



## **Data Pillar Limited - G-Cloud 14 Terms and Conditions**

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In these terms and conditions the following expressions will have the following meanings unless inconsistent with the context:

<b>“Access”</b>	means the Customer’s remote and/ or electronic access to the Services;
<b>“Authority”</b>	means Government Procurement Service;
<b>“BCP”</b>	means Business Continuity Plan;
<b>“Business Day”</b>	means any day other than a Saturday or Sunday or a public or bank holiday in England;
<b>“Business Hours”</b>	means the hours between 9:00am and 5:30 pm Monday to Friday on any Business Day or such other times as are agreed in writing by DataPillar;
<b>“Charges”</b>	means the charges in respect of the Services to be paid by the Customer to DATAPILLAR as set out in the G-Cloud Order Form;
<b>“Code of Connection”</b>	means the applicable code of connection detailed in the Technical Specification a copy of which the Customer acknowledges that it has received and agrees to comply with;
<b>“Contracting Body”</b>	means the Authority and any other person as listed in the OJEU Notice or Regulation 3 of the Public Contracts Regulations 2006, as amended from time to time;
<b>“Customer”</b>	means the Contracting Body identified in the applicable G-Cloud 14 Order Form;
<b>“G-Cloud 14 Call-Off Agreement”</b>	means an agreement between DATAPILLAR and a Customer formed upon agreement of a G-Cloud 14 Order Form in accordance with the G-Cloud 14 Framework Agreement;
<b>“G-Cloud 14 Order Form”</b>	means the prescribed form issued by GPS in connection with the G-Cloud 14 Framework Agreement for ordering G-Cloud Services;
<b>“G-Cloud 14 Service Definitions”</b>	means the applicable G-Cloud 14 Service Definitions issued by DATAPILLAR in accordance with the G-Cloud 14 Services Framework Agreement and agreed by DATAPILLAR and a Customer in a G-Cloud 14 Call-Off Agreement;

<b>“DR” “DataPillar”</b>	means disaster recovery; Data Pillar Limited
<b>“Good Industry Standards”</b>	means levels of performance which would reasonably be expected from a skilled and experienced provider of services of the same nature of the Services;
<b>“Hardware”</b>	means the DATAPILLAR owned and managed hardware which DATAPILLAR uses to supply the Services to the Customer;
<b>“Hours of Support”</b>	shall mean any hours detailed in DATAPILLAR’s G-Cloud Service Definitions during which DATAPILLAR shall provide certain elements of the Services relating to support;
<b>“Incident”</b>	shall mean an event relating to the Services affecting service delivery in respect of which either DATAPILLAR proactively offers assistance or is requested by the Customer to provide assistance in accordance with the terms of a G-Cloud 7 Call-Off Agreement and the Services purchased by the Customer;
<b>Incident Resolution”</b>	shall mean the point in time at which DATAPILLAR (acting reasonably at all times) considers an Incident to have been successfully resolved by the returning of the relevant Services to a level of performance substantially in accordance with its specification or by DATAPILLAR referring the Incident to the relevant third party provider or Resolver Group;
<b>“Intellectual Property Rights”</b>	means copyrights, moral rights, patents, supplementary protection certificates, trade marks, trade names, service marks, design rights, database rights, rights in goodwill, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)), and other similar or related intellectual property rights (whether registered or not) and applications for such rights anywhere in the world;
<b>“Internet”</b>	means the global data network comprising interconnected networks using the transmission control protocol or Internet protocol;
<b>“Location(s)” or “Sites”</b>	means the premises or other locations from and to which the Services are to be provided to the Customer or a user as specified in G-Cloud 14 Order Form;
<b>“Name”</b>	means any name specifically requested by or allocated to the Customer for use with the Services and shall include, without limitation, any domain name or mailbox name;
<b>“Out of Hours”</b>	shall mean any non Business Hours

