

AGILISYS LOT 2 CLOUD SOFTWARE SUPPLIER TERMS

1 INTERPRETATION

1.1 In addition to the definitions set out in Schedule 6 to the Framework Agreement (Interpretations and Definitions) the definitions set out below shall apply to these Supplier Terms.

Call-Off Period	means the duration of the Call-Off Agreement of which these Supplier Terms form part;
Clause	means, unless indicated otherwise, a clause of these Supplier Terms;
CO-n	means a clause of the Call-Off Terms where 'n' is the clause number;
Customer's Obligations	means the Customer's obligations set out in Schedule 1 (Customer's Obligations) of these Supplier Terms;
Documentation	means the technical documentation provided by the Supplier in relation to the Software and/or G-Cloud Services;
Effective Date	means the date of the Call-Off Agreement;
G-Cloud Services	means the services provided by the Supplier to the Customer under the Call-Off Agreement, as set out in the Service Definition;
Parameters	means the parameters relating to the licence of the Software and/or the G-Cloud Services, as set out in the Service Definition (for example, the number of users authorised to use the Software and/or G-Cloud Services);
Project Plan	means the project plan that the Supplier and the Customer, both acting reasonably, shall agree for the Set Up Services;
Set Up Services	the configuration and related work to be performed by the Supplier for the Customer to configure the Software, including any additional Service Modules, as set out in the Project Plan;
Service Definition	means the Supplier's service definition which accompanies these Supplier Terms and forms part of the Supplier's offer in the G-Cloud Store;
Service Module	means a discrete element of the Software which provides specific functionality.
Software	means the software to which these Supplier Terms relate (including any third party modules forming part of the software), in machine-readable executable object code form only, as more particularly described in the Service Definition, including any error corrections, updates, upgrades, modifications and enhancements provided to the Customer under the Call-Off Agreement;
Supplier Terms	means these terms and conditions that form part of the Call-Off Agreement.

1.2 The Order Form and these Supplier Terms form part of the Call-Off Agreement.

PART A

2 SET UP SERVICES

- 2.1 The Customer and the Supplier shall work together so as to allow the Supplier to perform the Set Up Services. The Supplier shall use reasonable endeavours to meet any and all performance dates that may be set out in the Project Plan.

3 GRANT OF LICENCE

- 3.1 In consideration for the Charges paid by the Customer to the Supplier, the Supplier hereby grants to the Customer from the Effective Date a non-exclusive, revocable (for breach of the Call-Off Agreement), non-transferable (except as set out in Clause CO-11) licence to connect to the Supplier's software platform and to use the Software (as specified in the Order Form) for the duration of the Call-Off Period in accordance with the terms of the Call-Off Agreement and the Parameters set out in the Service Definition.
- 3.2 The rights granted under Clause 3.1 are granted to the Customer only (except as set out in Clause CO-11). All other rights are expressly reserved to the Supplier and, unless explicitly, allowed hereunder, the Customer shall not license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software and/or G-Cloud Services available to any third party.

4 CUSTOMER DATA

- 4.1 The Customer hereby grants to the Supplier (and shall procure the grant to the Supplier of) a royalty-free, non-transferable, non-exclusive right during the Call-Off Period the right to connect to any system or database containing the Customer Data and to access, process, copy and use the Customer Data under or in connection with the Call-Off Agreement for the sole purpose of providing the G-Cloud Services and performing its obligations under the Call-Off Agreement.

5 CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall cooperate with the Supplier in good faith so as to expeditiously and cost-effectively achieve the objectives of the Call-Off Agreement, and in particular shall comply with the Customer's Obligations and ensure its staff and any third party contractors comply where necessary.
- 5.2 If the Supplier is delayed or impeded, or obliged to spend additional time or incur additional expenses, in the performance of any of its obligations under the Call-Off Agreement by reason of any failure by the Customer or its third party contractors to comply with the Customer's obligations under the Call-Off Agreement, then:
- 5.2.1 the Supplier shall not be liable for any delay or default in performance to the extent that the same occurs as a result of such failure, and
 - 5.2.2 the Supplier shall be entitled to recover from the Customer the additional costs, wasted costs and/or additional expenses that it has reasonably incurred to the extent that the same occurs as a result of such failure.

