



# Redcentric Supplier Terms

## G Cloud 14

April 2024

redcentric

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# Part A: General Terms

- 1.1 This document is the Supplier Terms as defined in the table at Schedule 3 to the Framework Agreement. These Supplier Terms apply to G-Cloud Services ordered by the Buyer from the Supplier under a Call-Off Contract.
- 1.2 The relationship between the Supplier Terms and the other components of the Call-Off Contract is as prescribed in the Call-Off Contract, and in particular the order of priority between such components is set out in Part A Clause CO 1.4

## 2 Applicability of the parts of these Supplier Terms

- 2.1 The Supplier Terms have been separated into different parts to cover the different types of G-Cloud Services that can be ordered from the Supplier by the Buyer.
- 2.2 The terms and conditions set out in Part A (“**General Terms**”) apply to all the G-Cloud Services; specific sections of the additional terms set out in Part B (“**Additional Terms**”) apply to those G-Cloud Services that are listed in the table below, but not to any other G-Cloud Service Types:

Service Name	Lot	Service for the purpose of the Supplier Terms	Additional Terms in Part B that apply
Access as a Service	1	Network	Section B
Backup as a Service	1	Backup as a Service	Section I
Database as a Service	1	Managed Cloud	Section L
DDOS Mitigation Service	1	Network	Section B
Disaster Recovery as a Service	1	Disaster Recovery	Section K
Healthcare Secure Remote Access	1	Network	Section B
Infrastructure Recovery	1	Infrastructure Recovery	Section J
Managed Firewall Service	1	Network	Section B
Managed LAN Switch Services	1	Network	Section B
Managed SD WAN Service	1	Network	Section B
Managed Server as a Service	1	Managed Cloud	Section L
Managed Wireless LAN Service	1	Network	Section B
Meraki Connectivity and Security	1	Network	Section B
Monitoring as a Service	1	Managed Cloud	Section L
Physical Workplace	1	Physical Workplace	Section J
Redcentric Cloud	1	Managed Cloud	Section L
Redcentric Sovereign Cloud	1	Managed Cloud	Section L
Secure Remote Access Service	1	Network	Section B
Storage as a Service	1	Managed Cloud	Section L
Two Factor Authentication	1	Network	Section B

Service Name	Lot	Service for the purpose of the Supplier Terms	Additional Terms in Part B that apply
Wireless Guest Access	1	Network	Section B
Call Recording	2	Voice	Section A
Cirrus Omnichannel contact centre	2	Voice	Section A
Microsoft Teams Calling	2	Voice	Section A
Omnichannel contact centre for Microsoft Teams	2	Voice	Section A
Teams Insights	2	Voice	Section A
Unity IP Voice	2	Voice	Section A
Unity Call Reporting	2	Voice	Section A
Unity on a SIM	2	Voice	Section A
Cyber Incident Response Services	3	Cyber Services	Section H
Cyber Security Professional Services	3	Cyber Services	Section H
Managed Public Cloud AWS	3	Managed Public Cloud AWS	Section M
Managed Public Cloud Azure	3	Microsoft Products	Section G
Managed Vulnerability Scanning	3	Cyber Services	Section H
Modern Workplace 365	3	Microsoft Products	Section G
Any Services that consume Microsoft services and software	1, 2, 3	Microsoft Products	Section G

- 2.3** If there is any conflict between any provision of the General Terms and the Additional Terms, those Additional Terms that apply to the relevant G-Cloud Service shall take precedence over the General Terms, but in all other cases the General Terms will take precedence to the extent necessary to resolve the conflict.

### 3 Definitions and Interpretation

- 3.1** Unless otherwise explicitly stated in these Supplier Terms, all capitalised terms used in the Supplier Terms shall have the meaning given to them in the Call-Off Contract or the Framework Agreement (as the case may be).
- 3.2** “**CO**” shall be a reference to the relevant Clause in the Call-Off Contract and “**FW**” shall be a reference to the relevant provision of the Framework Agreement.
- 3.3** In these Supplier Terms the following terms shall have the following meaning:
- “**Acceptance Criteria**” means those aspects of a G-Cloud Service that are described under the heading “Acceptance Criteria” in the relevant Service Definitions.
- “**Additional Terms**” has the meaning given in Clause 2.
- “**Availability**” has the meaning set out in Clause 7.7.
- “**Call-Off Contract**” has the meaning given in the table in FW Schedule 3 (Glossary and interpretations), together with any Buyer Specification, any document referred to in the Order Form, and the applicable Service Definitions and where relevant these Supplier Terms.
- “**Buyer Dependency**” means any obligation upon the Buyer under the Call-Off Contract from time to time upon which the Supplier is to any extent reliant in order to allow the Supplier or its subcontractors to roll out,

provide or decommission any G-Cloud Service, including any obligation which is expressly stated to be a Buyer Dependency or a Buyer responsibility in the Order Documents.

**“Buyer Equipment”** means any hardware (including Buyer Racks provided by the Buyer) or other equipment which the Supplier permits the Buyer to bring onto, install or operate at any premises of the Supplier as part of a G-Cloud Service.

**“Buyer Racks”** means the racks or cabinets, for the time being provided by the Supplier or the Buyer for installation in any data centers of the Supplier as part of a G-Cloud Service, in which the Buyer Equipment is housed.

**“Buyer Specification”** means a document of that name prepared by the Supplier in relation to G-Cloud Services and which sets out the technical specification of those G-Cloud Services and any roll-out or installation timetable; if there is a Buyer Specification it will be referred to in the Order Form.

**“Buyer Technical Summary”** means a detailed technical summary of the IT and/or communications infrastructure of the Buyer or the Buyer’s data storage, irrespective of whether it was (1) prepared by the Buyer; or (2) prepared by the Supplier on the basis of information provided by the Buyer. If there is a Buyer Technical Specification it will be referred to in the Order Form.

**“Call-Off Term”** means the period of the Call-Off Contract as specified in the Order Form.

**“Change in Law”** means any change in any Law occurring after the date of an Order Form affecting the Supplier and other suppliers of services which are the same or similar to the G-Cloud Services and which results in an increase in the cost to the Supplier of providing any or all of the G-Cloud Services in the Order Form.

**“Charges”** means the charges payable by the Buyer to the Supplier in respect of each G-Cloud Service, as set out in the Order Form.

**“CPI”** means the Consumer Prices Index published by the UK’s Office for National Statistics from time to time (or if that index ceases to be published or another body takes over publication, the nearest equivalent that the Supplier notifies to the Buyer from time to time).

**“End User”** means an individual user of a G-Cloud Service or categories of such users as permitted under Clause 14.1.

**“Equipment”** means any equipment used in the provision of a G-Cloud Service (whether it is installed at the Buyer’s or the Supplier’s premises) which is owned by the Supplier or a third-party provider to the Supplier.

**“Floor Service Level”** means the level of performance of a G-Cloud Service below which Service Credits are not the only remedy; any such level is set out in the relevant Service Definition.

**“Framework Agreement”** has the meaning given in the table at Schedule 3 FW.

**“General Conditions of Entitlement”** means the general conditions of entitlement notified by Ofcom under section 48 of the Communications Act 2003 from time to time.

**“General Terms”** has the meaning given in Clause 2.2.

**“Monitoring Requirements”** means any and all laws, enactments, orders, regulations, directives, codes of practice or other similar instruments (whether voluntary or compulsory) which are relevant to the G-Cloud Services provided by the Supplier and/or its Supplier Staff under the Call-Off Contract from time to time and which relate to the recording, interception, storage and/or disclosure of data for the purposes of safeguarding national security and/or preventing or detecting of crime and/or prosecution of offenders, including the Regulation of Investigatory Powers Act 2000, the Terrorism Act 2000, the Data Retention (EC Directive) Regulations 2009, and the Retention of Communications Data (Code of Practice) Order 2003, the Investigatory Powers Act 2016 and any requirements with similar effects that exist from time to time.

**“Ofcom”** means the UK’s communications regulator of that name, or any regulator that is successor to some or all of those responsibilities.

**“Order Documents”** means these Supplier Terms, the Order Form, a Buyer Specification, any document referred to in the Order Form, and the applicable Service Definition.

**“Planned Outage”** means any time between 04:00 hours and 06:00 hours on a Tuesday or Thursday



(except for any managed back up G-Cloud Service or managed archive G-Cloud Service where it is any time between 11:00 hours and 15:00 hours on a Tuesday or Thursday) during which maintenance activities are taking place; the terms includes such other times as are required in an emergency (and in an emergency the Supplier will use its reasonable efforts to avoid disruption in core service hours for the relevant G-Cloud Service and to give notice at the earliest opportunity).

**“Professional Services”** means services provided by the Supplier on a time and materials basis at the Professional Services Rates and in accordance with Section G of the Additional Terms.

**“Professional Services Rates”** means the Supplier’s then standard rates for time and materials work; the up-to-date rates are available on request from the Supplier from time to time.

**“Redcentric Cloud”** means the Suppliers IaaS Service as set out within these Supplier Terms and the relevant Service Definition.

**“Service Credit”** means the amounts (if any) as set out in the applicable Service Definitions which are to be paid by the Supplier to the Buyer in accordance with Clause 7 in the event that the Supplier fails to provide the relevant G-Cloud Service in accordance with the applicable Service Level.

**“Service Level”** means the standard to which a G-Cloud Service is to be delivered, as described in the applicable Service Definitions.

**“G-Cloud Service Type”** means one of the groups of G-Cloud Services that the Supplier provides, as categorised in the table in clause 2.2.

**“Software”** means any software which is made available by the Supplier for use by the Buyer (and/or any End User) in connection with, or as part of, any G-Cloud Service, whether by provision of a copy of the software or by allowing remote access and/or use of the software.

**“Time to Fix” or “TTF”** has the meaning set out in Clause 7.10.

- 3.4 For the purposes of the Call-Off Terms, including Clause CO-23, **“Force Majeure”** shall be interpreted to mean (1) Force Majeure as that term is defined in the table at Schedule 3 to the Framework Agreement; and/or (2) failure or brown out of the internet, failure or brown out of any third party communications network (other than where the communications network is being provided as part of the G-Cloud Services), power outages at sites which are not operated by the Supplier, governmental interference and any event which is covered by a BT **“Matters Beyond our Reasonable Control”** notice.

## 4 Provision and Use of the Services

- 4.1 The Supplier shall provide each G-Cloud Service which the Buyer has selected in the Order Form to the Buyer and its End Users for the applicable term (as specified in Part A Call-Off Contract Term of the Call-Off Contract) with reasonable skill and care and in accordance with all applicable Service Definitions and the terms of the Call-Off Contract.
- 4.2 The Buyer shall comply with, and shall procure that all End Users comply with, all Law, codes of practice and licence conditions applicable to its use of the G-Cloud Services and any reasonable policies of the Supplier which are advised to the Buyer by the Supplier from time to time in writing.
- 4.3 The Buyer will provide consent for the use of any subcontractor(s) set out in the Supplier’s Service Definition document.
- 4.4 The Buyer will provide the Supplier and its subcontractors with all access to its premises and assistance reasonably required by the Supplier to install Equipment and commission the G-Cloud Services in good time for the agreed target start date(s) set out in the Order Form or the Buyer Specification and, if no date has been agreed in either of those places, as soon as reasonably practicable after the date of the Order Form.
- 4.5 The Supplier reserves the right to amend, vary or change any Equipment, Software or G-Cloud Service (including the technical specification for any G-Cloud Service, the Equipment or the Software used to provide any G-Cloud Service and/or the Service Definition for any G-Cloud Service) provided that such amendment, variation or change does not materially and adversely affect the provision of any G-Cloud Service.
- 4.6 Where the Supplier reasonably considers that it is necessary to suspend the provision of any G-Cloud Service or any part of a G-Cloud Service (including the provision of the G-Cloud Service to a particular site) for the purposes of carrying out amendment, variation, change, repair, maintenance or improvement of or to any G-Cloud Service, Software and/or Equipment, the Supplier shall have the right to do so and



will use its reasonable endeavours to ensure that the Buyer receives reasonable prior notice of any such work. During the continuance of any such work, the Supplier shall continue to provide the G- Cloud Services in accordance with any applicable Service Level.

