

# Projects and Consulting General Terms of Business G-Cloud 14

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## GENERAL TERMS OF BUSINESS

### 1. Definitions and Interpretation

**Interpretation and Definitions:** In these General Terms of Business, clause 12.1 shall apply regarding interpretation and clause 13 shall apply regarding the use of defined terms and phrases. To the extent that any defined word and/or phrase is used in these General Terms of Business and the interpretation and/or a definition of such word and/or phrase is not specified in clause 13 (Definitions) hereunder, then such word and/or phrase shall be construed in accordance with the defined terms of the Call-Off Contract (including those set out in Schedule 6 (Glossary and interpretations) of the Call-Off Contract). In these General Terms of Business references to Order Form mean the Order Form (including Schedules 1 and 2 of the Call-Off Contract).

### 2. The Services

- 2.1. **Provision of Services:** We shall perform the Services in accordance with any specific terms as set out in the Order Form.
- 2.2. **Timescales:** Unless specifically agreed otherwise in the Order Form, we shall use reasonable endeavours to perform the Services in accordance with any milestone dates specified in the Order Form or agreed between us in writing from time to time. We shall be under no obligation with respect to milestones or timetables unless the same have been agreed with you in accordance with the foregoing.
- 2.3. **Progress reviews:** Each Party shall review with the other the progress of the Services at regular intervals. This will include review meetings attended by our representatives to review progress generally including actions undertaken and progress made since the previous meeting and any issues relating to the provision of the Services. We may charge for these meetings at our applicable Fee Rates as set out in the "Relationships and Engagement" column of our SFIA rates table.
- 2.4. **Opportunity to correct:** If there is a failure or deficiency in the supply of Services by us (which is capable of remedy) you shall always give us a reasonable opportunity to correct such failure or deficiency, in accordance with clause 18.5 of the Call-Off Contract.
- 2.5. **Work outside scope:** Any work we do outside the scope of the Services at your request or with your agreement shall (unless otherwise agreed) be performed, and fees paid, in accordance with this Call-Off Contract, applying the applicable Fee Rates as set out in the "Change and Transformation" column of our SFIA rates table.
- 2.6. **Acceptance:** Where an Order Form specifies Acceptance Criteria for any particular Deliverables, then clauses 2.7 to 2.10 (below) shall apply to such Deliverables. If no acceptance criteria are specified or otherwise agreed, then you shall be deemed to have accepted the relevant Deliverable on delivery.
- 2.7. **Notification:** We shall notify you when a Deliverable that is expressly stated in the Order Form to be subject to acceptance is ready for acceptance review. You shall then review such Deliverable against the relevant Acceptance Criteria.
- 2.8. **Acceptance procedure:** If such Deliverable materially meets the relevant Acceptance Criteria,

you shall notify us promptly in writing, and such Deliverable shall be accepted by you. If it materially fails to meet the relevant Acceptance Criteria then you shall notify us promptly in writing, with sufficient details and comments in respect of the failure so that if we update the Deliverable to address the comments it shall meet the relevant Acceptance Criteria in all material respects. We shall then use reasonable endeavours to remedy such material defects and re-issue the relevant Deliverable for review against the relevant Acceptance Criteria within 30 (thirty) days (or such longer period as is reasonable in view of the nature of the defect) from the date of your notice.

- 2.9. **Deemed acceptance:** You confirm that you will be deemed to have accepted the relevant Deliverable on the earlier of: (a) using the Deliverable (other than for carrying out the acceptance review) or modifying it; or (b) 14 (fourteen) days from the date that we tell you that the relevant Deliverable is ready for acceptance (if you do not inform us within this time of any material failure of the Deliverable to meet the relevant Acceptance Criteria).
- 2.10. **Meaning of acceptance:** Acceptance of the relevant Deliverable in accordance with the provisions of this clause 2 confirms that the Deliverable meets the requirements of this Call-Off Contract and that you may not then reject the Deliverable or make any claims in respect of any defects or problems which are subsequently discovered by you in respect of the Deliverable (although this is without prejudice to your rights and remedies under clause 6 (below) and clauses 11.6 to 11.9 of the Call-Off Contract).
- 2.11. **Changes:** If subject to clauses 16.1 and 16.2 (Legislative Change) of the Framework Agreement (which are incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract) a Party proposes a Variation pursuant to clause 32.1 (in the case of you) or clause 32.2 (in the case of us) of the Call-Off Contract or clause 36.3 of the Framework Agreement (which is incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract) or paragraphs 14 and 15 of Schedule 7 of the Framework Agreement (which is incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract) or paragraph 6 of Annex 2 (Joint Controller Agreement) of Schedule 7 of the Call-Off Contract, a Party shall provide the other Party with information about the impact of the Variation on other aspects of this Call-Off Contract; the other Party shall consider the proposed Variation in good faith and, if it is accepted, the Parties shall agree in writing the appropriate amendments to this Call-Off Contract; no Variation shall be effective unless agreed in writing and signed by the Parties' authorised representatives; and we may charge (at our applicable Fee Rates as set out in the "Change and Transformation" column of our SFIA rates table) for our time spent considering your Variation requests; if a Variation request is later withdrawn but results in a delay to the performance of the Services (and we told you of the possibility of delay caused by the request) we shall not be liable for that delay and shall be entitled to a reasonable extension of time for performing our duties and agreed timescales shall be changed accordingly.
- 2.12. **Assistance:** If we are required to comply with any remedial action reasonably proposed by you under



clause 13.8 of the Call-Off Contract or where assistance or remedial support is requested by you under the terms of Schedule 7 of the Framework Agreement as incorporated into the Call-Off Contract pursuant to clauses 2 and 33.1 of the Call-Off Contract, this will be provided at your cost (to be charged at our applicable Fee Rates as set out in our SFIA rates table) unless the corruption, loss, breach or degradation of the Buyer Data or Data Loss Event was caused by our action or omission.