6 WARRANTIES

- 6.1 The Supplier warrants to the Customer that:
- 6.1.1 the Software and the G-Cloud Services will operate substantially in

accordance with the functions and features set out in the Documentation;
and

- 6.1.2 the Software and the G-Cloud Services shall be provided with reasonable skill and care.
- 6.2 Except as set out for Customer Data in Clause 12.1 of these Supplier Terms, if the G-Cloud Services and/or Software do not conform to the warranties in Clause 6.1, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance in accordance with the support and maintenance service, or provide the Customer with an alternative means of obtaining the desired performance or functionality. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranties set out in in Clause 6.1 (but without prejudice to the Customer's remedy for breach of this Clause 6.2).
- 6.3 Notwithstanding the foregoing, the Supplier:
 - 6.3.1 does not warrant that the Customer's use of the Software and/or G-Cloud Services will be uninterrupted or error-free;
 - 6.3.2 does not warrant that the Software and/or G-Cloud Services and/or the information obtained by the Customer through the Software and/or G-Cloud Services will be error-free, accurate or meet the Customer's requirements; and
 - 6.3.3 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities (other than those communications networks and facilities controlled by the Supplier), and the Customer acknowledges that the Software and/or G-Cloud Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.4 The Supplier shall have no liability for any failure of the Software and/or G-Cloud Services to provide any facility or function if the failure results from:
 - 6.4.1 a modification or alteration of the Software by anyone other than the Supplier,
 - 6.4.2 any use of the Software in a manner contrary to the terms of the Call-Off Agreement and/or the instructions given to the Customer.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Customer agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Software and the G-Cloud Services. Except as expressly stated herein, the Call-Off Agreement does not grant the Customer any Intellectual Property Rights or licences in respect of the Software or the G-Cloud Services.
- 7.2 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 7.3 The Customer agrees that the Supplier has no obligation to the Customer, and undertakes no responsibility, to review the Customer Data or any content provided or received by the Customer through the use of the G-Cloud Services.

- 7.4 Where a customer procures Microsoft cloud products and services through the Supplier, the supplier will be acting as a reseller as part of Microsoft's Cloud Service Provider program. Microsoft require end customers to accept a the latest version of their customer agreement to receive service. The Supplier can provide the latest version of this document. Amongst other elements, the agreement will incorporate the Online ServicesTerms. <https://www.microsoft.com/en-gb/Licensing/product-licensing/products.aspx>

8 IPR INDEMNITY

- 8.1 The Supplier shall indemnify, defend and hold harmless the Customer on demand from and against all claims, actions, proceedings, and all damages, losses, fines, judgments, demands, fees, costs and expenses (including reasonable legal fees and disbursements) arising as a result of any action or claim by a third party that the that the Software and/or G-Cloud Services infringes the Intellectual Property Rights of a third party, provided that:
- 8.1.1 the Supplier is given prompt notice of such claim;
 - 8.1.2 the Customer provides information and reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense;
 - 8.1.3 the Supplier is given sole authority to defend or settle the claim; and
 - 8.1.4 the Customer shall not make any admissions which may be prejudicial to the defence or settlement of any claim without the Supplier's prior written consent.
- 8.2 In the defence or settlement of any claim referred to in Clause 8.1, the Supplier may obtain for the Customer the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Call-Off Agreement without further liability to the Customer.