- 4.7** The Buyer shall not re-sell any G-Cloud Service (nor allow any third party, including an End User, to re-sell any G-Cloud Service). In addition, the Buyer shall not use (nor allow any third party, including an End User, to use) any G-Cloud Service:
- 4.7.1** in a way which is offensive, indecent, menacing, a nuisance or defamatory;
  - 4.7.2** to send, knowingly receive, upload, download, store, display or use any material which is offensive, abusive, indecent, defamatory, obscene or menacing or which is in breach of any Intellectual Property Right, privacy or any other third party right;
  - 4.7.3** fraudulently or in connection with the commission of any criminal offence (including the improper use of a public electronic communications network in breach of section 127 of the Communications Act 2003; or any unauthorized access or denial of service attacks in breach of section 1, 2, or 3 of the Computer Misuse Act 1990 or in order to commit an offence under the Regulation of Investigatory Powers Act 2000 or the Investigatory Powers Act 2016);
  - 4.7.4** to “**spam**” or to send or provide unsolicited advertising or promotional material or to knowingly receive responses from “**spam**” or unsolicited advertising or promotional material sent or provided by the Buyer, any End User or any third party acting on behalf of any of them;
  - 4.7.5** to “**phish**” or otherwise seek information about any person’s accounts or personal details, other than in the course of the Buyer’s or its End Users’ normal and legal business;
  - 4.7.6** in an unlawful manner or in contravention of any legislation, laws, codes of practice, licence conditions (including Ofcom’s General Conditions of Entitlement and the Privacy and Electronic Communications (EC Directive) Regulations 2003, as amended from time to time) or in breach of any third-party rights;
  - 4.7.7** to knowingly upload or make available any virus, other malicious code or corrupt data or otherwise threaten the integrity or security of any computer (including by disclosing passwords); and/or
  - 4.7.8** in a way that has a material adverse effect on any telecommunications network or in contravention of any reasonable instructions of the Supplier from time to time regarding the use of any G-Cloud Service.
- 4.8** The Buyer shall indemnify the Supplier against any liability, cost, claim or expense incurred by or claimed from the Supplier arising out of any breach by the Buyer (and/or its End Users) of the obligations under Clause 4.6.
- 4.9** The Supplier may suspend the provision of any G-Cloud Service (or any part of a G-Cloud Service) without liability to the Buyer or any End User (including liability to pay Service Credits), where there is (or the Supplier reasonably suspects there is):
- 4.9.1** Any unauthorised access to the Buyer’s and/or its End Users’ network which may result in unauthorised access to the Supplier’s network (in which case the suspension will last until such time as that unauthorised access ceases or is demonstrated by the Buyer not to have occurred);
  - 4.9.2** any breach by the Buyer or any End User of any obligations under Clause 4.6 (in which case the suspension will last until such time as the Buyer has convinced the Supplier that the breach has stopped and is unlikely to resume and the Buyer has paid any sums due under the indemnity in Clause 4.7); and/or
  - 4.9.3** any sums due to the Supplier from the Buyer are overdue (in which case the suspension will last until such time as the Buyer has paid any overdue sums).
- 4.10** The Buyer shall remain liable to pay the Charges for all G-Cloud Services during any period of suspension pursuant to Clause 4.8 but shall not be entitled to Service Credits during any suspension.
- 4.11** The Supplier reserves the right to suspend or vary any G-Cloud Service (or part of a G-Cloud Service and whether generally or in respect of the Buyer only) where it is required to do so by law, or at the direction of any court or governmental or other regulatory body, or as a result of the loss, amendment or revocation of any licence which the Supplier requires to provide that G-Cloud Service (including Ofcom’s General Conditions of Entitlement) or as a result of a change imposed on the Supplier by any of its suppliers. During the period of any such suspension the Charges for the suspended G-Cloud Service (or part thereof) will not be payable unless the suspension arises as a consequence of an act or omission of the Buyer and/or any End User, or their employees or agents.

## **5 Service Roll Out & Testing**

- 5.1** The Supplier shall use its reasonable efforts to implement the provision of each G-Cloud Service by the agreed target start date(s) set out in the Implementation Plan. The Supplier shall inform the Buyer (in writing or via email) when each G-Cloud Service is first available for use (at each Buyer site, where the G-Cloud Service is to be provided at more than one site).
- 5.2** The Buyer shall have 7 days from being informed that a G-Cloud Service is available for use to verify that the G-Cloud Service meets the Acceptance Criteria for that G-Cloud Service in all material respects. If requested to do so by the Buyer, the Supplier shall provide reasonable supporting evidence to demonstrate that the relevant G-Cloud Service has been made available for use by the Buyer.
- 5.3** If the Buyer does not notify the Supplier of any failure of a G-Cloud Service to meet its Acceptance Criteria in all material respects within 7 days of being notified that the G-Cloud Service is available for use, the Buyer accepts that it shall not be entitled to reject the G-Cloud Service and that the date on which the G-Cloud Service was first ready for use was the date originally stated by the Supplier, from which date recurring Charges for the relevant G-Cloud Service will begin.
- 5.4** If the Buyer notifies the Supplier of a failure of a G-Cloud Service to meet its Acceptance Criteria in all material respects within 7 days of being notified that the G-Cloud Service is ready for use:
  - 5.4.1** the Supplier shall correct the failure and notify the Buyer when it has done so;
  - 5.4.2** the Buyer shall then verify that the G-Cloud Service is ready for use again in accordance with Clauses 5.2 to 5.4; and
  - 5.4.3** the Supplier shall not charge for the relevant G-Cloud Service until the Buyer has been notified that the G-Cloud Service is ready to be verified as ready for use.
- 5.5** If the Buyer has found failures of a specific G-Cloud Service to meet its Acceptance Criteria three or more times, and notified the Supplier of those failures of a specific G-Cloud Service to meet its Acceptance Criteria three or more times within the 7 day period, Buyer shall have the right to remove the relevant sites at which the G-Cloud Services are to be provided from the Call-Off Contract and the Supplier's sole responsibility shall be to refund any installation charges that have then been paid in relation to that G-Cloud Service.

## **6 Charges & Payments**

- 6.1** In consideration for the provision of the G-Cloud Services, the Buyer shall pay the Charges to the Supplier in accordance with Part A Call-Off Charges and Payments of the Call-Off Contract.
- 6.2** The recurring Charges for each G-Cloud Service will commence on the date on which the relevant G-Cloud Service is ready for use and be invoiced periodically, in advance or arrears as shown in the Order Form. Installation Charges will become due from the Buyer on the Buyer signing the relevant Order Form. Other Charges will become due as specified in the Call-Off Contract.
- 6.3** The Buyer must provide any purchase order number or other reference which it wishes to appear on any invoice at least twenty-eight days prior to the date on which the invoice in question is to be raised. The Buyer shall not be entitled to reject any invoice issued by the Supplier on the ground that it fails to include a purchase order number or other reference where the Buyer has failed to notify it to the Supplier in accordance with this Clause 6.3.
- 6.4** Where the Supplier is entitled to suspend the provision of any G-Cloud Service (or part of a G-Cloud Service) it shall be without liability to the Buyer (including liability to pay Service Credits).
- 6.5** The Buyer shall not be entitled to make any deduction or withholding from any amount due from it to the Supplier nor shall the Buyer be entitled to exercise any right of set-off (including in respect of any amounts withheld by the Supplier in accordance with any express right the Supplier has reserved elsewhere in these Supplier Terms), except to the extent expressly permitted by any provision of the Call-Off Contract (including these Supplier Terms) (including Clause 7.11). If any deduction or withholding is required by law to be made by the Buyer from any sum due, the relevant sum will be deemed grossed up in order that the net sum received by the Supplier is the amount that would have been payable without the deduction or withholding.

## **7 Service Credits**

- 7.1** Where the Service Definition for any G-Cloud Service provides for Service Credits to be payable by the Supplier in the event that it fails to provide that G-Cloud Service in accordance with a Service Level, then

if performance of that G-Cloud Service in a Month is worse than the applicable Floor Service Level the Buyer shall be entitled to seek damages for its losses, subject to the terms set out in Clause CO-24 (Liability) Part B.

- 7.2** The Service Credits have been agreed between the parties as a fair and reasonable assessment of the likely loss and damage which the Buyer (and any End User) would suffer as a result of the Supplier failing to meet the applicable Service Level but performing better than the relevant Floor Service Level. Service Credits therefore represent the full extent of the Supplier's liability for failure to achieve the relevant Service Level where that failure is not worse than the Floor Service Level. Where that failure is worse than the Floor Service Level the payment of Service Credits shall be without prejudice to the Buyer's entitlement to seek damages for its losses, provided that in any claim for damages by the Buyer full credit shall be given for any Service Credits paid by the Supplier in respect of the same Service Level failure.
- 7.3** Payment of the relevant Service Credits by the Supplier shall represent the Buyer's sole and exclusive remedy in respect of any failure by the Supplier to achieve the relevant Service Level where that failure is not worse than the Floor Service Level and the Buyer hereby waives its right to claim for any additional loss and damage suffered by it in excess of the value of the Service Credits in question where the relevant Floor Service Level has not been breached.
- 7.4** In no event shall the value of any Service Credits due from the Supplier in respect of any particular G-Cloud Service in a Month exceed a sum equal to half of the Charges which would have been payable by the Buyer for that G-Cloud Service during that Month had the Supplier provided the G-Cloud Service in question in accordance with all applicable Service Levels.
- 7.5** The Supplier shall not be liable to pay any Service Credit which would not have become due but for a breach by the Buyer (or any End User) of the Call-Off Contract, including, for the avoidance of doubt, these Supplier Terms.
- 7.6** If there is no Service Level applicable to a G-Cloud Service or Service Credits are not payable for failure to achieve a Service Level, then the Supplier shall have no liability to the Buyer for the relevant G-Cloud Service, except to the extent that there is a significant breach of the Call-Off Contract in relation to the provision of that G-Cloud Service.
- 7.7** Where Service Credits are expressed by reference to Availability, Availability will be calculated using this formula:
- A/(T-P) x 100, where:
- A = the number of seconds in the relevant Month for which the relevant G-Cloud Service was available.  
T = the total number of seconds in that Month in which that G-Cloud Service ought to have been available and  
P = the duration in seconds of acceptable outages in that Month.
- 7.8** If some, but not all, parts of a G-Cloud Service have no availability for a period of time (for example if there is no availability at some of the sites at which a service is provided), then the same formula will apply but:
- A = the aggregate number of seconds in the relevant Month, for which each part that G-Cloud Service was available (which will be assessed using the Supplier part codes shown on the Order Form)
- T = the number of seconds in that Month multiplied by the number of the Supplier part codes for that G-Cloud Service and
- P = the number of seconds of acceptable outages in that Month multiplied by the total number of the Supplier part codes for that G-Cloud Service.
- 7.9** In calculating Availability and whichever method is used above, the following shall be considered **"acceptable outages"** and their duration therefore count as part of P:
- 7.9.1** any period of non-Availability caused or contributed to by:
- 7.9.1.1** Planned Outages;
- 7.9.1.2** the failure of the Buyer to meet any Buyer Dependency;
- 7.9.1.3** the Supplier exercising a right to suspend the relevant G-Cloud Service pursuant to any provision of this Agreement;
- 7.9.2** faults in, or failure properly to operate, any hardware, software, communications links or other equipment (including Buyer Equipment) which does not form part of the relevant G-Cloud Services (including connections from the internet not provided by the Supplier, and all equipment not forming

part of the relevant G-Cloud Services which is used by the Buyer and/or any End User);

**7.9.3** without prejudice to Clause 7.9.2 above, faults in, or failure properly to operate, any software hosted on the relevant G-Cloud Services other than software which (i) forms part of those G-Cloud Services and (ii) was supplied by the Supplier pursuant to this Agreement; or

**7.9.4** Force Majeure.

**7.10** Service Credits will only be due if claimed by the Buyer within 30 days of the end of the relevant Month and shall be credited in the form of a credit note in the Month after the Month in which they were claimed. Service Credits shall not be payable in relation to any part Months at the start or end of the G-Cloud Services.

**7.11** Should the Supplier fail to issue a credit note to the Buyer for any Service Credits which have been claimed by the Buyer and become payable by the Supplier within the time period for issuing such credit note as specified in Clause 7.11, then the Buyer shall be entitled to deduct the value of those Service Credits from the next invoice issued by the Supplier for the Charges for the G-Cloud Services to which those Service Credits relate.

**7.12** In the absence of manifest error, the Supplier's ticketing system shall be regarded as an accurate record calculating Availability and TTF.

## **8 Charges Adjustment and Additional Cost Items**

**8.1** Certain of the Supplier's costs are not within its control. Whenever there is:

**8.1.1** an increase in the cost of third-party software used to provide any G- Cloud Service; and/or any Change in Law, then the Supplier shall be entitled to increase the Charges to the extent reasonably determined by the Supplier as necessary to reflect the increased cost to the Supplier of providing the G-Cloud Services as a result of any increase in third party software costs and/or in consequence of a Change in Law by serving not less than twenty-eight days' written notice of such increase on the Buyer. At the request of the Buyer, the Supplier shall provide to the Buyer reasonable supporting evidence to justify any such increase to the Charges. Any such evidence provided by the Supplier shall constitute Confidential Information of the Supplier. In the event that the Buyer does not wish to pay the increased Charges then it shall within twenty-eight days of receipt of the relevant notice from the Supplier serve 90 days' written notice to terminate the provision of the G-Cloud Service in question. During that notice period, the Charges for the G-Cloud Service in question shall not include the increase proposed by the Supplier which resulted In the Buyer electing to terminate the provision of that G-Cloud Service.

**8.2** The Charges for G-Cloud Services of specific G-Cloud Service Types may also be increased in the manner set out in the Additional Terms.