- 2.13. **Penetration Testing Services:** Where the Services include penetration testing, technical infrastructure assessments, simulated "hacking", use of materials to spoof or replicate legitimate infrastructure, social media or internet communications, or any activities which may be defined as an offense under the Computer Misuse Act 1990, and/or other physical breaching of information technology infrastructure, systems, security systems, business premises or other assets, you hereby expressly consent and grant authority to us and/or our authorised representatives to carry out such activities and use such materials. You agree to obtain authority to such activities from all relevant third parties, such as infrastructure hosting or management companies. You acknowledge that we are not liable for identified risks detailed in the Order Form. You shall defend, indemnify and hold us harmless against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonably legal fees) arising out of or in connection with our performing activities pursuant to these terms.

### 3. Your obligations and our recommendations

- 3.1. **Buyer obligations:** You agree to comply with your obligations as set out in this Call-Off Contract, including the specific "Buyer's responsibilities" referred to in the Order Form and the following general obligations to: (a) provide us and our Personnel with such information, co-operation, assistance, facilities and resources as we reasonably require to enable us to perform the Services; (b) act reasonably and in good faith in connection with this Call-Off Contract and the exercise of any discretion you may have under this Call-Off Contract and give prompt attention to any matter raised by us relating to your obligations and/or our performance of the Services; (c) be responsible for the commercial decisions that you make and to take into account any restrictions on the scope of the Services and all other factors of which you and your other advisers are, or should be, aware; (d) implement reasonable and appropriate business continuity and disaster recovery measures to mitigate against any reasonably foreseeable risks; (e) ensure that all equipment and software you make available or provide will be free of computer viruses, spyware and other malware and will comply with their specifications; (f) maintain and be responsible for your own data and software back-up and associated restoration measures in accordance with Good Industry Practice (including ensuring a reasonably frequent back-up is made of your data and software); (g) retain risk in, and title to, any hardware, software and other materials that you provide or make available to us; (h) ensure that we and our Personnel have all necessary rights and permissions to use any hardware, software and other materials provided or to be provided by you for the purposes of the Call-Off Contract; (i) notify us of any concerns or issues you have with the

Services or the performance of our obligations under this Call-Off Contract promptly and in any event within 30 days of becoming aware of the concern or issue; and (j) provide us with not less than 5 Working Days' written notice if you require any Supplier system to hold any protectively marked data.

- 3.2. **Recommendations:** To the extent that we make any recommendations and/or suggestions whether as part of the Services or otherwise ("**Recommendations**") regarding your procurement of any third-party products and/or services (the "**Third-party Elements**"), you acknowledge that (except to the extent expressly stated otherwise in this Call-Off Contract, with specific reference being made to this clause 3.2): (a) such Recommendations should not form the sole basis for any decision or action or inaction by you; (b) the Third-party Elements may relate to third parties' products and/or services which are unconnected with us, and therefore you are responsible for checking with the relevant third-party the quality, availability and/or suitability of such Third-party Elements; and (c) we will not be responsible for the quality, availability or suitability of the Third-party Elements.

- 3.3. **Impact:** Our ability to perform our obligations may be dependent on you fulfilling your obligations (including any Buyer's responsibilities set out in the Order Form) and on any agreed assumptions set out in the Order Form being correct. To the extent that you do not fulfil your obligations under this Call-Off Contract or the agreed assumptions are or become incorrect, then (without prejudice to our rights and remedies): (a) we may charge you (at the Fee Rates) for resources assigned to performing the Services even if not utilised, together with any additional charges which we incur; (b) we may change the scope of the Services or the agreed milestone dates and timetables (but shall consult with you and act reasonably in doing so); (c) our charges and any estimates may be affected, and you agree to accept reasonable changes to them; and (d) we will be relieved of our obligations to the extent that we are prevented from fulfilling them in accordance with this Call-Off Contract.

- 3.4. **Buyer responsibilities:** The Buyer acknowledges and agrees that it is ultimately responsible for determining its architecture and infrastructure requirements for its information technology infrastructure and for determining the security processes and specifications that it elects to implement. The Buyer is solely responsible for all disaster recovery, business continuity and back up arrangements in respect of its own equipment and/or all of its data that we may have access to under the Agreement. The Buyer is responsible at its own expense for the maintenance of industry standard systems, software, hardware, infrastructure, networks and security protocols. We are not liable for functionality issues that arise as a result of the requested Services being performed. We are not responsible for any adverse consequences resulting from inaccurate information regarding any IP addresses provided by the Buyer. The Buyer confirms that it has all necessary rights and consents (including without limitation from its employees, contractors and clients) to enable us to access and use the Buyer's assets, infrastructure and equipment (including without limitation the IPR in the same) to perform the Services. The Buyer





acknowledges that we make no representation, warranty or other assurance that the Services will disclose, address or remediate all vulnerabilities or other security deficiencies.