<b>“Party”</b>	means DATAPILLAR or the applicable Customer (as appropriate) and “Parties” shall be construed accordingly;
<b>“DATAPILLAR Service Desk”</b>	the contact point for the Customer within DATAPILLAR for raising Incidents or Service Requests;
<b>“Severity Level”</b>	means the severity levels specified in the G-Cloud 14 Service Definitions;
<b>“Service Commencement”</b>	means the date(s) set out in the G-Cloud 14 Order Form;
<b>“Service Delivery Manager”</b>	the appointed individual within DATAPILLAR who takes overall ownership of the delivery of the Services to the Customer;
<b>“Services Equipment”</b>	means any equipment provided by DATAPILLAR to the Customer in connection with the provision of the Services;
<b>“Service Levels” or “SLA”</b>	means the target level of the Services set out in the G-Cloud 6 Service Definitions;
<b>“Service Owner”</b>	the Customer employee responsible for the overall day to day management of the Services on behalf of the Customer;
<b>“Service Period”</b>	means the service period(s) defined in the Technical Specification;
<b>“Services”</b>	the services described in the applicable G-Cloud 14 Order Form agreed with the Customer in accordance with the G-Cloud 1 Framework Agreement;
<b>“Technical Specification”</b>	means the Customer Premises Equipment, connectivity, functionality and Service specifications detailed in the G-Cloud 14 Service Definitions together with the Code of Connection;

1.2 In these terms and conditions unless the context otherwise requires any reference to:

- 1.2.1 a "Clause", "Annex" or "Appendix" is a reference to a Clause, Annex or appendix in these terms and conditions;
- 1.2.2 the word "including" or "includes" shall mean "including without prejudice to the generality of the foregoing phrase or term" and references to "written", "in writing" or any similar expression shall include all data in written form whether represented in hand-writing, facsimile, printed, electronic or other format;
- 1.2.3 any reference to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof from time to time in force and to include any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder and any condition attaching thereto;
- 1.2.4 the Parties shall include their permitted successors and assigns;
- 1.2.5 an obligation on a Party not to do any act or thing shall be deemed to include an obligation not to permit or suffer the doing of that act or thing;
- 1.2.6 another agreement or any deed or other instrument shall be construed as a reference to that other agreement deed or other instrument as from time to time amended, varied, supplemented or novated;
- 1.2.7 headings in these terms and conditions are inserted for convenience only and shall not affect the interpretation of these terms and conditions;
- 1.2.8 to the singular include the plural, references to any gender include all other genders, and references to "persons" shall include individuals, bodies corporate, unincorporated associations, professions, businesses and partnerships; and
- 1.2.9 the Clause, Annex, and Appendix headings of these terms and conditions are for ease of reference only and shall not affect the interpretation or construction of these terms and conditions.

## **2. APPOINTMENT / COMMENCEMENT/ DURATION**

- 2.1 DataPillar shall provide the Services for the duration specified in the applicable G-Cloud 14 Order Form signed by DataPillar subject to the provisions for earlier termination set out in Termination of these terms and conditions. DATAPILLAR shall be under no obligation to accept G-Cloud 14 Order Forms from a Customer and shall be under no obligation to provide Services unless and until it has signed a G-Cloud 14 Order Form.

### **3. CHANGE CONTROL**

Either Party may submit a change request in respect of the Services and/or a G-Cloud 14 Call-Off Agreement.

- 3.1 DATAPILLAR may from time to time give instructions to the Customer about the use of the Services which DATAPILLAR reasonably considers to be necessary for any reason, including without limitation in the interests of security, or in the interests of the quality of the Services to DATAPILLAR's other customers. The Customer shall at all times abide by any such instructions.
- 3.2 Prior to DATAPILLAR acting on the project, DATAPILLAR will give as much on-line, written and/or oral notice as it, in its sole discretion, deems to be necessary.

#### **4. CHARGES**

- 4.1 The Charges will be calculated in accordance with the applicable G-Cloud 14 Call-Off Agreement and are exclusive of any value added tax or other applicable sales tax or duty which will be added to the sum in question.