## **9 Buyer Technical Summary**

**9.1** The Buyer accepts that any Buyer Technical Summary has been, or will be, relied on by the Supplier to produce the Buyer Specification for the G- Cloud Services to which it relates and to determine the applicable Charges for those G-Cloud Services. The Buyer warrants to the Supplier that:

**9.1.1** any Buyer Technical Summary provided by it (and/or any End User); and/or any information provided by it (and/or any End User) to enable the Supplier to complete the Buyer Technical Summary or upon which the Supplier relies to design its G-Cloud Services or determine the Charges,

**9.1.2** is complete. Accurate and not misleading in any way.

**9.2** If the warranty set out in Clause 9.1 proves to be untrue, the Supplier shall be entitled to charge the Buyer for all additional time and materials expended by the Supplier as a result of the inaccuracy at the Supplier's Professional Services Rates. If the on-going cost to the Supplier of providing the relevant G- Cloud Services is increased as a result of any inaccuracy in the warranty set out in clause 9.1, the Supplier shall be entitled to make a reasonable addition to the on-going cost of its G-Cloud Services by providing notice to the Buyer.

## **10 Premises**

**10.1** All access by the Buyer, any End User and its or their representatives to any premises of the Supplier (including any access by regulators or in exercise of audit rights) shall at all times be subject to compliance with the access and security policies of the Supplier for the time being in force. The Buyer shall indemnify the Supplier against all loss, damage, liability, claims and expense that the Supplier or any of its other customers may incur by reason of any act or omission of the Buyer and/or any End User and/or its or their representatives (including any access by regulators or in exercise of audit rights) whilst on any premises

of the Supplier (including any failure by the Buyer to comply with its obligations pursuant to the Call-Off Contract or these Supplier Terms).

- 10.2** Each of the Supplier and the Buyer shall ensure that all of its employees, agents, subcontractors and other persons authorised by it (including in the case of the Buyer, the employees, agents, subcontractors and other authorised persons of any End User) whom the other may permit to access its premises are suitably qualified, skilled and experienced to carry out the work for which they are entering the premises of the other. The Supplier or the Buyer shall be entitled to refuse any individual access to (or eject any individual from) its premises without liability to the other party where it has reasonable grounds for suspecting that such individual does not have the appropriate skills, qualifications or experience or may pose a threat to safety or security.
- 10.3** Whilst on any premises of the other party, the Supplier, and the Buyer (including any End Users) shall comply with all reasonable site procedures of the other party notified to it in advance in writing. While any representative of a party (or in the Supplier's case, its subcontractors) is on the premises of the other (or the premises of any End User), that other will ensure that it provides a suitable and safe working site
- 10.4** Whenever any work is to be undertaken by the Buyer, the Supplier or a third party at any premises of the Buyer in connection with the provision of a G-Cloud Service (including preparations required to allow provision of the G-Cloud Services), the Buyer shall be solely responsible for obtaining (at its own cost and in sufficient time to enable the work in question to be undertaken in good time) any necessary consents required to undertake that work, including landlord's consent and wayleaves or easements required to enable network communications to be made to the Buyer's (or its End Users') premises.
- 10.5** The Buyer shall allow the Supplier such access to any of the Buyer's and its End Users' premises at such times as the Supplier may request to enable it to perform its obligations under the Call-Off Contract, including access to enable the Supplier to install, alter, vary, change, maintain, repair, replace or upgrade Equipment and Software or, on termination or expiry of the Call-Off Contract, to remove Equipment and Software from those premises. Neither the Buyer nor any End User shall be entitled to deny the Supplier (or any third party acting for the Supplier) access to any of its premises in such circumstances by reason of any dispute (and the Buyer shall ensure that its End Users act accordingly). Where requested by the Supplier, such access may include remote (as opposed to physical) access to Equipment and Software installed at any premises of the Buyer or its End Users; the Buyer shall cooperate fully with the Supplier in order to allow such access and procure that its End Users also cooperate in that manner.
- 10.6** The Supplier shall use its reasonable endeavours to undertake any work which requires access to the Buyer's or its End Users' premises during the Working Day but reserves the right to require out of hours access. Where the Buyer requests that the Supplier undertakes any work at the premises of the Buyer or its End Users outside of the Working Day, the Supplier reserves the right to make an additional charge in respect of the provision of such out of hours work in accordance with the Professional Services Rates.

## **11 Buyer Dependencies**

- 11.1** The Buyer acknowledges that failure to fulfil any Buyer Dependencies in the manner and timescales required under the Call-Off Contract from time to time may prejudice the Supplier's ability to meet its obligations under the Call-Off Agreement. The Buyer therefore agrees that the Supplier shall not be liable for any failure by the Supplier to perform its obligations under the Call-Off Contract to the extent caused by the Buyer's failure to ensure that all Buyer Dependencies are fulfilled in the manner and timescales required by the Call-Off Contract. Any obligation of the Supplier which is prejudiced by the Buyer's failure to ensure that the all-Buyer Dependencies are fulfilled in the manner and timescales required by the Call-Off Contract shall be deemed extended by a reasonable time.
- 11.2** If as a result of the Buyer's failure to ensure that all the Buyer Dependencies are fulfilled in the manner and timescales required by the Call-Off Contract and/or these Supplier Terms the Supplier spends any additional time or incurs any additional costs, it shall be entitled to invoice the Buyer for those costs and that time at the Professional Services Rates.
- 11.3** The Buyer shall at all times cooperate (and procure that the End Users cooperate) with the Supplier in connection with the implementation and provision of the G-Cloud Services.
- 11.4** Notwithstanding any other term of the Call-Off Contract, the Supplier will not be in breach of the Call-Off Contract to the extent that its failure to perform or delay or defect in performance of its obligations under the Call-Off Contract arises as a result of:
  - 11.4.1** any breach by the Buyer of its obligations contained in the Call-Off Contract or these Supplier Terms; or
  - 11.4.2** the Supplier relying on any incomplete or inaccurate data provided by, or complying with any



instruction or request made by, the Buyer, an End User and/or any of their respective employees or representatives.

## **12 Supplier Equipment**

- 12.1** Where the Supplier or a third party installs any Equipment or Software at any premises of the Buyer and/or any End User as part of any G-Cloud Service, such Equipment and Software shall at all times remain in the ownership of the Supplier or the third-party owner. Neither the Buyer nor any End User shall acquire any rights of ownership in, or title to, any such Equipment or Software, nor any lien or other similar rights over such Equipment or Software (whether by operation of law or otherwise).
- 12.2** Risk of damage to or loss of any Equipment or Software of the Supplier or any third party owner installed at any premises of the Buyer and/or any End User shall be borne by the Buyer from the time such Equipment or Software is installed by the Supplier or the third party until the Supplier or the third party commences its removal. The Buyer shall ensure that such Equipment and Software is insured at its own cost against fire, theft and all usual risks (including loss or damage caused by an event of Force Majeure).
- 12.3** In the event of any damage to or loss of any Equipment or Software whilst at the risk of the Buyer (other than damage or loss caused by the Supplier or the relevant third party), the Buyer shall pay to the Supplier the cost of repairing or replacing (as applicable) the Equipment or Software in question regardless of whether or not such costs are recoverable by the Buyer under the policy of insurance maintained by it.
- 12.4** In respect of any Equipment or Software installed at any premises of the Buyer and/or any End User, the Buyer shall (and shall procure that each End User shall):
- 12.4.1** take reasonable care of that Equipment or Software, such obligation to include prohibiting any person other than those authorised by the Supplier to damage, alter, tamper with, move, remove, replace, or repair that Equipment or Software;
  - 12.4.2** immediately inform the Supplier of any damage to, loss of or alterations to such Equipment or Software;
  - 12.4.3** maintain at its own cost any operating environment for that Equipment or Software as may be reasonably specified by the Supplier from time to time;
  - 12.4.4** provide at its own cost an adequate electricity supply and suitable earth connections for that Equipment or Software;
  - 12.4.5** not remove, alter or obscure any labels or markings which identifies that Equipment or Software as the property of the Supplier or a third party;
  - 12.4.6** not sell, charge, mortgage or otherwise encumber that Equipment or Software; and
  - 12.4.7** allow Supplier to collect any such Equipment or Software at any time in the 60 days following termination or expiry of the relevant G-Cloud Services (but this right shall not apply in relation to hardware which has been sold to the Buyer or any software that has been expressly licensed to the Buyer on a perpetual basis).
- 12.5** The obligations of the Buyer pursuant to Clause 12.3 shall continue notwithstanding the termination of the Call-Off Contract or any applicable G- Cloud Service until such time as the Supplier has removed the relevant Equipment and Software from the Buyer's and its End Users' premises.

## **13 Other Obligation of the Parties**

- 13.1** Each party shall comply with any other obligations and responsibilities as may be specified in any other document which forms part of and/or is referred to in any part of the Call-Off Contract.
- Data Backup.
- 13.2** If the G-Cloud Services do not include a managed backup service provided by the Supplier, the Buyer is responsible for backing up its own data and the Supplier shall not in any circumstances be liable to the Buyer or any End User for any loss of or corruption to data (whether temporary or permanent).
- 13.3** If the G-Cloud Services include any managed backup service provided by the Supplier, it is up to the Buyer to determine what data is backed up, the frequency of backup intervals, and to ensure safekeeping of encryption keys. The Parties agree and acknowledge that the effectiveness of the backup service depends on the Buyer's choice of data to back up and further acknowledge that if the encryption keys are lost, recovery of backed up data may not be possible. Accordingly, subject to Clause CO-24.1 Part B, where

the G-Cloud Services include any managed backup service provided by the Supplier, the Supplier shall not be liable to the Buyer (or any End User) for any loss or damage arising as a result of any loss of or corruption to data (whether temporary or permanent) to the extent that any loss destruction, corruption, degradation, inaccuracy or damage:

- 13.3.1** was caused by a breach by the Buyer of its obligations under the Call-Off Contract and/or these Supplier Terms; and/or
  - 13.3.2** relates to data that was not selected by the Buyer for back-up; and/or
  - 13.3.3** could have been prevented by the Buyer selecting a different back- up frequency; and/or
  - 13.3.4** could have been prevented by restoring such data from the managed back-up service and the Supplier is unable to restore such data as a result of the Buyer's loss of any backup encryption key.
- 13.4** Where, in order to make use of any G-Cloud Service, the Buyer and/or any End User is provided with any encryption keys by the Supplier, those encryption keys shall be held at the risk of the Buyer and it shall be the sole responsibility of the Buyer and each End User to ensure that those encryption keys are kept safe and secure. The Supplier will not keep copies of any encryption key provided to the Buyer or End User. The Buyer acknowledges that the Supplier shall not be able to undertake the restoration of any data where the Buyer or End User (as applicable) has lost any applicable encryption key provided to it and that the Supplier shall have no liability to the Buyer or any End User in such circumstances.

## **14 End Users**

- 14.1** The identities and/or categories and/or numbers of persons entitled to be End Users are set out in the Order Form. Should the Buyer wish to add additional End Users a variation under Clause CO-32 (Variation process) Part B will be necessary, and there may be additional Charges. The Supplier is entitled to use technical means to prevent use of the G-Cloud Services by additional persons who have not been agreed as End Users under this Clause.
- 14.2** The Buyer shall not permit any third party to use any of the G-Cloud Services, except authorised End Users.
- 14.3** Where the Call-Off Contract allows End Users to use any G-Cloud Services, the Buyer agrees (on its own behalf and as duly authorised agent for and on behalf of each End User) that none of the End Users shall be entitled to enforce the terms of the Call-Off Contract or to make any claim against the Supplier in relation to the Call-Off Contract or the G-Cloud Services (including any claim in negligence). The Buyer shall procure that none of the End Users makes any such claim. the Supplier agrees that any losses of any End User resulting from a breach of the Call-Off Contract by the Supplier shall be deemed to be a loss of the Buyer and that the Buyer shall be entitled to seek recovery of those losses on the basis that they are losses suffered by the Buyer itself. All losses of the Buyer and all losses of the End Users shall be subject to the limitations and exclusions in Clause CO-24 (Liability) Part B and the caps on liability set out in Clause CO-24 (Liability) Part B shall apply to all such claims in the aggregate.