- 3.5. Export control: The Buyer agrees that it shall not disclose or provide access to any military items or to items listed as dual-use by applicable export and sanctions law, including all regulations, rules and requirements ("**Export and Sanction Laws**") to any Capgemini entity, resource or subcontractor absent prior written agreement of the parties. Notwithstanding any other provision of the Call-Off Contract, the Buyer hereby further represents and warrants that the Services it requests us to provide will not violate Export and Sanctions Law and that the Buyer shall not use the Services performed by us in violation of Export and Sanctions Law, including, without limitation, for any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons.

#### 4. Fees

- 4.1. Fees: You shall pay the charges and expenses for the Services as set out in this Call-Off Contract.
- 4.2. Price reviews: The Parties may review the fees, charges and rates where, pursuant to clause 3.4 of the Framework Agreement, a price review is permitted in the Call-Off Contract. In that case, the Parties will set out or refer to the agreed price review mechanism in the applicable Order Form.

#### 5. Personnel

- 5.1. Conduct of Personnel: Each Party shall ensure that its Personnel comply with the other Party's reasonable rules, regulations and practices relating to security, health and safety when on the other Party's premises, provided they are made available to them reasonably in advance. If we are required to enter the premises of a third-party, you shall ensure that the third-party protects our Personnel as it does its own employees.
- 5.2. Not used.
- 5.3. Non-solicitation: Without restricting the right of an employee freely to accept and change employment and subject to clauses 5.4 to 5.7 of these General Terms of Business and clause 29 of the Call-Off Contract, neither Party shall (during the term of this Call-Off Contract and for 6 (six) months afterwards), without the other Party's written consent, offer employment to any of the other Party's Personnel who have been engaged in this Call-Off Contract. However, this restriction shall not apply to any person who (without having been approached directly or indirectly) responds to a general recruitment advert placed by or on behalf of the new employer. If either Party breaches this clause, it shall promptly pay to the other Party a sum equal to the annual salary of the employee in question (net of benefits) and the Parties agree that this amount is a genuine pre-estimate of the loss that Party is likely to suffer as a result of such breach.
- 5.4. Application of the Employment Regulations – Commencement: The Parties agree that the commencement of any Services to you may constitute a "relevant transfer" under the Employment Regulations. You shall be responsible for all emoluments and outgoings in respect of any Personnel (including all wages, bonuses, commissions, PAYE, National Insurance

contributions and pension contributions) in respect of the period prior to the Start Date.

- 5.5. You shall provide us with all Personnel information (including but not limited to the pension entitlements of the Transferring Employees and all applicable Admission Agreements) that we request within 7 days of our request and in any event no later than 7 days prior to the Start Date.
- 5.6. You shall be liable for and shall indemnify us and our sub-contractors in respect of any Employment Liabilities which may be incurred arising out of or in connection with: (a) the employment or termination of employment of each of the Transferring Employees prior to or on the Start Date; (b) any persons other than any Transferring Employee whose employment or claims or liabilities arising out of their employment or its termination transfer to us or our sub-contractors; (c) any failure by you or your outgoing contractor to comply with your obligations under the Employment Regulations; and (d) redundancy costs where any Transferring Employee is given notice of redundancy by us or our sub-contractors within 6 months of the Start Date.
- 5.7. Application of the Employment Regulations – End: Each Party shall ensure that it complies with its obligations under the Employment Regulations and hereby gives an indemnity to each other to the extent that any claim or Employment Liabilities arise from: (a) its own failure to comply with its obligations under the Employment Regulations; and/or (b) any acts or omissions for the period for which the indemnifying Party was acting in the capacity of the "employer".
- 5.8. You shall indemnify us for any claim or Employment Liabilities arising from any employment action intended and/or taken by you or a replacement service provider arising from the operation of Regulation 4(9) of the Transfer Regulations or otherwise in respect of the transferring employees on the final list who will either transfer their employment to you or to a replacement service provider.

#### 6. Intellectual Property Rights

- 6.1. You acknowledge and agree that (unless specifically agreed otherwise by us in the Order Form):
- (i) in accordance with clause 11.4 of the Call-Off Contract, the licence terms set out in clauses 6.2 and 6.3 of these General Terms of Business are acceptable to you (and, for the avoidance of doubt, that we can use third-party IPRs and Background IPRs in relation to the Project Specific IPRs); and
  - (ii) in accordance with clause 15.1 of the Call-Off Contract, software created for you is not suitable for publication as open source (except for any software which is a Buyer IPR Deliverable) and furthermore you confirm that you do not require the right to publish such software as open source and will not publish such software as open source.
- 6.2. Use of Deliverables and Materials:
- (i) Supplier IPR Deliverables: You have the right to use the Deliverables and Materials (other than Buyer IPR Deliverables) (subject to any restrictions on use in this Call-Off Contract and applicable third-party licences (including Open Source Software ("**OSS**") licences)) for your internal business purposes and



for any other purpose agreed in the Order Form. You shall tell us if you propose that Materials and Deliverables will be provided to, or used by, a third-party, so that we can agree terms regarding such provision or use and/or require the third-party to enter into a direct relationship with us before any such Materials or Deliverables are made available to them. You will not sub-licence the Materials or Deliverables to or make them available to third parties without our prior written consent.