## **5. LOSS OF SOFTWARE AND DATA SECURITY**

The Customer acknowledges that DATAPILLAR does not have any knowledge of the quantity or value of the data or software used by the Customer in utilising the Services. The Customer shall take all reasonable steps to mitigate the risks of data and software loss inherent in its use of the Services. The Services that DATAPILLAR has agreed to provide to assist the Customer to mitigate such loss including any back-up of data and software (if applicable) are set out in the G-Cloud 14 Service Definitions. The Customer agrees that DATAPILLAR shall not be liable for loss of Customer data or software to the extent that the Customer data or software has changed since the time that DATAPILLAR was last required to perform a backup (if a back-up was required) pursuant to a G-Cloud 14 Call-Off Agreement.

DATAPILLAR is not responsible to the Customer or any third party for unauthorised access to the Customer's data or software or the unauthorised use of the Services unless the unauthorised access or use results from DATAPILLAR's negligence or its failure to meet its security obligations set out in a G-Cloud 14 Call-Off Agreement.

## 6. TERMINATION

Either Party may by notice in writing served on the other Party terminate a G-Cloud 14 Call-Off Agreement forthwith if:

- 6.1.1 the other Party is in material breach of any of the terms of a G-Cloud 14 Call-Off Agreement and, where the breach is capable of remedy, the other Party fails to remedy such breach within thirty (30) days service of a written notice from the Party not in default, specifying the breach and requiring it to be remedied; or
- 6.1.2 the other Party;
  - 6.1.2.1 convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors; or
  - 6.1.2.2 if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
  - 6.1.2.3 if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party; or
  - 6.1.2.4 if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction); or
  - 6.1.2.5 other circumstances arise which entitle the court or a creditor to appoint a receiver, administrator or administrative receiver to make a winding up order in relation to the other party; or
  - 6.1.2.6 has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Clause 6.1.2.

## **7. INTELLECTUAL PROPERTY**

- 7.1 All Intellectual Property Rights in or in relation to the Services (including any manuals and operating documentation relating thereto) or in any materials (including software) provided by DATAPILLAR during the course of supplying the Services shall vest in DATAPILLAR or its suppliers as the case may be. The Customer shall have no title to or interest in any such Intellectual Property Rights except to the extent specifically set out in a G-Cloud 14 Call-Off Agreement.
- 7.2 DATAPILLAR shall be free to utilise for the benefit of its other customers any skill and/or know-how that it may develop or acquire in the performance of the Services.
- 7.3 The Customer shall notify DATAPILLAR immediately if it becomes aware of any illegal or unauthorised use of any of the Intellectual Property Rights in the Services and will assist DATAPILLAR and/or its suppliers in taking steps necessary to defend the owners' rights.
- 7.4 To the extent that the Customer provides DATAPILLAR, for the purpose of or in connection with providing the Services, with any materials, including the data and/ or software supplied by the Customer, in respect of which the Customer owns (or is licensed by a third party to use) the Intellectual Property Rights, DATAPILLAR acknowledges and agrees that nothing in a G-Cloud 14 Call-Off Agreement grants to DATAPILLAR any right, title or interest in such materials other than a limited non-exclusive right to use or process those materials solely for the purposes of providing the Services. All Intellectual Property Rights in such materials are and shall remain the exclusive property of the Customer or (if applicable) its third party licensors.
- 7.5 Subject to the provisions of this Clause 7, the Customer undertakes that it shall not (and that it shall not employ nor permit any third party to) attempt to copy, adapt, amend, disassemble, de-compile or reverse engineer any software supplied by DATAPILLAR under a G-Cloud 14 Call-Off Agreement except to the extent allowed by English law.
- 7.6 The Customer further acknowledges that any software supplied by DATAPILLAR and all accompanying operating documentation and manuals are confidential and subject to this terms and conditions.

## **8. LAW AND JURISDICTION**

A G-Cloud 14 Call-Off Agreement and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England and Wales. All disputes or claims arising out of or relating to a G-Cloud 14 Call-Off Agreement shall be subject to the exclusive jurisdiction of the English and Welsh Courts to which the parties irrevocably submit.