## **15 Software Licensing & Intellectual Property Rights**

- 15.1** Ownership of all and any Intellectual Property Rights in any Software and/or the G-Cloud Services shall at all times remain vested in the Supplier and/or its third-party licensors (as appropriate). Neither the Buyer nor any End User shall acquire ownership of or title to any such Intellectual Property Rights pursuant to the Call-Off Contract or the provision of any G-Cloud Services to it.
- 15.2** Subject to the payment by the Buyer of the Charges for the relevant G- Cloud Service and the compliance by the Buyer (and all End Users) with the obligations placed upon the Buyer and the End Users under the Call-Off Agreement, the Supplier grants to the Buyer a non-exclusive, non- transferable, revocable licence to use the Software to the extent necessary to utilise the G-Cloud Service to which it relates, but only during the Call-Off Contract Term of the G-Cloud Service in question and subject to any limitations set out or referred to in the Order Documents. The Supplier also consents to the Buyer granting its End Users a non-exclusive, non- transferable, revocable sub-licence to use the Software to the extent necessary for them to utilise the G-Cloud Service to which it relates, but only during the term of the G-Cloud Service in question, and on condition that such sub-licence terminates on or before the date on which the Buyer's licence terminates (for whatever reason).
- 15.3** The Buyer will not and will not permit any third parties (including the End Users) to:
- 15.3.1** distribute or allow others to distribute copies of the Software or any part thereof to any third party;



- 15.3.2** tamper with, remove, reproduce, modify, amend, or copy the Software or any part thereof;
- 15.3.3** provide, rent, sell, lease, license or otherwise transfer the Software or any copy or any part thereof or use it for the benefit of a third party;
- 15.3.4** reverse assemble, disassemble, decompile, or reverse engineer the Software or any part thereof;
- 15.3.5** attempt to discover the source and/or object code of the Software or any other underlying proprietary information;
- 15.3.6** remove, modify, or obscure any copyright, trademark or other proprietary rights notices that are contained in the Software; and/or
- 15.3.7** use the Software in any circumstance where non-fault tolerant software is required, including in any application or situation where failure could lead to death or bodily injury or severe physical or environmental damage.
- 15.4** Clause 15.3 shall apply without prejudice to any rights which the Buyer may have in respect of the Software which cannot lawfully be limited or excluded. The Buyer accepts that compliance with the restrictions in Clause 15.3 may be verified and enforced directly by the Supplier's third-party suppliers of the relevant Software in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 15.5** The Buyer accepts that no warranties or representations are made to the Buyer by any of the Supplier's third-party suppliers of the Software, whether in relation to the Software or the G-Cloud Services that include the Software and that those third-party suppliers are under no obligation to provide maintenance to any such Software for the Buyer or its End Users.
- 15.6** Certain G-Cloud Services are dependent on Software which is licensed to the Supplier by third parties. If any such Software ceases to be available for use in those G-Cloud Services, the Supplier may (in its absolute discretion) replace that Software with functionally equivalent Software or terminate the provision of the relevant G-Cloud Service by giving the Buyer not less than 14 days' prior written notice.
- 15.7** Certain Software, use of which is licensed to the Supplier by third parties, may require the Buyer and/or the End Users to enter into an end user agreement with the relevant third party licensor and it shall be a condition of the provision of the G-Cloud Service in question that the Buyer and the End Users enter into and abide by the terms of any applicable end user agreement.
- 15.8** Subject to compliance by the Buyer and each End User with Clause 15.3, the Supplier warrants that (where applicable) it is authorised to sub-license use of Software in which the Intellectual Property Rights are owned by a third party to the Buyer in connection with the provision of the relevant G-Cloud Services.
- 15.9** Subject to compliance by the Buyer with Clause 15.10, the Supplier shall indemnify the Buyer for all losses, claims, liabilities, expenses and costs which the Buyer or any End User may incur to a third party as a result of the use or possession by the Buyer or any End User in accordance with the Call-Off Contract of any Software in which the Intellectual Property Rights are owned by the Supplier being found to infringe the Intellectual Property Rights of any third party.
- 15.10** The indemnity set out in Clause 16.9 shall only have effect if the Buyer:
  - 15.10.1** as soon as reasonably possible informs the Supplier of any claim which it receives or which it becomes aware that it may receive;
  - 15.10.2** makes no admission as to liability in respect of any claim or potential claim without the prior written consent of the Supplier (and procures that no End User makes any such admission);
  - 15.10.3** allows the Supplier (at the cost of the Supplier) to have sole conduct and control of the defence and/or settlement of any claim or potential claim; and
  - 15.10.4** provides (and procures that the End Users provide) the Supplier with such support, information, and assistance as it may reasonably request in connection with the investigation, defence and/or settlement of any claim or potential claim. The Supplier shall on request, refund the reasonable and demonstrable expenses of the Buyer and any End User incurred in complying with its obligations pursuant to this Clause 15.10.4.
- 15.11** Certain G-Cloud Services require the Buyer and its End Users to obtain licences to use specific Software, as set out in the Order Documents. In those circumstances the Buyer undertakes that it and all End Users will at all times have the relevant rights to use the relevant Software and the Buyer hereby indemnifies the Supplier against all claims, losses and costs that the Supplier suffers in consequence of any breach of that undertaking. The Buyer also agrees that on request by the Supplier from time to time, the Buyer will inform the Supplier of the software it has loaded onto any Equipment that the Supplier is providing as part of the

G-Cloud Services, the number of users of that software and demonstrate to the Supplier's reasonable satisfaction that all that software is properly licensed.

- 15.12** Where G-Cloud Services permit usage of Software by a particular number of people, or on or via a particular number of computers, processors or servers, or are charged for by reference to the number of computers, processors or servers on which the Software is installed or used, the Buyer shall promptly on the Supplier's demand from time to time confirm the number of users, the number of computers, processors or servers on which the relevant Software is then installed or being used and the identity of the users of those computers, processors or servers. The Buyer accepts that the Supplier is entitled to share such information (and all information provided under Clause 15.11), together with the Buyer's and its End Users' names and addresses, with the third-party licensors of such Software from time to time.

## **16 Security**

- 16.1** The Supplier shall use its security policies from time to time in relation to the G-Cloud Services; the current version of those policies is available on request from the Supplier. In the event of any conflict between any provision of the Call-Off Contract and the Supplier's security policies, the relevant provision of the Call-Off Contract shall apply.
- 16.2** The Buyer shall make sure that the logon and password details issued to the Buyer and/or any End User or issued by the Buyer and/or any End User from time to time in connection with the G-Cloud Services are kept secure, are not shared and are managed prudently. The Buyer agrees that the Supplier is entitled to treat any action or instruction made via a logon and password as a valid action or instruction.

## **17 Confidentiality**

For the purposes of Clause FW 34 (Confidentiality) which is incorporated into the Call-Off Contract by Clause CO 2.1 Part B the Supplier and Supplier Staff shall be entitled to:

- 17.1** record, retain, use and disclose the Buyer's (and its End Users') Confidential Information as required by the Monitoring Requirements from time to time; and
- 17.2** disclose the Buyer's (and its End Users') Confidential Information to a regulatory body to whom they are required to disclose it (including as envisaged pursuant to Section A of the Additional Terms and under the Monitoring Requirements).

## **18 Variations**

From time to time, it may be necessary for the Supplier to make such reasonable amendments to Order Documents as may be necessary from time to time to ensure the Supplier's and/or the G-Cloud Service's continuing compliance with Law and/or licence conditions. For the purposes of Clause CO-32.3 Part B, the Buyer shall not withhold its agreement to such amendments provided that the Supplier can demonstrate that they are necessary within the terms of this Clause 18.

## **19 Assignment and Subcontracting**

For the purposes of Clause FW 21 (Transfer and subcontracting) which is incorporated into the Call-Off Contract by Clause CO 2.1 Part B, the Buyer hereby gives its consent to:

- 19.1** the Supplier assigning or novating any of its rights or obligations under the Call- Off Contract to:
- 19.1.1** any Group Company of the Supplier who shall in turn be entitled to assign or novate those rights or obligations to other Group Companies. For the purposes of this Clause 19 "**Group Company**" means all subsidiary companies of the Supplier together with any parent or holding company and all other subsidiary companies of that parent or holding company (as those terms are defined by the Companies Act 2006); or
- 19.1.2** any purchaser of the whole or any part of the Supplier's business;
- 19.2** the Supplier sub-contracting the performance of any of its obligations under the Call-Off Contract to any of the parties listed or referred to in the Order Form and/or applicable Service Definition.

## **20 Notices**

- 20.1** Where notice is required under the terms of the Call-Off Contract it may only be given in the ways set out in the table below. Notices shall take effect at the time stated in the table (or if that time is not within a Working Day, at the point in time when the next Working Day begins):

Permitted method of delivery	When effective	Where the Buyer must be served	Where the Supplier must be served
By hand	On delivery	At the address and email stated in the Order Form	The Company Secretary, Redcentric, Central House, Beckwith Knowle, Otley Road, Harrogate, HG3 1UG  And for email: companysecretary@redcentricplc.com
By prepaid first class post	At the start of the second full Working Day after posting		
By email	On dispatch if sent more than half an hour before the end of a Working Day or otherwise at the start of the Working Day after dispatch, but in each case only if a copy is sent by prepaid first class post on the same day as the email is sent or if the recipient acknowledges receipt of the email (an automated reply will not count as a reply for these purposes)		

**20.2** Either party may change its addressee and/or address details for receiving notices by serving notice of the changed details on the other party, provided that the new physical address is within the UK.

**20.3** Whilst the parties may make operational communications concerning the Call-Off Contract via electronic mail, notice may not be validly served by electronic mail unless all of the relevant requirements set out in Clause 20.1 have been met.

## **21 General**

**21.1** The Buyer consents, unless such consent is withdrawn by written notice to the Supplier, to the Supplier disclosing for marketing purposes that the Buyer is a Buyer of the Supplier in respect of the G-Cloud Services.

**21.2** Time shall not be of the essence of any date set out in the Call-Off Contract.

**21.3** The additional terms set out below apply to all G-Cloud Services of the G-Cloud Service Type that appears at the start of the relevant Section.

# Part B: Additional Terms

## A Additional Terms that apply to Voice Services

### 1 Application of this Section A

The provisions that follow only apply to those G-Cloud Services within the Voice G-Cloud Service Type; they do not apply to any other G-Cloud Service Type.

### 2 Definitions

In this Section A of Part B, the following terms have the following meanings.

- 2.1 **“Artificial Inflation of Traffic”** means any behaviour that artificially causes calls to be made or artificially prolongs calls.
- 2.2 **“Phone-paid Services Authority”** or **“PSA”** means Phone-paid Services Authority of c/o Ofcom, Riverside House, 2a Southwark Bridge Road, London, SE1 9HA, being the current UK regulator for Premium Rate Services.
- 2.3 **“PSA Code of Practice”** means the code of practice of Phone-paid Services Authority from time to time in force, which is available via [www.psauthority.org.uk](http://www.psauthority.org.uk).
- 2.4 **“Premium Rate G-Cloud Service”** has the meaning given in s120 of the Communications Act 2003.
- 2.5 **“Regulated G-Cloud Service”** means any G-Cloud Service, the provision of which by the Supplier to the Buyer is subject to regulation by PSA and/or any G-Cloud Service which is to be used by the Buyer or any End User to provide Premium Rate G-Cloud Services.
- 2.6 **“Regulated G-Cloud Services Information Form”** means the form with that title which the Buyer is required to complete and return to the Supplier prior to commencing the provision of any Premium Rate G-Cloud Service.
- 2.7 **“Telephone G-Cloud Service”** means any G-Cloud Service which includes the provision of facilities to make or receive telephone calls together with any related services.

### 3 Suspension

The Supplier reserves the right to suspend or vary any Voice G-Cloud Service (or part of a Voice G-Cloud Service and whether generally or in respect of the Buyer and/or its End Users only) where it is required to do so by any regulatory body (including PSA), or as a result of the loss, amendment or revocation of any licence which the Supplier requires to provide that Voice G-Cloud Service (including Ofcom's General Conditions of Entitlement). During the period of any such suspension the Charges for the suspended Voice G-Cloud Service (or part thereof) will not be payable unless the suspension arises as a consequence of an act or omission of the Buyer, its End Users or their employees or agents or any persons authorised by any of them to use the Voice G-Cloud Service.

### 4 Regulated Services

- 4.1 In respect of any Regulated G-Cloud Service, the Buyer warrants that it is aware of, and fully familiar with, all applicable requirements of the PSA Code of Practice. The Buyer agrees (for the benefit of both the Supplier and the benefit of PSA) that it shall fully comply (and procure that its End Users fully comply) with its and their obligations under the PSA Code of Practice, together with any directions which are made by PSA in accordance with that Code of Practice from time to time. The Buyer shall not (and shall procure that no End User shall) advertise, promote, or provide any Premium Rate G-Cloud Service before the Supplier has given its written consent to the Buyer providing the relevant Premium Rate G-Cloud Service (and the parties agree that such consent may be subject to such conditions as the Supplier requires).
- 4.2 Without prejudice to the generality of Clause 4.1, the Buyer warrants that:
  - 4.2.1 it and each of its End Users have (and will maintain) sufficient financial and other resources necessary to discharge its and their obligations under the PSA Code of Practice fully, in light of the intended Regulated G-Cloud Services and Premium Rate G-Cloud Services and shall provide to the Supplier such evidence of those resources as the Supplier may request from time to time;

End User, such arrangements being as a minimum sufficient to enable the Buyer and/or relevant End User to discharge its obligations under the PSA Code of Practice;