(ii) Buyer IPR Deliverables: All Intellectual Property Rights in Buyer IPR Deliverables shall vest in you on payment. You grant to us a perpetual, worldwide, royalty-free, non-exclusive, irrevocable licence to use, modify, adapt, enhance, reverse compile, decode and translate the Intellectual Property Rights in the Buyer IPR Deliverables for the purpose of performing the Services and for any other purpose unless using it would result in unauthorised disclosure of your Confidential Information.

6.3. Use of your materials: Subject to clause 34.2 of the Framework Agreement (which is incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract) and clause 12.3 of the Call-Off Contract, we and our Personnel may use any documentation or materials (including systems, methodologies, tools, software, reports, correspondence and advice) supplied or made available by or on behalf of you to the extent necessary for the performance of our obligations under this Call-Off Contract.

6.4. OSS: When Open Source Software ("OSS") (including OSS tools, libraries, frameworks and any other element that is directly or indirectly governed under an OSS license) is made available to you under the Services:

- a) you agree to the terms and conditions of the licence of the OSS (which we shall provide to you on your written request);
- b) such OSS shall be understood to be acquired by you, and its availability and proper functioning shall be deemed your responsibility;
- c) the respective OSS licence agreement shall apply with respect to such OSS, and you shall be bound by all covenants and obligations arising from the OSS licence agreements;
- d) we shall have no liability arising from such OSS, including any liability relating to use, interoperability, warranty, intellectual property, quality, design or software functionality, access to its maintenance, updates or otherwise; and
- e) in the case of conflict between the OSS licence terms and other terms of this Call-Off Contract, the OSS license terms shall prevail.

6.5. You acknowledge and agree that notwithstanding any term to the contrary in the Call-Off Contract, in accordance with clause 11.4 of the Call-Off Contract the licence terms referred to in clause 6.4 of these General Terms of Business are acceptable to you and you shall indemnify us against all losses, liabilities, damages, costs and expenses we may suffer or incur to a third party in the event of non-compliance by you with the requirements of clauses 6.4a) and 6.4c) and/or the terms of any applicable third party licence terms. We shall provide the applicable third party licence terms to you on your written request.

6.6. Third-party items: Where you are responsible for providing third-party items (including software or hardware), you shall obtain any necessary licences and consents for you and us and our Personnel to use such items for the purposes of this Call-Off Contract.

6.7. IPR Indemnity: Subject to clause 24 (Liability) of the Call-Off Contract and clause 6.8 (below), you shall (at your expense) defend, indemnify, and hold harmless us (and such of our officers, directors, Personnel, agents, affiliates, successors and/or assigns) (the "**Indemnified Party**") as the case may be) from and against any and all Loss: (i) awarded to a third-party by a court in final judgment of a claim; and/or (ii) agreed by you to be paid to a third-party in final settlement of a claim, in each case to the extent such Loss arises from any third-party claim brought against the Indemnified Party alleging that our or their possession and/or use of the Buyer's Background IPR, Buyer Software, works, materials, and/or any third-party licensed materials, in each case supplied by or made available by or on behalf of you (but in all cases excluding the Buyer Data), infringe that third-party's Intellectual Property Rights (an "**GTB IPR Claim**"). To avoid doubt, clause 11.5 of the Call-Off Contract applies to Buyer Data.

6.8. Control of proceedings: The indemnity given under clause 6.7 (above) is subject to, us: (a) giving you prompt notice of any such GTB IPR Claim as soon as we become aware of such GTB IPR Claim; (b) giving our reasonable assistance (at your cost) in connection with any such GTB IPR Claim and not admitting liability or attempting to settle or compromise such GTB IPR Claim without your prior written agreement (such agreement not to be unreasonably withheld or delayed); and (c) allowing you sole conduct and control of any such GTB IPR Claim.

6.9. Alternative action: If there is a third-party claim and/or allegation which may give rise to a GTB IPR Claim under clause 6.7, you may (at your sole discretion): (a) obtain the right for the Indemnified Party to continue using the infringing work; or (b) make such modifications or amendments to the infringing work or its relevant parts so that the infringing work becomes non-infringing without incurring a material reduction in the quality or performance of the respective work.

6.10. Exclusions: The indemnities in clause 6.7 shall not apply to the extent that the Indemnified Party has caused or contributed to the events which gave rise to the GTB IPR Claim under the indemnity.

6.11. IPR notices: Neither Party shall delete or obscure any proprietary information or notices relating to Intellectual Property Rights (if any) appearing on documentation or materials provided by the other Party (including the Materials and the Deliverables).

6.12. You acknowledge that any references in the Service Definition and/or Service Description to any OSS is for illustrative purposes only and that whether or not use of any OSS in the provision of the Services is appropriate or suitable is dependent on the specific Services to be provided under the Call-Off Contract and that this will need to be determined between our receipt of your order and the Start Date.