PART B

9 TERMS FROM THE ORDER FORM

- 9.1 The provisions set out in this Clause 9 of these Supplier Terms shall form part of the Order Form as set out further below.
- 9.2 Paragraph 6.1 Payment. Invoice format. The Customer shall pay the Supplier within thirty (30) calendar days of receipt of a valid invoice.
- 9.3 Paragraph 8 Liability. Subject to the provisions of CO-24 'Liability' of the Call-Off Agreement:
- 9.3.1 The annual aggregate liability of either Party for all defaults resulting in direct loss of or damage to the physical property of the other Party under or in connection with the Call-Off Agreement shall in no event exceed £1 million.
 - 9.3.2 The annual aggregate liability under the Call-Off Agreement of the Supplier for all defaults (other than those covered by clause 9.3.1 above) shall in no event exceed the greater of £100,000 and or one hundred and twenty five per cent (125%) per cent of the Charges payable by the Customer to the

Supplier in the Year in which the liability arises or any anniversary thereof in which the liability arises.

10 SUBCONTRACTORS AND OTHER PERMISSIONS

- 10.1 The Customer hereby gives its written approval for the Supplier to use any Sub-Contractor identified in the Service Definition.
- 10.2 The Customer hereby gives its written approval for the Supplier to transfer Customer Personal Data to any Sub-Contractor approved in accordance with Clause 10.1 of these Supplier Terms for the provision of the G-Cloud Services contemplated by the Call-Off Agreement.
- 10.3 The Customer hereby gives its written approval for the Supplier to combine Customer Data (including personal data) with data collected by other customers to create cross-customer analyses, and to supply the results of its analyses to third parties, provided that in doing so it maintains both the anonymity of personal data and the anonymity of the customers contributing the data.
- 10.4 The Customer agrees that it shall agree and comply to the terms of any supplier or Sub-Contractor that the Supplier requires in the Service Description.

11 CUSTOMER PERSONAL DATA

- 11.1 The Customer undertakes (on a continuing basis for the duration of the Call-Off Period) that it has all the consents necessary to allow the transfer and processing of the Customer Personal Data by the Supplier and Sub-contractors (being Sub-contractors authorized pursuant to Clause CO-13) as part of the G-Cloud Services.

12 LIABILITY

- 12.1 Subject always to Clause CO-16, in the event of any corruption, loss or damage to Customer Data which occurs as a result of a breach by the Supplier of the terms of this Call-Off Agreement, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up maintained by the Supplier in accordance with the Supplier's archiving and back-up procedures.
- 12.2 The Supplier shall have the right to recover as a direct loss:
 - 12.2.1 any additional operational and/or administrative expenses arising from the Customer's default, delay, act, omission, negligence or negligent statement;
 - 12.2.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Supplier arising from the Customer's default, delay, act, omission, negligence or negligent statement; and
 - 12.2.3 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Supplier which arise out of or in connection with the Customer's default, delay, act, omission, negligence or negligent statement.
- 12.3 Except for the obligations implied by Section 2 of the Supply of Goods and Services Act 1982, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law including, without limitation, the implied

conditions, warranties or other terms as to satisfactory quality and fitness for purpose are, to the fullest extent permitted by applicable law, excluded from the Call-Off Agreement.

- 12.4 The Supplier makes no guarantee that the G-Cloud Services shall create any savings during the Call-off Contract Period or anytime after.

13 TERMINATION

- 13.1 The Supplier may terminate the Call-Off Agreement immediately at any time by written notice to the Customer if:

13.1.1 the Customer commits a material breach of its obligations under the Call-Off Agreement and (if such breach is remediable) fails to remedy that breach within 30 days of Customer being notified in writing of that breach; and

13.1.2 the Customer commits a material breach of its obligations under the Call-Off Agreement and such breach is not remediable.

- 13.2 The Supplier may terminate the Call-Off Agreement immediately at any time by written notice to the Customer if:

13.2.1 the Customer ceases to carry on its business;

13.2.2 a receiver, administrative receiver, liquidator, administrator or similar officer is appointed over all or any part of the assets or undertaking of the Customer and is not discharged within thirty (30) days of such appointment;

13.2.3 the Customer makes an assignment for the benefit of, or a composition with, all its creditors, or another arrangement or similar import;

13.2.4 the Customer shall go into liquidation otherwise than for the purposes of bona fide amalgamation or reconstruction, and

13.2.5 similar or analogous events occurring in relation to the Customer.