- 4.2.2** each of it and each of its End Users have in place (and will maintain) adequate Buyer service arrangements and refund mechanisms for users of any Premium Rate G-Cloud Services which are provided by the Buyer or any
- 4.2.3** no sanction has been imposed against it or any End User (or any officer, employee, agent or subcontractor of the Buyer or any End User) by PSA which would prohibit the Supplier from providing any Regulated G-Cloud Service to the Buyer and/or any End User; and
- 4.2.4** it shall immediately inform the Supplier should any sanction be imposed against it or any End User (or any officer, employee, agent or subcontractor of the Buyer or any End User) by PSA which would prohibit the Supplier from providing any Regulated G- Cloud Service to the Buyer or any End User.
- 4.3** Prior to the Supplier making any Regulated G-Cloud Service available to the Buyer or any End User, the Buyer shall:
- 4.3.1** complete and return to the Supplier a Regulated G-Cloud Services Information Form and inform the Supplier of any subsequent updates to the information provided on that form; and
- 4.3.2** provide to the Supplier a copy of the registration form lodged by the Buyer or any End User with PSA together with a copy of the acknowledgement of receipt of that form issued by PSA.
- 4.4** The Supplier reserves the right to:
- 4.4.1** immediately terminate without any liability to the Buyer or any End User (including any liability to pay Service Credits) the provision by the Supplier of all or part of any Regulated G-Cloud Service (including the right to terminate the Buyer's and/or any End Users' access to any or all telephone numbers allocated to the Buyer or any End User by the Supplier or ported to the Supplier) either at the direction of PSA or in order to prevent or remedy any actual or suspected breach by the Supplier or the Buyer and/or any End User of the PSA Code of Practice;
- 4.4.2** withhold out of any amount due from the Supplier to the Buyer such amount of money as may be specified by PSA for such period of time as may be specified by PSA, without any liability to the Buyer or any End User;
- 4.4.3** pay out of any sums withheld by it pursuant to Clause 4.4.2 such outstanding fines or administrative charges which may be due from the Buyer and/or any End User to PSA as may be requested by PSA without any liability to the Buyer or any End User (in which case the Buyer shall cease to be entitled to recover that amount from the Supplier); and/or
- 4.4.4** pay refunds on behalf of the Buyer and/or any End User, as requested by PSA, and recover the reasonable administration costs of doing so (in which case the Buyer shall cease to be entitled to recover those amounts from the Supplier).
- 4.5** The Buyer acknowledges that the Supplier is required to monitor the Regulated G-Cloud Services it provides and the Premium Rate G-Cloud Services the Buyer and/or its End Users provide from time to time on an on-going basis. The Buyer shall promptly provide (and procure that its End Users promptly provide) such information and access as the Supplier may reasonably require for that purpose from time to time.
- 4.6** The Buyer warrants, on a continuing basis, that all information provided by it to the Supplier from time to time in accordance with this Clause 4 is complete, accurate, up-to date, not misleading in any way and will be provided in sufficient time to enable the Supplier to comply with its obligations under the PSA Code of Practice and any requests for information received by the Supplier from PSA. The Buyer shall inform the Supplier without delay of any changes to any information provided by it. At the request of the Supplier, the Buyer shall provide such evidence as the Supplier may request to verify the accuracy of any information provided by the Buyer pursuant to this Clause 4.
- 4.7** Any information or guidance which the Supplier may provide to the Buyer or any End User concerning the obligations of the Buyer, or any End User under the PSA Code of Practice is provided on an "as is" basis, based on the Supplier's own understanding and interpretation of the PSA Code of Practice. The Supplier makes no representation as to the accuracy or completeness of any such information or guidance which may be provided by it and neither the Buyer nor any End User shall have any claim against the Supplier in respect of any errors or omissions which may be contained in that information or guidance. If the Buyer or any End User wishes to rely on any advice concerning the PSA Code of Practice, the Supplier recommends that the Buyer engages an expert in the field.

## 5 Telephone Services & Internet Protocol Addresses

- 5.1** The Supplier shall use its reasonable endeavors to provide uninterrupted Telephone G-Cloud Services;

however no warranty or other representation is given by the Supplier that any Telephone G-Cloud Service will be error or fault free or offer all of the services and facilities associated with traditional telephone lines (and for this reason, the Buyer shall ensure that appropriate alternative arrangements are in place for the making of emergency calls). The Supplier shall have no liability to the Buyer in respect of any interruptions to any Telephone G-Cloud Service (other than to pay any applicable Service Credits) and the Buyer shall not be entitled to any refund of Charges (or to withhold payment of any Charges). In particular, the Buyer acknowledges that the performance of any Telephone G-Cloud Services may be impaired by the uploading or downloading of data by the Buyer or End Users across the same network used to provide those Telephone G-Cloud Services and that the Supplier shall have no liability to the Buyer or End Users (including liability to pay Service Credits) where Telephone G-Cloud Services are impaired in such circumstances.

- 5.2** Where the Buyer or any End User uses equipment in connection with any Telephone G-Cloud Service of a type not approved for use with that G-Cloud Service by the Supplier, the Supplier shall have no liability to the Buyer (including liability to pay Service Credits) as a result of any errors or faults with any G-Cloud Service which are attributable to the Buyer's or any End Users' use of such un-approved equipment. The Supplier shall confirm on request by the Buyer from time to time, whether or not specific equipment is approved for a specific Telephone G-Cloud Service.
- 5.3** The Supplier shall use its reasonable endeavours to resolve any fault with any Telephone G-Cloud Service which is reported to it by the Buyer as soon as reasonably practicable. In the event that the Supplier agrees to work outside the Working Day to remedy any such fault, then the Buyer agrees to pay the Supplier's additional charges for such out of hours work at the Professional Services Rates.
- 5.4** The Supplier reserves the right to charge the Buyer (at the Professional Services Rates) for any work undertaken by the Supplier in investigating and/or remedying any fault with any Telephone G-Cloud Service which is reported to it by the Buyer which subsequently turns out not to exist, to have been caused by the act or omission of the Buyer (or an End User) or to have been caused by the Buyer (or an End User) using equipment in connection with any Telephone G-Cloud Service of a type not approved for use with that G-Cloud Service by the Supplier (the Supplier will confirm whether specific equipment is approved for a particular use in the manner set out in Clause 5.2 of this Part A).
- 5.5** Where the Supplier provides any internet protocol addresses, telephone numbers or codes to the Buyer and/or any End User as part of any G-Cloud Service then neither the Buyer nor any End User shall acquire any legal, equitable or other rights in respect of the same other than the right to use the internet protocol address, telephone number or code in question during the Call-Off Term of the relevant G-Cloud Service in accordance with the terms of the Call-Off Contract. All Intellectual Property Rights or other rights subsisting in any internet protocol address, telephone number or code provided to the Buyer and/or any End User by the Supplier shall at all times remain vested in the Supplier or its third-party licensor (as applicable).
- 5.6** The Buyer shall not sell, transfer or lease (and shall procure that no End User sells, transfers or leases) any internet protocol address, telephone number or code which is provided to it by the Supplier and, subject to Clause 6.7, upon termination of the G-Cloud Service in connection with which any internet protocol address, telephone number or code was provided, the right to use such internet protocol address, telephone number or code shall revert back to the Supplier.
- 5.7** At the Buyer's request, the Supplier will 'port' telephone numbers in accordance with Ofcom's General Conditions of Entitlement and the Supplier's then standard charges, to the extent that it has the right to do so, generally or under contract. The Supplier does not guarantee that it has the right to port any telephone number unless it has specifically stated in an Order Form that it does have the right.
- 5.8** The Supplier reserves the right to withdraw or change any internet protocol addresses, telephone numbers or codes which have been provided by it to the Buyer and/or any End User at any time on not less than 7 days' notice.
- 5.9** The Buyer shall not (and shall procure that none of its End Users) undertake Artificial Inflation of Traffic nor make any nuisance calls, nor seek access to any restricted areas of any underlying network. If the Supplier suspects that the Buyer and/or any End User is in breach of this Clause, the Supplier shall be entitled to suspend or terminate the G-Cloud Services immediately on notice to the Buyer.
- 5.10** The Buyer shall (and shall procure that its End Users shall) use telephone numbers allocated to them for the purpose they were originally allocated, in order that the national telephone numbering plan issued by Ofcom is complied with.

## **6 VOIP Services**

- 6.1** The voice over IP G-Cloud Services provided by the Supplier from time to time are different from the



publicly available telephone systems in the following IMPORTANT ways:

- **IF THERE IS A POWER CUT OR FAILURE, YOUR VOICE SERVICES WILL FAIL;**
- **IF THE RELEVANT NETWORK CONNECTION FAILS, YOUR VOICE SERVICES WILL FAIL; and**
- **IF YOUR VOICE SERVICES FAIL, YOU WILL NOT BE ABLE TO CALL THE EMERGENCY NUMBERS, 999 OR 112.**

**6.2** When an emergency call is made, location information about the physical site with which that number is associated is passed to the emergency services however ALL NUMBERS PROVIDED UNDER UNITY IP VOICE AND ALL OTHER VOICE OVER IP SERVICES ARE NOMADIC AND SO A CALLER TO EMERGENCY SERVICES WILL HAVE TO GIVE THEIR LOCATION TO THE EMERGENCY SERVICES.

**6.3** The voice over IP G-Cloud Services provided by the Supplier from time to time do not include:

**6.3.1** support for the Buyer's or its End Users' local area networks or other networks not provided by the Supplier.

**6.3.2** the right to use the relevant service from outside the UK; or access to the internet.

**6.4** Whenever the Buyer or any of its End Users uses any voice over IP G-Cloud Services provided by the Supplier from time to time, the Buyer shall (and the Buyer shall procure that its End Users shall):

**6.4.1** ensure that its/their networks are of sufficient quality to allow the G-Cloud Services to operate properly;

**6.4.2** ensure that its/their networks meet the reasonable requirements notified to the Buyer by the Supplier from time to time;

**6.4.3** ensure that any equipment connected to the G-Cloud Service or used with the relevant G-Cloud Service is used in accordance with its instructions and appropriate security procedures;

**6.4.4** ensure that all equipment connected to the G-Cloud Service or used with the relevant G-Cloud Service (including handsets) is technically compatible, meets any requirements set out in the relevant Service Definition and has all approvals and certifications required for that use;

**6.4.5** ensure that their use does not have a detrimental effect on the Supplier's provision of those G-Cloud Service to its other customers;

**6.4.6** comply with the Supplier's reasonable rules relating to administration and system management notified to the Buyer from time to time; and

**6.4.7** appoint a single administrator to report faults in the G-Cloud Service to the Supplier.

**6.5** In no circumstances shall the Supplier be liable to the Buyer for any difference between the cost of making or receiving a telephone call via any VOIP Telephone G-Cloud Service compared to the cost of using a traditional telephone service.

## **7 Variations to the Call-Off Contract**

**7.1** The Supplier shall be entitled to make such reasonable amendments to any document comprising the Order Documents (and therefore to the Call-Off Contract) as may be necessary from time to time to ensure the Supplier's and the Call-Off Contract's continuing compliance with any applicable legislation, law, code of practice (including the PSA Code of Practice) and/or licence condition (including Ofcom's General Conditions of Entitlement). Where those changes have a material detrimental effect on the Buyer the Supplier shall give the Buyer not less than 31 days' notice and in those circumstances, the Buyer shall be entitled, for the 60 days following the Supplier's notice, to terminate any affected G-Cloud Services which are a of Voice G-Cloud Service Type (but no other G-Cloud Services) on 30 days' notice without payment of any termination fees.

## **8 Amendment to Charges**

**8.1** Where in connection with the provision of any G-Cloud Service it is necessary for a circuit to be installed at the Buyer's site by a third party network provider, the Buyer accepts that the installation Charges may be higher than those specified in the Order Form if the third party's site survey identifies circumstances or issues not originally contemplated by the parties at the date when the relevant Order Form was signed. Within five Working Days of the Buyer being informed that the installation Charges are to be increased, the Buyer may either agree to pay the additional charges or terminate the provision of that particular part



of the G-Cloud Service in respect of which the Charges are otherwise to be increased, by serving written notice on the Supplier subject to the Buyer paying all reasonable costs incurred or committed to by the Supplier in anticipation of providing that G-Cloud Service to the Buyer.

## **9 Additional Termination Rights**

The Supplier reserves the right to terminate any aspect of the Voice G-Cloud Service Type by giving not less than 7 days' notice to the Buyer if it has no alternative but to do so by reason of any requirement of Law.

## **10 Phone-paid Services Authority, Data Protection and Confidential Information**

- 10.1** Notwithstanding any other terms of the Call-Off Contract, where Regulated G- Cloud Services are provided the Buyer acknowledges that the Supplier may be required to disclose all data it holds relating to those Regulated G-Cloud Services and the related Premium Rate G-Cloud Services provided using them, including data collected from consumers, to PSA for regulatory purposes. The Buyer hereby consents to that disclosure and use (on its own behalf and as duly authorised agent for and on behalf of the End Users) and shall take such steps as are required to permit such disclosure and use under the Data Protection Legislation.
- 10.2** Before the Buyer and/or any End User requests or consents to any telephone number being placed in a telephone directory the Buyer agrees to procure any consents required under the Data Protection Legislation in order that the relevant information may lawfully be passed to BT and included in the relevant directory.

## **B Additional Terms that apply to Network Services**

### **1 Application of this Section B**

The provisions that follow only apply to those G-Cloud Services within the Network G-Cloud Service Type; they do not apply to any other G-Cloud Service Type.