## 7. Confidentiality and use of information

7.1. Not used.



## 8. Limitation of liability

- 8.1. Mitigation: Each Party agrees to use all reasonable endeavours to mitigate any losses which it may suffer under or in connection with this Call-Off Contract (including in relation to any losses covered by an indemnity) and any amounts it seeks from the other Party in respect of any liability.
- 8.2. Your acts/omissions: You agree that we shall not be liable for any failure by us to comply with our obligations under this Call-Off Contract to the extent that such failure is a result of any act and/or omissions of you or your Personnel.
- 8.3. Not used.
- 8.4. Your payment obligations: Despite any provision to the contrary, nothing in this clause 8 of these General Terms of Business or elsewhere in the Call-Off Contract shall exclude or restrict your obligation to pay charges or sums due to us under this Call-Off Contract.
- 8.5. Our advice: In relation to any particular transaction, specific advice should always be sought by you, and all material information provided to us. Our advice is provided for the purposes described in this Call-Off Contract. Its applicability will depend on the particular circumstances of which we were aware in respect of how it was going to be used, and we disclaim any responsibility for the use of our advice for a different purpose, in a different context or by a third-party.
- 8.6. Reasonableness: You and we agree that the limitations and exclusions of liability contained in this Call-Off Contract are reasonable in view of the nature and extent of the obligations accepted by each Party under this Call-Off Contract and the level of the fees and charges.
- 8.7. Insurance: Nothing in this Call-Off Contract shall oblige us to take out or maintain insurance or insurance cover which is either: unavailable in the insurance market with reputable insurers; or is offered by insurers on terms such that the relevant insurance is not generally purchased by service providers similar in size and nature to us.

## 9. Ending and Suspension

- 9.1. Ending: Each Party is entitled to End this Call-Off Contract in accordance with the Call-Off Contract.
- 9.2. Not used.
- 9.3. Consequences of Ending: At the End (which includes expiry) of this Call-Off Contract, the provisions of this Call-Off Contract which are expressed and/or intended to survive Ending will survive including clauses 1, 2.4, 3, 4.1, 5.3, 6, 8, 9, 10.3 – 10.7, 11.3, 12, 13 and 14 of these General Terms of Business and those clauses specified under clause 19.4 of the Call-Off Contract. You shall pay all fees and other charges due prior to the date of End or expiry.
- 9.4. Exit assistance: Any exit assistance we provide, such as assisting with the handover of our provision of the Services back to you or another supplier you may appoint, shall (unless otherwise agreed) be performed, and fees paid, in accordance with this Call-Off Contract, applying our applicable Fee Rates as set out in the "Delivery and Operation" column of our SFIA rates table.
- 9.5. Payment: You are obliged to pay us: (a) for any Services that have been provided under this Call-Off

Contract up to the date of the expiry or End of the Call-Off Contract and for which we have not previously been paid; (b) in advance for any exit assistance that we are to provide; and (c) where any Services are subject to a minimum duration, for any such Services yet to be provided which shall not be provided as a result of the End of the Call-Off Contract, except in circumstances where the Call-Off Contract is Ended by you pursuant to clause 9.1 (except for where you End the Call-Off Contract pursuant to clause 18.1 of the Call-Off Contract).

- 9.6. If you End the Call-Off Contract pursuant to clause 11.9 of the Call-Off Contract and demand a refund from us of the money paid for the affected Services you shall promptly return to us all Deliverables and other materials we have provided to you under the Call-Off Contract.

- 9.7. If you End the Call-Off Contract pursuant to clause 18.1 of the Call-Off Contract you shall on or before the End date pay us our avoidable and unavoidable costs (which shall include our stranded costs, unrecovered costs and breakage costs). We shall calculate such costs and Losses following receipt of your notice to End the Call-Off Contract under clause 18.1 of the Call-Off Contract and shall provide you with details of the same within a reasonable time.

## 10. Data protection

- 10.1. Personal Data: If in the course of performing the Services, we process Buyer Personal Data in accordance with clauses 12 (Protection of information), 13 (Buyer data) and 33 (Data Protection Legislation (GDPR)) of the Call-Off Contract then we each record our intention that you shall be the Controller and that we shall be the Processor and each party agrees to comply with all corresponding obligations under the Data Protection Legislation. You authorise us to process such Buyer Personal Data on your behalf as is necessary for the purposes of the Call-Off Contract. You acknowledge that you are and will remain solely responsible for determining the purposes and the means of us Processing the Buyer Personal Data in the course of performing our obligations under this Call-Off Contract and for approving the Protective Measures applicable to the protection of Buyer Personal Data and you agree to comply with any obligations on the Buyer described in the Protective Measures and/or Schedule 7 (Processing Data) of the Framework Agreement as incorporated into the Call-Off Contract pursuant to clauses 2 and 33.1 of the Call-Off Contract. You shall ensure that any Personal Data you provide is lawfully provided and your instructions to us in respect of the Buyer Personal Data are lawful and acknowledge that we are entitled to rely on your instructions in respect of the Processing of Buyer Personal Data.

- 10.2. Technical Measures: You acknowledge that the Services are designed to be used for data with a security classification of no higher than 'Official'. You shall inform us if you have any specific data security requirements whereupon we shall agree to implement additional measures in respect of such specific requirements, subject to agreement of a Variation. You warrant and represent that any such specific data security requirements ensure a level of security appropriate to the risk.