- 13.3 If the Supplier terminates the Call-Off Agreement pursuant to Clause 13.1 of these Supplier Terms, the Customer shall pay the Supplier within 30 days of the notice of termination, as liquidated damages (being a genuine pre-estimate of the anticipated loss), a sum equivalent to 15% of the Charges that would have been paid to Supplier for the remaining portion of the Call-Off Period had the Call-Off Agreement not been terminated.

14 TERMINATION WITHOUT CAUSE

- 14.1 Where the Customer terminates the Call-Off Agreement pursuant to Clause CO-18 (Termination without Cause), the Customer shall pay to the Supplier a sum equivalent to 15% of the Charges that would have been paid to Supplier for the remaining portion of the Call-Off Period after the effective date of termination had the Call-Off Agreement not been terminated.

- 14.2 The early termination fees provided for in Clause 14.1 of these Supplier Terms shall be paid within 30 days of the notice of termination. The Customer shall pay the Supplier's unavoidable costs, associated with Clause CO-195, within 30 days' of the Supplier's submission of the fully itemised and costed list of unavoidable loss

15 EFFECTS OF TERMINATION

- 15.1 On expiry, and on termination of the Call-Off Agreement, all licences granted under the Call-Off Agreement shall immediately terminate and the Customer shall:
- 15.1.1 delete all copies of the Software in the possession of, or under the control of, the Customer;
 - 15.1.2 pay to the Supplier any sums due to the Supplier under the Call-Off Agreement,
 - 15.1.3 return to the Supplier all equipment, property, Confidential Information and other items (and all copies of them) belonging to the Supplier
- 15.2 On expiry, and on termination of the Call-Off Agreement the Supplier shall provide the following exit and service transfer services, such services to be chargeable at the Supplier's Lot 4 day-rates:
- 15.2.1 the services required to provide a smooth handover of the G-Cloud Services, Customer Data and the Customer's Confidential Information to the Customer or as nominated by the Customer, and
 - 15.2.2 the Supplier shall comply with Clause CO-13. Data and Confidential Information shall be returned to the Customer in its then current format or in a format nominated by the Customer (in which event the Customer will reimburse the Supplier's reasonable data conversion expenses calculated at the Supplier's Lot 4 SCS/day-rates.
- 15.3 The Customer recognises that the Supplier has spread its set up and implementation costs across the term of the Call-Off Agreement, and that Clause CO-7 shall not be capable of application by merely pro-rating the Charges over the term of the Call-Off Agreement and that accordingly the Supplier may recover unbilled set up and implementation costs in full before returning sums under Clause CO-7

16 SURVIVING CLAUSES

- 16.1 Those Clauses the survival of which is necessary for the interpretation or enforcement of the Call-Off Agreement, or which by their nature can be reasonably interpreted as surviving the expiry or termination of the Call-Off Agreement, shall continue to have effect after expiry or termination of the Call-Off Agreement.

17 COMMERCIAL TERMS

- 17.1 **Payment terms.** Unless Charges are otherwise expressed to be due and payable on a particular date, payment of invoices shall be made by the Customer in Pounds Sterling within thirty (30) days of the date of each invoice to a bank account nominated in writing by the Supplier.
- 17.2 **Disputed invoices.** If the Customer (acting in good faith) disputes part or all of any invoice on reasonable grounds, it shall notify the Supplier in writing as soon as is reasonably possible identifying clearly the disputed part of such invoice and the reasons why it is challenged. If the dispute exists in relation to part only of an invoice, the Customer shall pay the undisputed amount in accordance Clause 17.1.
- 17.3 **No deductions.** All amounts due under the Call-Off Agreement shall be paid in full by

the Customer without any deduction or withholding other than as required by law and the Customer shall not be entitled to assert any credit, set-off, deduction, counterclaim or abatement of any nature whatsoever against the Supplier in order to justify withholding payment of any such amount in whole or in part.