### **2 Adjustments to Charges**

- 2.1** If any G-Cloud Service is to include DSL or similar technology at any Buyer site and such technology is found to be unavailable at that site, the Supplier will promptly advise the Buyer that this is the case. The Buyer shall then either agree to pay the Supplier for the time and costs of installing that technology, obtaining any wayleaves and/or consents and undertaking any necessary work and network upgrades at the Professional Services Rates or, within five Working Days of the Buyer being informed that such technology is unavailable, the Buyer may terminate the provision of that particular G- Cloud Service at the relevant site only, by serving written notice on the Supplier, subject to the Buyer paying all reasonable costs incurred or committed to by the Supplier in anticipation of providing that G-Cloud Service to the Buyer.
- 2.2** Where in connection with the provision of any G-Cloud Service it is necessary for a circuit to be installed at the Buyer's site by a third party network provider, the Buyer accepts that the installation Charges may be higher than those specified in the Order Form if the third party's site survey identifies circumstances or issues not originally contemplated by the parties when they executed the relevant Order Form. Within five Working Days of the Buyer being informed that the installation Charges are to be increased, the Buyer may either agree to pay the additional charges or terminate the provision of that particular G-Cloud Service (or part of the G-Cloud Service) by serving written notice on the Supplier, subject to the Buyer paying all reasonable costs incurred or committed to by the Supplier in anticipation of providing that G- Cloud Service to the Buyer.
- 2.3** The capacity of any circuits located at each of the Buyer's sites has been agreed between the Supplier and the Buyer as the bandwidth required as at the date of the relevant Order Form for the then current traffic flow across the Buyer's network. In the event that any subsequent modifications are required as a result of variances in actual traffic flow, such modifications shall be paid for by the Buyer in addition to the relevant Charges

### **3 Prohibited Acts**

- 3.1** The following provisions shall be deemed added to Clause 4.6 of the General Terms in relation to all Network G-Cloud Services, by insertion of the following words at the end of the Clause:
- 3.1.1** "and/or
- 3.1.2** to violate general standards of internet conduct and usage such as denial of service attacks, web-page defacement and port and network scanning and breaching acceptable use policies;
- 3.1.3** to violate any restrictions on the size of email;
- 3.1.4** to forge or spoof any addresses; and/or
- 3.1.5** to share network connections in a manner that allows third parties to access and use such connections."

### **4 Service Limitations**

- 4.1** The Supplier may implement traffic management measures to maintain the quality of its G-Cloud Services across its and its suppliers' customers more generally, including restrictions on heavy users of contended services.
- 4.2** The Buyer (on its own behalf and as agent for its End Users) acknowledges and accepts that use of spam filters carries a small risk that messages it wishes to receive are lost. The Supplier shall not be liable for any such loss.
- 4.3** The Buyer and its End Users' use of the internet is at its and their own risk.

### **5 Variations**

The Supplier shall be entitled to make such reasonable amendments to any document comprising the Order Documents (and therefore to the Call-Off Contract) as may be necessary from time to time to ensure the

Supplier's and the Call-Off Contract's continuing compliance with any applicable legislation, law, code of practice and/or licence condition (including Ofcom's General Conditions of Entitlement). Where those changes have a material detrimental effect on the Buyer the Supplier shall give the Buyer not less than 31 days' notice and in those circumstances, the Buyer shall be entitled, for the 60 days following the Supplier's notice, to terminate any affected G-Cloud Services which are of a Network G-Cloud Service Type (but no other G-Cloud Services) on 30 days' notice without payment of any termination fees.

## **6 Managed Wireless LAN Service**

- 6.1** The provisions of this Clause 6 shall apply, in addition to the other provisions of this Part C, where the G-Cloud Service in question is the Managed Wireless LAN Service.
- 6.2** If the Buyer uses the Guest Internet Access capability of the Managed Wireless LAN Service ("Guest Service"):
  - 6.2.1** the Buyer shall require each guest user to accept end user terms and conditions ("**EUTC**") (the functionality for which is built into the Guest Service) before being given access to any internet page other than the relevant landing page. The Buyer shall be responsible for the contents, enforceability, and enforcement of the EUTC, which shall form a contractual relationship between the Buyer and the guest user (and shall not form any contractual relationship between the Supplier and the guest user). As a minimum, the EUTC shall contain obligations and restrictions on the guest user which are no less onerous than the Buyer's corresponding obligations and restrictions under these Supplier Terms, including Clause 4.6 of the General Terms as amended by Clause 3 of this Section B; and
  - 6.2.2** for the avoidance of doubt, the Buyer shall be responsible for compliance with all Law, codes of practice and licence conditions applicable to the provision of the Guest Service to its guest users, including Ofcom's General Conditions of Entitlement.

## **C Additional Terms that apply to Data Services**

### **1 Application of this Section C**

The provisions that follow only apply to those G-Cloud Services within the Data G-Cloud Service Type; they do not apply to any other G-Cloud Service Type.

### **2 Data Retrieval**

**2.1** On the day following the date on which the provision of a Data G-Cloud Service terminates the G-Cloud Service will be completely decommissioned by the Supplier and, subject to Clause 2.2 all data stored by the Supplier in connection with the use of the Data G-Cloud Service will be deleted.

**2.2** If the Buyer wishes to retrieve any data stored by it using a Data G-Cloud Service, the Buyer shall by written notice to the Supplier on or before the date of termination elect for retrieval of the data carried out by the Supplier using a portable disk containing such data in the Supplier's then standard form, in which case the Buyer must pay immediately all Charges which may be outstanding at the date of termination and the Supplier's then current Charge for the provision of such retrieval via portable disk. In these circumstances the Supplier shall have no obligation to permit the use of the Data G-Cloud Service beyond the termination date so that the Buyer may retrieve its data

### **3 No Staff Transfers**

**3.1** The parties have agreed that they do not expect any transfers of staff to the Supplier from the Buyer (or any End User or any contractor engaged by the Buyer or any End User) at the outset of the Call-Off Contract, nor any transfers of staff to the Buyer (or any End User or any contractor engaged by the Buyer or any End User to provide services in replacement to the G- Cloud Services) from the Supplier at the termination or expiry of the Call-Off Contract or any G-Cloud Services.

**3.2** If, notwithstanding the expectations set out in Clause 3.1, any transfer of staff to the Supplier from the Buyer (or any End User or any contractor engaged by the Buyer or any End User) occurs at the outset of the Call-Off Contract or on the addition of any new G-Cloud Service, then

**3.2.1** The parties will promptly notify each other giving all details and provide all relevant information to each other and conduct any communication, consultation and/or discussion that they are required to conduct with affected individuals or their unions.

**3.2.2** The Supplier may decide to employ the individual concerned on a long-term basis or

**3.2.2.1** require the Buyer to use its reasonable endeavours to employ the individual in place of the Supplier as soon as possible; or

**3.2.2.2** if a request has been made under this Clause 3.2 but that has not resulted in the individual's contract of employment being with the Buyer within 10 Working Days of the request being made, at any time within 12 months of the transfer occurring (or new contract arising), the Supplier may terminate the contract of employment of the individual concerned, taking reasonable steps to minimise the costs of that termination

**3.2.3** If an individual's employment transfers to the Supplier and the Supplier decides not to take that person on as a long-term employee and the Supplier incurs any liability or cost in connection with that employment or the termination of that employment, the Buyer will indemnify the Supplier against all such liabilities and costs from time to time, promptly on demand.

**3.3** If, notwithstanding the expectations set out in Clause 3.1, any transfer of staff to the Buyer (or any End User or any contractor engaged by the Buyer or any End User) from the Supplier occurs at the termination or expiry of the Call-Off Contract or any G-Cloud Service, then:

**3.3.1** The parties will promptly notify each other giving all details and provide all relevant information to each other and conduct any communication, consultation and/or discussion that they are required to conduct with affected individuals or their unions.

**3.3.2** The Buyer (or any End User or any contractor engaged by the Buyer or any End User) may decide to employ the individual concerned on a long-term basis or

**3.3.2.1** require the Supplier to use its reasonable endeavours to employ the individual in place of the Buyer (or any End User or any contractor engaged by the Buyer or any End User) as soon as possible; or,

**3.3.2.2** if a request has been made under this Clause 3.3 but that has not resulted in the individual's contract of employment being with the Supplier within 10 Working Days of the request being made, at any time within 12 months of the transfer occurring (or new contract arising), the Buyer (or any End User or any contractor engaged by the Buyer or any End User) may terminate the contract of employment of the individual concerned, taking reasonable steps to minimise the costs of that termination

**3.3.3** If an individual's employment transfers to the Buyer (or any End User or any contractor engaged by the Buyer or any End User) in circumstances where that entity decides not to take that person on as a long term employee and the Buyer (or any End User or any contractor engaged by the Buyer or any End User) incurs any liability or cost in connection with that employment or the termination of that employment, the Supplier will indemnify the Buyer against all such liabilities and costs from time to time, promptly on demand.

## D Additional Terms that apply to Hosting Services

### 1 Application of this Section D

The provisions that follow only apply to those G-Cloud Services within the Hosting G-Cloud Service Type; they do not apply to any other G-Cloud Service Type.

### 2 Data Retrieval

- 2.1 In this Section D of Part 2, "**Permitted AMP Usage**" means the number of amps calculated by multiplying the number of Buyer Racks installed at any premises of the Supplier by eight.

### 3 No Interest in Land

- 3.1 Whereas part of any Hosting G-Cloud Service the Supplier permits the Buyer to install any Buyer Equipment at any premises of the Supplier, the only right which is granted is the right to locate such Buyer Equipment upon the premises of the Supplier during the term of the provision of the G-Cloud Service in question. The provision of any such G-Cloud Service shall not create any relationship of landlord and tenant between the Supplier and the Buyer or any End User.
- 3.2 The Supplier reserves the right to require the Buyer to relocate, at the Supplier's cost, any Buyer Equipment located at any premises of the Supplier to an alternative location within the same premises. In the case of a private suite, the Supplier shall ensure that the alternative location provides at least the same floor area. The Supplier shall provide the Buyer with at least ten Working Days' written notice of any requirement for it to relocate any Buyer Equipment pursuant to this Clause 3.2

### 4 Adjustments to Charges

- 4.1 If the Buyer's use of the G-Cloud Services results in more electricity than the Permitted AMP Usage being consumed by any Buyer Rack, the Supplier shall be entitled to require that the Buyer either reduces its usage to the Permitted AMP Usage or charge the Buyer for its excess power consumption at that Buyer Rack at its then standard price per AMP.
- 4.2 The initial Charges for Hosting G-Cloud Services are based on the assumption that there will be no increase in the cost to the Supplier of the electricity required to operate the Buyer Equipment and the relevant data centre generally (including electricity used for heating/cooling) during the Call-Off Contract Term. If there is a subsequent increase in the cost of electricity to the Supplier, the Supplier shall be entitled to increase the relevant Charges to reflect the increased cost of electricity committed for consumption by the Buyer Equipment and by an amount (calculated by reference to the space used by the Buyer at the relevant data centre) to reflect the increased cost in operating the data centre environment by serving not less than twenty-eight days' written notice on the Buyer.
- 4.3 The Supplier shall be entitled to increase the Charges for any and all Hosting G-Cloud Services once each Year to reflect any increase in the Supplier's costs of providing those G-Cloud Services, other than the cost of electricity. Such cost increases may include increases in rent, rates, taxes, service charges and other utility charges. Any increase applied by the Supplier pursuant to this Clause 4.3 shall take into account any increases in the Charges which have been made by the Supplier in the preceding twelve months in accordance with Clause 8.1 of the General Terms.

### 5 Buyer Equipment

- 5.1 The Supplier shall be entitled to access any Buyer Equipment located at its premises (including any Buyer Equipment located in a private suite or locked cabinet) at any time for the purposes of performing maintenance or other works in the case of an emergency or for health and safety reasons. The Buyer shall provide the Supplier with any security codes, access passes or keys necessary to enable access by the Supplier in accordance with this Clause 5.1.
- 5.2 The Buyer shall be solely responsible for the provision, installation, configuration and maintenance of all Buyer Equipment. Risk of loss or damage to Buyer Equipment shall remain with the Buyer at all times and the Buyer shall be responsible for insuring all Buyer Equipment against fire, theft and all usual risks (including loss or damage caused by an event of Force Majeure)
- 5.3 The Buyer shall ensure that all Buyer Equipment:
- 5.3.1 is supplied, configured, and used in accordance with all applicable manufacturer's instructions, safety standards, best industry practice and the reasonable instructions of the Supplier;

- 5.3.2 is not added to, modified, removed, or changed without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed); and
- 5.3.3 does not exceed any power utilisation agreed with the Supplier.
- 5.4 At the request of the Supplier from time to time, the Buyer shall promptly provide the Supplier with an accurate list of all Buyer Equipment installed at any premises of the Supplier.
- 5.5 Within seven days of the date of termination of any Hosting G-Cloud Service in respect of which any Buyer Equipment is located at any premises of the Supplier, the Buyer shall remove that Buyer Equipment from the premises of the Supplier during the Working Day (making good any damage and subject to the other terms of the Call-Off Contract). In the event that the Buyer fails to remove the Buyer Equipment within:
  - 5.5.1 such seven-day period, then the Buyer shall continue to pay the Charges for the terminated Hosting G-Cloud Service as though the G- Cloud Service was continuing (although the Supplier shall not be obliged to provide that G-Cloud Service) until such time as the Buyer Equipment is removed by the Buyer or otherwise disposed of by the Supplier in accordance with Clause 5.5.2; and
  - 5.5.2 twenty-eight days of the date of termination, the Supplier shall be entitled to: (i) place that Buyer Equipment into storage (and the Buyer shall pay to the Supplier on demand its Professional Services Rates for the time spent and all reasonable costs incurred by the Supplier in connection with that storage); (ii) sell that Buyer Equipment accounting to the Buyer for the proceeds of any sale (after first deducting any amounts owing from the Buyer to the Supplier, for the time spent in effecting a sale at the Professional Services Rates and any other reasonable costs of effecting any sale); or (iii) dispose of that Buyer Equipment (and the Buyer shall pay to the Supplier on demand for the time spent in effecting a sale at the Professional Services Rates and any other costs all reasonable costs incurred by the Supplier in disposing of that Buyer Equipment).

