termination or expiry of the Call-Off Contract.

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

41.5 While on the Buyer's premises, Maple and Oak Consulting 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 Maple and Oak Consulting 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 Maple and Oak Consulting's risk. Upon termination or expiry of the Call-Off Contract, Maple and Oak Consulting will remove such Equipment.

#### **42. Equipment**

42.1 Any Equipment brought onto the premises will be at Maple and Oak Consulting'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, Maple and Oak Consulting 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.