- 17.4 **Expenses.** The Supplier shall be entitled to pass on the cost of hotels, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals engaged by the Supplier in the provision of the Software and/or the G-Cloud Services to the Customer, provided such costs are reasonable and supported by appropriate documentation.
- 17.5 **Indexation.** The Supplier shall be entitled, with effect from each anniversary of the Effective Date, to adjust the Charges by giving the Customer not less than one (1) month's prior written notice before such revised Charge is applied provided that:
- 17.5.1 such increase shall not exceed the greater of (i) 5% (five per cent); or (ii) a percentage equal to the percentage increase in the Retail Price Index provided by the Office for National Statistics, in each case during the period since the last such increase or, if there has been no such increase, during the period since the Effective Date; and
- 17.5.2 no increase shall in respect of the current price list be made until a period of not less than 12 (twelve) months has elapsed since the date on which the immediately preceding increase came into effect.
- 17.6 **Audit.** The Supplier shall have the right to audit the Customer's use of the Software on giving such prior notice to the Customer as is reasonable in the circumstances.

Schedule 1 Customer's Obligations

1 The Customer shall:

- 1.1 provide the Supplier in a timely manner with:
 - 1.1.1 all necessary co-operation in relation to the Call-Off Agreement; and
 - 1.1.2 all necessary access to such relevant information and documentation as may be required by the Supplier;

in order to deliver the G-Cloud Services and provide access to the Software in accordance with the Call-Off Agreement, including but not limited to security access information and configuration information;
- 1.2 comply with all applicable laws and regulations with respect to its activities under the Call-Off Agreement (including, without limitation, in relation to its use of the Software and the G-Cloud Services);
- 1.3 carry out all other Customer responsibilities set out in the Call-Off Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 1.4 ensure that its employees and sub-contractors use the Software and G-Cloud Services in accordance with the terms and conditions of the Call-Off Agreement;
- 1.5 obtain and shall maintain all necessary licences (including APIs), consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Call-Off Agreement;
- 1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
- 1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres;
- 1.8 provide the Supplier, at no cost to the Supplier, access during Normal Business Hours to its computer systems and facilities as the Supplier may reasonably consider necessary for performance of its obligations;
- 1.9 ensure that any and all its employees and sub-contractors using the Software have received adequate training and undertake to carry out their role in relation to the operation of the Software in line with good industry practice and in accordance with the Services Description and any relevant documentation and reasonable advice given by the Supplier or its licensors;
- 1.10 be responsible for the accuracy of the inputs to and the outputs from the software products used in conjunction with the Software, as well as ensuring the parameters of the Software are set correctly for the administration, processing of data and calculations in accordance with any legal, accounting or tax requirements;
- 1.11 ensure that its operating systems and database software (and those of its sub-

contractors) are at all times compatible with the Software and are not malfunctioning in a way that adversely affects the operation of the Software;

- 1.12 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify the Supplier promptly of any such unauthorised access or use;
- 1.13 not remove any product identification or copyright and other notices of ownership which are displayed when using the Software;
- 1.14 ensure (at no cost to the Supplier) that any third party providers of systems (or other systems which the Software is to integrate or communicate with) provide all reasonable and necessary co-operation and assistance to deliver the necessary interfaces with the Software.
- 1.15 use reasonable endeavours to ensure that the Software or G-Cloud Services do not store, distribute or transmit any virus or other malicious software;
- 1.16 not use the Software or G-Cloud Services to store, distribute or transmit any unlawful, harmful, threatening material in using the G-Cloud Services or otherwise use the G-Cloud Services to facilitate any illegal activities;
- 1.17 not except as may be allowed by any applicable law and except to the extent permitted under the Call-Off Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- 1.18 not access all or any part of the G-Cloud Services in order to build a product or service which competes with all or any part of the G-Cloud Services;
- 1.19 attend and participate in the conference room pilots and workshops so that work on the configuration and implementation of the Software is kept within the limits stated in the Service Definition and/or allowed for in the Project Plan;
- 1.20 (to a reasonable extent) contribute to focus groups relating to the future development of the Software and the G-Cloud Services.