## 6 No Staff Transfers

- 6.1 The parties have agreed that they do not expect any transfers of staff to the Supplier from the Buyer (or any End User or any contractor engaged by the Buyer or any End User) at the outset of the Call-Off Contract, nor any transfers of staff to the Buyer (or any End User or any contractor engaged by the Buyer or any End User) to provide services in replacement to the G-Cloud Services) from the Supplier at the termination or expiry of the Call-Off Contract or any G-Cloud Service
- 6.2 If, notwithstanding the expectations set out in Clause 6.1, any transfer of staff to the Supplier from the Buyer (or any End User or any contractor engaged by the Buyer or any End User) occurs at the outset of the Call-Off Contract or on the addition of any new G-Cloud Service, then:
  - 6.2.1 The parties will promptly notify each other giving all details and provide all relevant information to each other and conduct any communication, consultation and/or discussion that they are required to conduct with affected individuals or their unions.
  - 6.2.2 The Supplier may decide to employ the individual concerned on a long-term basis or:
    - 6.2.2.1 require the Buyer to use its reasonable endeavours to employ the individual in place of the Supplier as soon as possible; or if a request has been made under this Clause 6.2 but that has not resulted in the individual's contract of employment being with the Buyer within 10 Working Days of the request being made, at any time within 12 months of the transfer occurring (or new contract arising), the Supplier may terminate the contract of employment of the individual concerned, taking reasonable steps to minimise the costs of that termination.
  - 6.2.3 If an individual's employment transfers to the Supplier and the Supplier decides not to take that person on as a long-term employee and the Supplier incurs any liability or cost in connection with that employment or the termination of that employment, the Buyer will indemnify the Supplier against all such liabilities and costs from time to time, promptly on demand.
- 6.3 If, notwithstanding the expectations set out in Clause 6.1, any transfer of staff to the Buyer (or any End User or any contractor engaged by the Buyer or any End User) from the Supplier occurs at the termination or expiry of the Call-Off Contract or any G-Cloud Service, then:
  - 6.3.1 The parties will promptly notify each other giving all details and provide all relevant information to each other and conduct any communication, consultation and/or discussion that they are required to conduct with affected individuals or their unions.
  - 6.3.2 The Buyer (or any End User or any contractor engaged by the Buyer or any End User) may decide to employ the individual concerned on a long-term basis or:



**6.3.3** require the Supplier to use its reasonable endeavours to employ the individual in place of the Buyer (or any End User or any contractor engaged by the Buyer or any End User) as soon as possible; or,

**6.3.3.1** if a request has been made under this Clause 6.3 but that has not resulted in the individual's contract of employment being with the Supplier within 10 Working Days of the request being made, at any time within 12 months of the transfer occurring (or new contract arising), the Buyer (or any End User or any contractor engaged by the Buyer or any End User) may terminate the contract of employment of the individual concerned, taking reasonable steps to minimise the costs of that termination.

**6.3.3.2** If an individual's employment transfers to the Buyer (or any End User or any contractor engaged by the Buyer or any End User) in circumstances where that entity decides not to take that person on as a long term employee and the Buyer (or any End User or any contractor engaged by the Buyer or any End User) incurs any liability or cost in connection with that employment or the termination of that employment, the Supplier will indemnify the Buyer against all such liabilities and costs from time to time, promptly on demand.

## **7 Hands & Eyes Service**

**7.1.1** Where “**hands and eyes services**” are provided as part of the Hosting G-Cloud Services, they are provided subject to the terms applicable to Professional Services and if any work is performed over and above the work included in the relevant Hosting G-Cloud Services, it will be provided as a Professional Service and subject to the Professional Services Rates and Section G of the Additional Terms.

## **E Additional Terms that apply to IaaS/SaaS Services**

### **1 Application of this Section E**

The provisions that follow only apply to those G-Cloud Services within the IaaS/SaaS G-Cloud Service Type; they do not apply to any other G-Cloud Service Type.

### **2 No Staff Transfers**

- 2.1** The parties have agreed that they do not expect any transfers of staff to the Supplier from the Buyer (or any End User or any contractor engaged by the Buyer or any End User) at the outset of the Call-Off Contract, nor any transfers of staff to the Buyer (or any End User or any contractor engaged by the Buyer or any End User) to provide services in replacement to the G-Cloud Services) from the Supplier at the termination or expiry of the Call-Off Contract or any G-Cloud Services.
- 2.2** If, notwithstanding the expectations set out in Clause 2.1, any transfer of staff to the Supplier from the Buyer (or any End User or any contractor engaged by the Buyer or any End User) occurs at the outset of the Call-Off Contract or on the addition of any new G-Cloud Service, then:
- 2.3** The parties will promptly notify each other giving all details and provide all relevant information to each other and conduct any communication, consultation and/or discussion that they are required to conduct with affected individuals or their unions.
- 2.4** The Supplier may decide to employ the individual concerned on a long-term basis or:
- 2.4.1** require the Buyer to use its reasonable endeavours to employ the individual in place of the Supplier as soon as possible; or
- 2.4.2** if a request has been made under this Clause 2.2 but that has not resulted in the individual's contract of employment being with the Buyer within 10 Working Days of the request being made, at any time within 12 months of the transfer occurring (or new contract arising), the Supplier may terminate the contract of employment of the individual concerned, taking reasonable steps to minimise the costs of that termination.
- 2.5** If an individual's employment transfers to the Supplier and the Supplier decides not to take that person on as a long-term employee and the Supplier incurs any liability or cost in connection with that employment or the termination of that employment, the Buyer will indemnify the Supplier against all such liabilities and costs from time to time, promptly on demand.
- 2.6** If, notwithstanding the expectations set out in Clause 2.1, any transfer of staff to the Buyer (or any End User or any contractor engaged by the Buyer or any End User) from the Supplier occurs at the termination or expiry of the Call-Off Agreement or any G-Cloud Service, then:
- 2.6.1** The parties will promptly notify each other giving all details and provide all relevant information to each other and conduct any communication, consultation and/or discussion that they are required to conduct with affected individuals or their unions.
- 2.7** The Buyer (or any End User or any contractor engaged by the Buyer or any End User) may decide to employ the individual concerned on a long-term basis or:
- 2.7.1** require the Supplier to use its reasonable endeavours to employ the individual in place of the Buyer (or any End User or any contractor engaged by the Buyer or any End User) as soon as possible; or,
- 2.7.2** if a request has been made under this Clause 2.9 but that has not resulted in the individual's contract of employment being with the Supplier within 10 Working Days of the request being made, at any time within 12 months of the transfer occurring (or new contract arising), the Buyer (or any End User or any contractor engaged by the Buyer or any End User) may terminate the contract of employment of the individual concerned, taking reasonable steps to minimise the costs of that termination.
- 2.8** If an individual's employment transfers to the Buyer (or any End User or any contractor engaged by the Buyer or any End User) in circumstances where that entity decides not to take that person on as a long term employee and the Buyer (or any End User or any contractor engaged by the Buyer or any End User) incurs any liability or cost in connection with that employment or the termination of that employment, the Supplier will indemnify the Buyer against all such liabilities and costs from time to time, promptly on demand.
- 2.9** require the Supplier to use its reasonable endeavours to employ the individual in place of the Buyer (or any End User or any contractor engaged by the Buyer or any End User) as soon as possible; or,

- 2.9.1** if a request has been made under this Clause 2.9 but that has not resulted in the individual's contract of employment being with the Supplier within 10 Working Days of the request being made, at any time within 12 months of the transfer occurring (or new contract arising), the Buyer (or any End User or any contractor engaged by the Buyer or any End User) may terminate the contract of employment of the individual concerned, taking reasonable steps to minimise the costs of that termination;
- 2.9.2** if an individual's employment transfers to the Buyer (or any End User or any contractor engaged by the Buyer or any End User) in circumstances where that entity decides not to take that person on as a long term employee and the Buyer (or any End User or any contractor engaged by the Buyer or any End User) incurs any liability or cost in connection with that employment or the termination of that employment, the Supplier will indemnify the Buyer against all such liabilities and costs from time to time, promptly on demand.

### **3 Data Retrieval**

- 3.1** On the day following the date on which the provision of an IaaS/SaaS G-Cloud Service terminates the G-Cloud Service will be completely decommissioned by the Supplier and, subject to Clause 3.2 all data stored by the Supplier in connection with the use of the IaaS/SaaS G-Cloud Service will be deleted.
- 3.2** If the Buyer wishes to retrieve any data stored by it using an IaaS/SaaS G-Cloud Service, the Buyer shall by written notice to the Supplier on or before the date of termination elect for retrieval of the data carried out by the Supplier using a portable disk containing such data in the Supplier's then standard form, in which case the Buyer must pay immediately all Charges which may be outstanding at the date of termination and the Supplier's then current Charge for the provision of such retrieval via portable disk. In these circumstances the Supplier shall have no obligation to permit the use of the IaaS/SaaS G-Cloud Service beyond the termination date so that the Buyer may retrieve its data.

## **F Additional Terms that apply to Professional Services**

### **1 Application of this Section F**

The provisions that follow only apply to those G-Cloud Services within the Professional Services G-Cloud Service Type; they do not apply to any other G-Cloud Service Type.

### **2 Outputs**

- 2.1** The Supplier will use its reasonable endeavours to provide the Professional Services and endeavour to do so by any dates agreed between the parties in writing. The Supplier does not guarantee to be able to achieve any specific outcome from Professional Services.
- 2.2** If the Buyer is dissatisfied with any Professional Services, its sole remedy shall be to complain within 30 days of completion of the relevant Professional Services and allow the Supplier a reasonable time to re-perform those Professional Services.

### **3 Charges**

All Professional Services will be charged on a time and materials basis at the Professional Services Rates and invoiced Monthly in arrears.

### **4 Intellectual Property Rights**

If the Professional Services result in the creation of any Intellectual Property Rights, those Intellectual Property Rights shall vest in and be the property of the Supplier.

### **5 Expenses**

- 5.1** In addition to Charges at the Professional Services Rates, the Supplier shall be entitled to recover its expenses which are reasonably incurred in providing the Professional Services.

## **G Additional Terms that apply to Microsoft Products**

### **1 Application of this Section G**

The provisions that follow apply to G-Cloud Services that consume Microsoft software or services.

### **2 Definitions**

**2.1** “**Microsoft Buyer Agreement**” has the meaning given in clause 3.1

**2.2** “**Microsoft Product**” means the relevant Microsoft Cloud TM product provided by Microsoft (for example Microsoft Office 365 TM, Microsoft Azure TM) and resold to the Buyer by Supplier in its capacity as Microsoft reseller, in connection with any G-Cloud Services that consume Microsoft software or services

### **3 General Provisions**

**3.1** The Microsoft Products are provided to the Buyer by Microsoft, not by Supplier. It is a condition of the provision of the Microsoft Products that the Buyer enters into a direct customer agreement with Microsoft in a form prescribed by Microsoft from time to time (“**Microsoft Buyer Agreement**”). Supplier has no control over this requirement or over the form of the Microsoft Buyer Agreement. Supplier will provide the Buyer with the then current form of the Microsoft Buyer Agreement when preparing an order for Microsoft Product and will require the Microsoft Buyer Agreement to be returned signed by the Buyer before the relevant Service can be implemented.

**3.2** The Buyer acknowledges that all Microsoft Products are provided to it, by Microsoft, subject to the terms and conditions of the Microsoft Buyer Agreement and all documents and provisions referenced in it, including Use Rights and SLA (as those terms are defined in the Microsoft Buyer Agreement). It is the Buyer’s responsibility to make itself aware of, and comply with, all such provisions.

**3.3** Without limiting clause 3.2 above, the Microsoft Buyer Agreement contains provisions dealing with the renewal and termination of the Buyer’s subscription to the Microsoft Product, and it is important that the Buyer makes itself aware of those provisions.

**3.4** The Buyer acknowledges and agrees that Microsoft may modify a Microsoft Product, or may release a new version of a Microsoft Product at any time and for any reason including to address customer needs or otherwise address competitive demands, to respond to a government regulation, order, or law, or to advance innovation in its product offerings. Microsoft has the right to add new features or functionality to, or remove existing features or functionality from, a Microsoft Product.

**3.5** Supplier is not permitted by Microsoft to make, and does not make, any representation or warranty about the Microsoft Products.

**3.6** The Buyer acknowledges that Supplier is required to stop collecting new orders for Microsoft Products for the Buyer if at any time Microsoft notifies Supplier of the termination of the Buyer’s status as a Microsoft customer in respect of Microsoft Products.