- 10.3. Subject to clause 24 of the Call-Off Contract, you shall during and after the Term keep us fully indemnified against all Losses arising from any



breach of your obligations under the Data Protection Legislation.

- 10.4. Taking into account the nature of the Services and the information available to us, we shall, on request and at your cost (to be charged to you at our applicable Fee Rates as set out in our SFIA rates table), provide reasonable assistance to you to meet your obligations under the Data Protection Legislation in respect of: (a) Personal Data Breach notification or Data Loss Event notification; (b) a request, complaint or communication relating to your obligations under Data Protection Legislation; (c) Data Protection Impact Assessments; (d) fulfilment of Data Subjects' rights; (e) any communication from the Information Commissioner or any other regulatory authority in connection with Buyer Personal Data or Personal Data Processed under the Call-Off Contract in accordance with Annex 1 of Schedule 7 of the Call-Off Contract; and (f) prior consultation with supervisory authorities.
- 10.5. We will comply as soon as reasonably possible and without undue delay with our notification requirements and unless prohibited by Law the provision of information obligations under paragraphs 6 and 7 of Schedule 7 (Processing Data) of the Framework Agreement as incorporated into the Call-Off Contract pursuant to clauses 2 and 33.1 of the Call-Off Contract. Further any audits proposed by you under the terms of Schedule 7 as incorporated into the Call-Off Contract under clauses 2 and 33.1 of the Call-Off Contract you agree will be upon reasonable notice, conducted (i) no more frequently than once per annum unless otherwise agreed in writing between the Parties, (ii) will be carried out during business hours and cause minimal disruption, (iii) any third party auditor may not be a competitor of ours, and will be required to sign a reasonable confidentiality agreement with us and (vi) we will not be required to provide, and an audit will not have access to, our internal pricing or other clients' information or our internal reports.
- 10.6. Unless we specifically agree otherwise in the Order Form, you consent to the transfer and/or processing of Buyer Personal Data to/by Approved Subcontractors, for the purposes of providing the Services. We will ensure that any such Approved Subcontractor is subject to a written contract which complies with paragraph 12 (c) of Schedule 7 of the Framework Agreement (incorporated into the Call-Off Contract pursuant to clauses 2 and clause 33.1 of the Call-Off Contract). You acknowledge and agree that these clauses 10.6 and 10.7 satisfy your consent requirements under clause 12.3 of the Call-Off Contract and paragraphs 5 (d), 5 (e) and 12 of Schedule 7 of the Framework Agreement (which are incorporated into the Call-Off Contract pursuant to clauses 2 and 33.1 of the Call-Off Contract).
- 10.7. In respect of any Approved Subcontractor located outside the UK or European Economic Area and not in a third country which is subject to an "adequacy" decision, we will ensure that we have in place adequate safeguards to transfer the Buyer Personal Data to the Approved Subcontractor to satisfy the relevant Data Protection Legislation requirements. You will comply with any of our reasonable requests which are necessary to enable us to comply with this clause 10.7 of these General Terms of Business.
- 10.8. Independent Controllers of Personal Data: For the purposes of paragraphs 19 and 24 of Schedule 7 of the Framework Agreement as incorporated into the

Call-Off Contract pursuant to clauses 2 and 33.1 of the Call-Off Contract, each party acknowledges and agrees that it shall only make such data protection policies, information or procedures available to the other party where requested to the extent that such policies, procedures and information are not already in the possession of the other Party. Further for the purposes of compliance with paragraphs 20 and 21 (b) of Schedule 7 of the Framework Agreement as incorporated into the Call-Off Contract pursuant to clauses 2 and 33.1 of the Call-Off Contract, we each agree to inform our Personnel involved in the provision/receipt of Services of the other Party's privacy policy (to the extent such privacy policy has been made available to it) and make such available to the other on request.

- 10.9. For the purposes of Annex 2 (Joint Controller Agreement) of Schedule 7 of the Call-Off Contract: we both acknowledge and agree in accordance with paragraph 16 of Schedule 7 of the Framework Agreement as incorporated into the Call-Off Contract pursuant to clauses 2 and 33.1 of the Call-Off Contract, that where we both jointly acknowledge and agree that we are to be Joint Controllers in respect of certain Personal Data in connection with the provision of Services under a Call-Off Contract, that we shall implement such terms that are necessary to comply with the requirements of the UK GDPR Article 26. For the avoidance of doubt, each Party acknowledges and agrees that these terms shall be based on the terms set out in the template at Annex 2 of Schedule 7 of the Call-Off Contract but the Parties reserve the right to make such changes and amendments as we consider necessary to enter into a Joint Controller Agreement. Further each party acknowledges and agrees that Annex 2 is not a standalone agreement and remains subject to the exclusions and limits of liability as set out in clause 24 of the Call-Off Contract and these General Terms of Business unless otherwise agreed in writing between the Parties.

10.9.1. Without prejudice to the above, in respect of paragraph 7 (Liabilities for Data Protection Breach) to Annex 2 (Joint Controller Agreement) where you are held responsible for the payment of such Financial Penalties, then to the extent that you require us to provide full cooperation and access, subject to the audit requirements set out in clause 10.5, to enable you to conduct a thorough audit of a Personal Data Breach or pursuant to paragraph 3 (Data Protection Breach) of Annex 2 where the Data Protection Breach was caused by your action or omission, we shall be entitled to charge to you what we consider (in our sole discretion) to be our reasonable costs in providing such cooperation and access.

