

AGILISYS LOT 1 HOSTING SUPPLIER TERMS

1 INTERPRETATION

- 1.1** The definitions set out below shall apply to these Supplier Terms. The definitions set out in the Call-Off Terms and the clauses of the Framework Agreement shall apply in these Supplier Terms.

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| Call-Off Period | means the duration of this Call-Off Agreement; |
| 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 section 15 of the Service Definition and Schedule 1 of these Supplier Terms; |
| Documentation | means the Service Definition; |
| Effective Date | means the date of this Call-Off Agreement; |
| G-Cloud Services | means the services provided by the Supplier to the Customer under this Call-Off Agreement, as more particularly described in the Service Definition; |
| 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 to configure the G-Cloud Services for the Customer 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 on the G-Cloud Store; |
| Supplier Terms | means these terms and conditions; |

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 endeavors to meet any and all performance dates that may be set out in the Project Plan.

3 CUSTOMER'S OBLIGATIONS

- 3.1** The Customer shall cooperate with the Supplier in good faith so as to expeditiously and cost-effectively achieve the objectives of this Call-Off Agreement, and in particular shall

comply with the Customer's Obligations.

- 3.2** The Customer shall be responsible (to the exclusion of the Supplier) for the software that the Customer loads onto the infrastructure provided by the Services.
- 3.3** The Customer shall ensure that the software provided by the Customer is and remains compatible with the G-Cloud Services. The Supplier shall not be liable for any failure of the Services to interface with other hardware or any software not approved by the Supplier.
- 3.4** 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 this Call-Off Agreement by reason of any failure by the Customer or its third party contractors or its staff to comply with the Customer's obligations under this Call-Off Agreement, then:
 - 3.4.1** 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
 - 3.4.2** 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.

4 WARRANTIES

- 4.1** The Supplier warrants to the Customer that:
 - 4.1.1** the G-Cloud Services will operate substantially in accordance with the functions and features set out in the Documentation; and
 - 4.1.2** the G-Cloud Services shall be provided with reasonable skill and care.
- 4.2** Except as set out for Customer Data in Clause 9.1 of these Supplier Terms, if the G-Cloud Services do not conform to the warranties in Clause 4.1, the Supplier will, at its expense, use all reasonable commercial endeavors to correct any such non-conformance in accordance with the Support & 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 4.1 (but without prejudice to the Customer's remedy for breach of this Clause 4.2).
- 4.3** Notwithstanding the foregoing, the Supplier:
 - 4.3.1** does not warrant that the Customer's use of the G-Cloud Services will be uninterrupted or error-free;
 - 4.3.2** does not warrant that the G-Cloud Services and/or the information obtained by the Customer through the G-Cloud Services will be error-free, accurate or meet the Customer's requirements; and
 - 4.3.3** 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 G- Cloud Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.4** The Supplier shall have no liability for any failure of the G-Cloud Services to provide any facility or function if the failure results from use of the G-Cloud Services in a manner contrary to the terms of this Call-Off Agreement and/or the instructions given to the Customer.
- 4.5** The Supplier does not guarantee that the G-Cloud Services shall result in any savings

for the Customer during the Call-Off Period or any time after.

5 INTELLECTUAL PROPERTY RIGHTS

- 5.1** The Customer shall own all rights, title and interest in and to all the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2** All intellectual property rights in the Supplier's pre-existing material shall (as between the Customer and the Supplier) be owned by the Supplier.

PART B

6 TERMS FROM THE ORDER FORM

- 6.1** The provisions set out in this Clause 6 of these Supplier Terms shall form part of the Order Form as set out further below.
- 6.2** Invoice format. The Customer shall pay the Supplier within thirty (30) calendar days of receipt of a valid invoice.
- 6.3** Subject to the provisions of CO-24 'Liability' of the Call-Off Agreement:
 - 6.3.1** 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 this Call-Off Agreement shall in no event exceed £1million.
 - 6.3.2** The annual aggregate liability under this Call-Off Agreement of the Supplier for all defaults (other than those covered by clause 6.3.1 above) shall in no event exceed the greater of £100,000 and or one hundred and twenty five per cent (125%) 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.

7 SUBCONTRACTORS AND OTHER PERMISSIONS

- 7.1** In accordance with Clause CO-16.1, the Customer hereby gives its written approval for the Supplier to use any Sub-Contractor identified in the Service Definition.
- 7.2** The Customer hereby gives its written approval for the Supplier to transfer Customer Personal Data to any Sub-Contractor approved in accordance with Clause 7.1 of these Supplier Terms for the provision of the G- Cloud Services contemplated by this Call-Off Agreement.
- 7.3** 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.
- 7.4** 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.
- 7.4** Where a customer procures Microsoft cloud products and services through Agilisys, Agilisys 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 Services Terms. <https://www.microsoft.com/en-gb/Licensing/product-licensing/products.aspx>

8 CUSTOMER PERSONAL DATA

- 8.1** 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 as part of the G-Cloud Services.