10.9.2. Subject to the audit requirements set out in clause 10.5 of these General Terms of Business, we each agree to provide the other with such cooperation and access as reasonably requested for the other to conduct an audit of such Personal Data Breach pursuant to paragraph 7.1 (a) and (b) of Annex 2.

10.9.3. To the extent permitted by Law or as may otherwise be agreed between the Parties in writing, we each agree that any Claim Losses incurred pursuant to paragraph 7.3 or Financial Penalties pursuant to paragraph 7.1 of Annex 2





of Schedule 7 of the Call-Off Contract shall be subject to the exclusions and limits of liability set out in clause 24 of the Call-Off Contract and the provisions of clause 8 to these General Terms of Business.

10.9.4. Notwithstanding the terms of paragraph 7.4 of Annex 2, each Party shall at its own cost and expense be entitled to control the defence of any such claim made against it pursuant to paragraph 7 of Annex 2 and any related proceedings or settlement negotiations, and the other party shall make no admission in respect of such claim, except that the other party shall be entitled to take any action which it deems necessary if the other party fails to take action, or unreasonably delays taking action, in defending or settling any such claim, proceedings or negotiations where such failure or delay may in the reasonable opinion of the other party, prejudice their own interests as the innocent party. Each party agrees to take reasonable steps to cooperate with the other party as reasonably requested in the defence of such a claim, proceedings, negotiations or settlement.

## 11. Freedom of Information Act

11.1. FOIA request: This clause 11 applies only if you are a "public authority" (as defined in FoIA) or otherwise are, or become, subject to FoIA and is subject to clauses 7.1, 7.2 and 18 of the Framework Agreement (which are incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract) to the extent that there exists any inconsistency and/or conflict between the same. Where you receive a Request for Information, we shall, if requested by you and at your cost, provide you with reasonable assistance. We shall not be required to supply a copy of any Information that is also held by you (or a third-party acting on your behalf) or to convert any Information into a different format.

11.2. FOIA disclosure: Where you receive a Request for Information that may involve Capgemini CI you shall: (a) as soon as reasonably practicable notify us and provide us with a copy of the Request for Information validated by you; (b) fully consult with us and take into account our views on disclosure; and (c) consider in good faith all relevant exemptions to disclosure under FoIA.

11.3. Your obligations: You shall have in place an effective process to handle Requests for Information and you undertake to disclose Capgemini CI only when and to the minimum extent strictly necessary for you to respond to a Request for Information so as to comply with your obligations under FoIA.

11.4. Duration: The provisions of this clause 11 shall continue only for a period of 5 (five) years after the expiry or End for any reason of this Call-Off Contract.

## 12. General

12.1. Interpretations: In these General Terms of Business: (a) headings are inserted for convenience of reference only and shall not affect the interpretation or construction of these General Terms of Business; (b) references to clauses, paragraphs, schedules or annexes are to clauses, paragraphs, schedules or annexes of these General Terms of Business unless otherwise stated; and (c)

these General Terms of Business shall be interpreted in accordance with those clauses of the Framework Agreement which are incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract.

12.2. Implied Terms: The express terms, conditions and warranties in this Call-Off Contract are in lieu of all terms, conditions, warranties, representations, statements, undertakings and obligations whether express or implied by statute, common law, custom, usage or otherwise all of which are hereby excluded to the fullest extent permitted by Law.

12.3. Our obligations and freedom to deliver: We are free to carry out the Services in any manner unless otherwise expressly stated in this Call-Off Contract. Our obligations in respect of our performance of any Services are limited to those obligations expressly stated in this Call-Off Contract.

12.4. Purchase orders: The terms of any purchase order issued by you to us shall not apply. Any acceptance by us of a purchase order shall not have any legal effect and shall only be relevant for the purpose of referencing invoices.

12.5. Publicity: Any publicity to be issued or announcement to be made in connection with this Call-Off Contract by you shall only be issued or made subject to our prior written consent.

12.6. Third-party rights: Save as otherwise expressly set out in the Call-Off Contract, a person who is not a Party to this Call-Off Contract shall not have any rights under or in connection with it.

12.7. Not used.

12.8. Not used.

12.9. Not used.

12.10. Variations: No alteration, variation or addition to this Call-Off Contract shall be valid unless agreed in writing by the authorised representatives of each Party.

12.11. Not used.

12.12. Not used.

12.13. Notices: Any notice given under this Call-Off Contract must be in writing, marked for the attention of the relevant contact people as specified in the Order Form, and sent or delivered by first class post (or special delivery or next Working Day courier service) or, subject to clause 20.2 of the Call-Off Contract, by email to the other Party at its address specified in the Order Form (or such other address as is notified by such Party in writing and in the case of email in accordance with clause 20.1 of the Call-Off Contract). Any notice: (a) delivered by hand shall be deemed to have been given when deposited at the appropriate address; (b) sent by post (as above) or courier shall be deemed to have been given 48 (forty eight) hours after it is sent to the appropriate address; (c) sent by email shall be deemed delivered in accordance with clause 20.2 of the Call-Off Contract. A notice will be deemed to be served on the date that the recipient acknowledges that it received the notice, if the notice is not sent in compliance with this clause 12.13 or clauses 20.1 or 20.2 of the Call-Off Contract.

12.14. Not used

12.15. Not used



- 12.16. **Exclusive Remedies:** You agree that where a remedy for a particular breach or default is expressed in this Call-Off Contract then that remedy (unless otherwise expressly stated in this Call-Off Contract) is the sole and exclusive remedy in the event of a breach or default occurring.
- 12.17. **Compliance with Law:** Each Party shall be responsible for its compliance with any Laws which apply to its business. You shall notify us promptly of any specific legal and/or regulatory requirements which apply to you and/or CCS that we should be aware of in order to provide the Services in a compliant manner and also any Specific Change in Law, and we shall work together to agree any necessary and/or consequential Changes required in connection with the Specific Change in Law.
- 12.18. **Corporate Social Responsibility:** Prior to entering into an Order Form, you agree to notify us promptly and in good time of any specific applicable Government Buying Standards that are directly applicable to the provision of the Services and which we should be aware of in order to provide the Services, whereupon we shall agree with you to implement additional measures (if required) in respect of the applicable Government Buying Standards subject to agreement of a Variation. You further acknowledge and agree that you will provide us with information about the impact of such standards on the delivery of the Services and on other aspects of the Call-off Contract (where relevant) and we may charge (in accordance with our applicable Fee Rates as set out in the "Change and Transformation" column of our SFIA rates table) in respect of our time spent considering this information.

### 13. Definitions

- 13.1. **Definitions:** In these General Terms of Business, the following terms have the following meanings:

**"Acceptance Criteria"** means the acceptance criteria for any particular Deliverables as specified in an Order Form;

**"Approved Subprocessor"** means Capgemini's subprocessor(s) and/or subcontractor(s) set out in the Order Form or approved by the Buyer from time to time in accordance with clause 21.1 of the Framework Agreement (which is incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract), clause 12.3 of the Call-Off Contract and/or paragraphs 5 (d), 5 (e) and/or 12 of Schedule 7 the Framework Agreement (which is incorporated into the Call-Off Contract pursuant to clauses 2 and 33.1 of the Call-Off Contract) (as the case may be);

**"Buyer IPR Deliverable"** means any Deliverable or Material which is created by us in the course of performing the Services or exclusively for the purpose of performing the Services and which is described as a Buyer IPR Deliverable in the Order Form but it does not include: (i) any IPRs created independently of this Call-Off Contract; and/or (ii) any of the following IPRs which were owned by the Supplier or its third-party licensors on or before the Start Date (as enhanced or modified pursuant to this Call-Off Contract or otherwise):

- (a) any Supplier Background IPRs;
- (b) any IPRs owned or licensed by Supplier's third-party licensors; and

- (c) any IPRs in Supplier software owned by the Supplier;

**"Capgemini CI"** means Confidential Information or other commercially sensitive information disclosed by us (whether owned by us or not) under this Call-Off Contract;

**"Employment Liabilities"** means any losses, costs, demands, damages, claims (actual and threatened) or expenses (including any legal and other professional expenses) and all losses, damages, compensation and other liabilities incurred by either Party or by any of our sub-contractors arising out of or in connection with the employment or termination of employment of any person;

**"Fee Rates"** means the fee rates set out in our SFIA Rate Card;

**"General Terms of Business"** means the terms and conditions contained in this document;

**"Materials"** means all materials used, developed, or provided by us (including systems, Supplier Background IPRs, software, reports, correspondence and advice) but does not include Deliverables and those materials provided by or on behalf of you;

**"Personnel"** means a Party's directors, officers, employees, workers, agents, third-party service providers (including Subcontractors), successors, and assignees;

**"Request(s) for Information"** has the meaning set out in the Framework Agreement;

**"Transferring Employees"** means the persons employed by you or any of your sub-contractors prior to the Start Date wholly or mainly in the provision of services which become the Services and who have been identified to us as such no later than 14 days prior to the Start Date;

**"we", "us", "ours", "Capgemini"** means Capgemini UK plc; and

**"you", "yours"** means CCS or the Buyer whose details are set out in an Order Form.

### 14. Law

- 14.1. **Governing law:** This Call-Off Contract and any dispute or claim arising in connection with it shall be governed by the laws of England and Wales (or Scotland or Northern Ireland, if so agreed in an Order Form).

- 14.2. **Jurisdiction:** Subject to clause 15.1 and clause 32 of the Framework Agreement (which are incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract), these General Terms of Business shall be subject to the exclusive jurisdiction of the courts of England and Wales (or Scotland or Northern Ireland, if so agreed in an Order Form).

## About Capgemini

Capgemini is a global business and technology transformation partner, helping organizations to accelerate their dual transition to a digital and sustainable world, while creating tangible impact for enterprises and society. It is a responsible and diverse group of 340,000 team members in more than 50 countries. With its strong over 55-year heritage, Capgemini is trusted by its clients to unlock the value of technology to address the entire breadth of their business needs. It delivers end-to-end services and solutions leveraging strengths from strategy and design to engineering, all fueled by its market leading capabilities in AI, cloud and data, combined with its deep industry expertise and partner ecosystem. The Group reported 2023 global revenues of €22.5 billion.

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