9 LIABILITY

- 9.1** Subject always to Clause CO-24, 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.
- 9.2** The Supplier shall have the right to recover as a direct loss:
- 9.2.1** any additional operational and/or administrative expenses arising from the Customer's default, delay, act, omission, negligence or negligent statement;
 - 9.2.2** 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
 - 9.2.3** 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.
- 9.3** 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 this Call- Off Agreement.

10 TERMINATION

- 10.1** The Supplier may terminate this Call-Off Agreement immediately at any time by written notice to the Customer if:
- 10.1.1** the Customer commits a material breach of its obligations under this 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
 - 10.1.2** the Customer commits a material breach of its obligations under this Call- off Agreement and such breach is not remediable.
- 10.2** The Supplier may terminate this Call-Off Agreement immediately at any time by written notice to the Customer if:
- 10.2.1** the Customer ceases to carry on its business;
 - 10.2.2** 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;
 - 10.2.3** the Customer makes an assignment for the benefit of, or a composition with, all

its creditors, or another arrangement or similar import;

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

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

10.3 If the Supplier terminates this Call-Off Agreement pursuant to Clause 10 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 this Call-Off Agreement not been terminated.

11 TERMINATION WITHOUT CAUSE

11.1 Where the Customer terminates this Call-Off Agreement pursuant to Clause CO-18 (Termination without Cause), the Customer shall pay to the Supplier, in addition to the sums provided for in Clause CO-19, 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 the termination notice had this Call-Off Agreement not been terminated.

11.2 The early termination fees provided for in Clause 11 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-19.5, within 30 days' of the Supplier's submission of the fully itemised and costed list of unavoidable loss

12 EFFECTS OF TERMINATION

12.1 On expiry, and on termination of this Call-Off Agreement, all licenses granted under this Call-Off Agreement shall immediately terminate and the Customer shall:

12.1.1 pay to the Supplier any sums due to the Supplier under this Call-Off Agreement,

12.1.2 return to the Supplier all equipment, property, Confidential Information and other items (and all copies of them) belonging to the Supplier

12.2 On expiry, and on termination of this 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:

12.2.1 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

12.2.2 the Supplier shall comply with Clause CO-33. 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.

12.3 The Customer recognises that the Supplier has spread its set up and implementation costs across the term of this Call-Off Agreement, and that Clause CO-33 shall not be capable of application by merely pro-rating the Charges over the term of this Call- Off Agreement and that accordingly the Supplier may recover unbilled set up and implementation costs in full before returning sums under Clause CO-33.

13 SURVIVING CLAUSES

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

14 COMMERCIAL TERMS

- 14.1** 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.
- 14.2** 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 14.1.
- 14.3** No deductions. All amounts due under this 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.
- 14.4** 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 G-Cloud Services to the Customer, provided such costs are reasonable and supported by appropriate documentation.
- 14.5** 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:
- 14.5.1** 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
 - 14.5.2** 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.

Schedule 1: Customer 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 this Agreement; and
 - 1.1.2** all necessary access to such relevant information, software, systems and documentation as may be required by the Supplier;in order to allow the Supplier to provide the G-Cloud Services in accordance with this Agreement;
- 1.2** comply with all applicable laws and regulations with respect to its activities under this Agreement (including, without limitation, in relation to its use of the G-Cloud Services);
- 1.3** carry out all other Customer responsibilities set out in this 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 personnel use the G-Cloud Services in accordance with the terms and conditions of this Agreement and it shall be responsible for any of its users' breaches of this Agreement as if they were its;
- 1.5** obtain and shall maintain all necessary licenses (including APIs), consents, and permissions necessary to enable the relevant systems of the Customer (or sub-contractors of the Customers) to connect with the G-Cloud Services;
- 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** ensure that any and all users of the G-Cloud Services have received adequate training and that they undertake to carry out their role in relation to the operation of the G-Cloud Services, in line with good industry practice and any relevant documentation and reasonable advice given by the Supplier or its providers;
- 1.9** ensure that its operating systems and software are at all times compatible with the G-Cloud Services;
- 1.10** use all reasonable endeavours to prevent any unauthorised access to, or use of, the G-Cloud Services and notify the Supplier promptly of any such unauthorised access or use;
- 1.11** ensure that any third party providers of services or systems (or other systems which the G-Cloud Services is to integrate with) provide all reasonable and necessary co-operation and assistance to deliver the necessary interfaces with the G-Cloud Services, such third party services shall be procured by the Customer at the Customer's cost and expense.

2 The Customer shall not:

- 2.1** use the G-Cloud Services to store, distribute or transmit any viruses or malicious software;
- 2.2** use the G-Cloud Services to store, distribute or transmit any unlawful, harmful or threatening material or otherwise use the G-Cloud Services to facilitate any illegal

activities;

- 2.3** use the G-Cloud Services for any uses for which the G-Cloud Services were not intended;
- 2.4** use the G-Cloud Services to provide services to third parties;
- 2.5** attempt to obtain, or assist third parties in obtaining, access to the G- Cloud Services.