### **4 Modern Workplace 365 and Managed Public Cloud Azure Services Specific Terms**

**4.1** Microsoft Office 365 TM and Microsoft Azure TM Microsoft Products provided by the Supplier are described in detail in the applicable Service Definitions. The Supplier will provide, and the Buyer will receive, the Services in accordance with the terms, requirements and restrictions of the applicable Service Definition. In summary, the Services consist of the provisioning to the Buyer of a subscription to the relevant Microsoft Product in the Supplier’s capacity as a Microsoft reseller, and, in addition, related Services, including support Services, related to the Microsoft Product, as set out in the Service Definition.

**4.2** The applicable service levels and service credits are provided by Microsoft as summarised in the applicable Service Definition, and Supplier does not offer any separate or additional Service Levels or Service Credits, nor does it provide any assurance that Microsoft’s practices in this area will not change. Without limitation, Supplier is not subject to any service levels in relation to the delivery and/or performance of any Microsoft Product, in respect of which service level agreement commitments are made directly by Microsoft, to the Buyer as set out or referred to in the Microsoft Buyer Agreement. Accordingly, Supplier is not responsible to the Buyer for the delivery and/or performance (or non-delivery, late delivery, non-performance, or late performance) of the Microsoft Product except to the extent (if any) expressly set out in the applicable Service Definition.

**4.3** The Buyer acknowledges and agrees that all data stored on the Microsoft Product by the Buyer will be processed by Microsoft and its affiliates, subsidiaries and service providers as contemplated by the Microsoft Buyer Agreement. The Buyer must notify the individual users of the Microsoft Product that their

data may be processed for the purposes of disclosing it to law enforcement or other governmental authorities and shall obtain such users' consent to the same.

## H Additional Terms that apply to Cyber Services

### 1 Application of this Section H

The provisions that follow only apply to those G-Cloud Services within the Cyber G-Cloud Service Type; they do not apply to any other G-Cloud Service Type.

### 2 Definitions

- 2.1 **“Deliverables”**: the deliverables set out in any Call-Off Contract
- 2.2 **“Documents”**: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.
- 2.3 **“Input Material”**: means all Documents, information and materials provided by the Buyer relating to the G-Cloud Services, including computer programs, data, reports, branding, trademarks and specifications.

### 3 Supplier responsibilities to the Buyer

- 3.1 The nature and content of any advice the Supplier provides will reflect the specific scope and limitations of the engagement, the amount and accuracy of information provided to the Supplier and the timescale within which the advice is required. If the Buyer asks the Supplier to provide its advice in an abbreviated format or timescale, the Buyer accepts that the Buyer will not receive all the information they would have done had the Supplier provided a full written report or had been able to perform the work without an abbreviated timescale;
- 3.2 The Supplier is providing specific advice only for the engagement and for no other purpose and the Supplier disclaims any responsibility for the use of its advice for a different purpose or in a different context.
- 3.3 The Supplier shall be under no obligation to update any advice for events occurring after the advice has been accepted by the Buyer as final form.
- 3.4 The Supplier shall:
  - 3.4.1 allocate sufficient resources to the G-Cloud Services to enable it to comply with the obligations of the Call-Off Contract;
  - 3.4.2 co-operate with the Buyer in all matters relating to the G-Cloud Services and comply with any reasonable requests or instructions which may be made from time to time by the Buyer.

### 4 The Buyer's responsibilities to the Supplier

In order to enable the Supplier to fulfil its responsibilities, the Buyer agrees on request, to provide the Supplier with complete, accurate and timely information and to carry out any obligations as documented within the Call-Off Contract (including these Supplier Terms). The Buyer agrees that any commercial decisions that it makes, are not within the scope of the Suppliers duty of care and in taking such decisions the Buyer must take into account the restrictions on the scope of the Suppliers work and other factors, commercial and otherwise, of which the Buyer and its other advisers are, or should be, aware from sources other than the Suppliers work.

### 5 No Reliance

The reports, letters, information and advice the Supplier provides to the Buyer as part of the G-Cloud Services are given in confidence solely for the purpose of the G-Cloud Services and are provided on the condition that the Buyer undertakes not to disclose these, or any other Confidential Information made available to the Buyer by the Supplier during the course of the Call-Off Contract, to any third party (being a party other than those to whom the report, letter, information or advice is addressed) without the Suppliers prior written consent. The Supplier disclaims all responsibility for any consequence whatsoever should any such third party rely upon any report, letter, information, or advice without the Supplier first having given its written consent that such third party may do so.

### 6 Authorisation – Computer Misuse Act 1990

- 6.1 Acceptance of the Call-Off Contract and/or instruction to proceed with the G-Cloud Services shall act as authorisation for the Supplier employees to access the computer systems and/or networks of the Buyer in support of the G-Cloud Services. This authorisation is with particular reference to the UK Computer Misuse Act 1990 and any local applicable laws which create a criminal offence of accessing systems without authorisation or similar.



- 6.2** This authorisation includes the right to gain full access to systems and machines, including the introduction of code and the manipulation of data in support of the G-Cloud Services. The signatory to the Call-Off Contract confirms that they have the relevant authority to grant such authorisation on behalf of the Buyer for the Supplier employees to access these systems and networks and that they have informed any other relevant third parties such as hosting companies of this authorisation.
- 6.3** Furthermore, the Buyer understands and accepts that the G-Cloud Services will review a snapshot in time of the systems in scope. Subsequent configuration changes could result in the introduction of new vulnerabilities or a weakened security posture. Testing is representative of both the Supplier's security testing methodology and attack techniques known at the time of testing.
- 6.4** As such, and due to limitations within the G-Cloud Services, legal frameworks and time constraints, the Buyer acknowledges that additional security weaknesses, which could not reasonably be identified during the G-Cloud Services, may be present within the systems, and in no event will the Supplier, or its directors, agents or employees, be liable for any decision made, or withheld, in reliance of the information contained within the formal report.

## I Additional Terms that apply to Backup As A Service Services

### 1 Application of this Section I

The provisions that follow only apply to those G-Cloud Services within the Backup as a Service G-Cloud Service Type; they do not apply to any other G-Cloud Service Type.

### 2 Overview

The G-Cloud Services provide off-site electronic backup services for Buyer data. Data is backed up into and retrieved from the Supplier G-Cloud Services, as described in greater detail below and in the Service Description and Call-Off Contract

### 3 Definitions

- 3.1 **“Backup Schedule”** means a schedule of the times agreed with the Supplier from time to time, that backups of the Buyer’s Systems are to be taken;
- 3.2 **“Communications Link(s)”** means either (i) a Supplier or Buyer procured telecommunication(s) link, or (ii) the Internet, as specified in the Call-Off Contract;
- 3.3 **“CPE Site”** means any site described as such in the Call-Off Contract where any CPE is to be located (including any Buyer rack in which any CPE is to be installed at a Supplier site);
- 3.4 **“Buyer Contact”** means the Buyer’s authorised representative specified as such in the Call-Off Contract, nominated to liaise and work with the Supplier in connection with the G-Cloud Services;
- 3.5 **“Buyer Backup Data”** means the agreed files, databases and directories contained within the Buyer System(s), that are to be stored in the G-Cloud Services pursuant to the Call-Off Contract;
- 3.6 **“Customer Premises Equipment”** or **“CPE”** means any Supplier equipment (e.g. a router) to be installed at a Buyer site (or on a Buyer rack at a Supplier site) for the purposes of the G-Cloud Services;
- 3.7 **“Buyer System(s)”** means the Buyer’s data processing system(s) identified with file server references, operating system and database or open file manager or email application type, all as specified in the Call-Off Contract;
- 3.8 **“Documentation”** means any documentation provided by the Supplier for the purpose of providing the G-Cloud Services;
- 3.9 **“Secondary G-Cloud Services”** means a secondary Supplier G-Cloud Services at a site different from the site of the G-Cloud Services;
- 3.10 **“Software Installation Site”** means any site at which the Supplier is to install software;
- 3.11 **“Backup Data”** means the Buyer Data that is stored on the G-Cloud Services from time to time;
- 3.12 **“Subscription Charges”** means the Charges described as such in the Price Card and SFIA Rate Card
- 3.13 **“G-Cloud Services”** means the primary, and where applicable, secondary Supplier platforms and data processing systems used for storage of the Backup Data.

### 4 Data Restores

- 4.1 If the G-Cloud Services is not available for retrieval purposes for any reason, then at the Buyer’s request the Supplier shall use its reasonable endeavours to make available Backup Data in the Secondary G-Cloud Services where applicable.
- 4.2 On expiry or earlier termination of the Call-Off Contract, the Buyer shall cease to have access to the G-Cloud Services and Secondary G-Cloud Services, where applicable, the Supplier will retain all Backup Data for 30 days after expiry or earlier termination of the Call-Off Contract. During this 30-day period, at the Buyer’s request, the Supplier will make the Backup Data available to the Buyer, subject to payment of its then current Charges, set out in the SFIA rate card, for doing so. At the expiry of the 30 days period, the Supplier will delete all Backup Data.

### 5 Buyer Responsibilities

- 5.1 In sufficient time to enable the Supplier to perform its obligations the Buyer shall:

- 5.1.1** Appoint the Buyer Contact and designate two suitably qualified and authorised employees, to provide the co-ordination and assistance required;
- 5.1.2** If applicable, (i) give the Supplier or its agents access to the CPE Site(s) to enable it or them to install any CPE there for the purposes of the G-Cloud Services; (ii) provide suitable space in suitable communications rack(s) for the CPE; and (iii) provide suitable power for the CPE; (iv) (except when a CPE Site is a Supplier site) provide one or more PSTN lines as required for the Supplier to provide remote support;
- 5.1.3** Provide any Communications Link(s) the Buyer is to provide;
- 5.1.4** If applicable, install and configure the software on the Buyer's Systems (such installation to be subject to such reasonable procedures and processes as may be required by the Supplier), if (as specified in the Call-Off Contract or otherwise agreed with the Supplier) it is responsible for installing the software on the Buyer Systems;
- 5.1.5** If applicable, assist the Supplier, as reasonably requested by the Supplier, in installing and configuring the software on the Buyer Systems, if (as specified in the Call-Off Contract or otherwise agreed with the Supplier) the Supplier is responsible for installing the software;
- 5.1.6** If applicable, assist the Supplier in setting up and defining parameters of the Buyer Data;
- 5.1.7** If applicable, work with the Supplier to establish, configure and install the Backup Schedule.
- 5.1.8** Appoint the Buyer Contact to coordinate activities between the Buyer and the Supplier;
- 5.1.9** If applicable, supply the names of its employees who are authorised to request changes (that do not require the Supplier's agreement) to any element of the G-Cloud Services; and
- 5.1.10** Provide such assistance as may be required by the Supplier throughout the Call-Off Term, designate two suitably qualified and authorised employees who have access rights to all the Buyer's relevant computer systems (including the Buyer's Systems) and who have relevant knowledge of: (i) IT and data management; (ii) the Buyer's network structure; (iii) the Buyer's directory structures, and (iv) the Buyer's business activities relevant to the application of the IT systems.
- 5.1.11** The Buyer shall promptly:
  - 5.1.11.1** inform the Supplier of any changes to the Buyer Contact from time to time;
  - 5.1.11.2** inform the Supplier of any changes to the parameters of the Buyer Data from time to time;
  - 5.1.11.3** make any necessary changes to any configuration files from time to time as directed by the Supplier's personnel;
  - 5.1.11.4** give the Supplier any diagnostic information and log files required by the Supplier from time to time.
- 5.1.12** The Buyer warrants that the Backup Data is and will be lawful and lawfully held by the Buyer and that it shall, if applicable, use the CPE and Supplier procured Communication Link(s) (if any) and software in a proper and lawful manner and only in connection with the G-Cloud Services, and not allow any person to use the same who is not trained and skilled in its operation.
- 5.1.13** The Buyer acknowledges and agrees that it is the best judge of the value and importance of the Backup Data, and it will be solely responsible for taking out any insurance policy or other financial cover for any costs, expenses, loss or damage, which may arise from any loss, damage or destruction to Backup Data, howsoever occurring.

## **6 Supplier Responsibilities**

- 6.1** Starting on the Call-Off Contract Start Date, and subject to the Buyer performing its obligations in relation to installation, the Supplier shall:
  - 6.1.1** If applicable, install and configure the software on the Buyer's Systems, if (as specified in the Call-Off Contract or otherwise agreed) the Supplier is responsible for installing the software on the Buyer Systems);
  - 6.1.2** If applicable, install and configure the Communications Link(s) and/or CPE (if any) that the Supplier is to provide at the CPE Site(s);

**6.1.3** If applicable, provide training in the use of the G-Cloud Services for the number of Buyer employees specified in the Call-Off Contract (and if no such number is specified, then for up to two (2) Buyer employees);

**6.1.4** If applicable, work with the Buyer to establish, configure and install the Backup Schedule.

## **7 Miscellaneous**

### **7.1 Changes and Outages**

**7.1.1** From time to time, the Supplier may need to perform maintenance on, or make repairs or adjustments to, equipment, systems and/or infrastructure at the location of the Primary G-Cloud Services and/or, if applicable, Secondary G-Cloud Services, and shall be entitled to do so at its discretion, without incurring liability for so doing. In the event of any such maintenance or adjustment being needed, then except in the case of emergency maintenance, the Supplier will give the Buyer reasonable prior notice, and shall use reasonable endeavours to limit the interruption. If emergency maintenance is needed, the Supplier shall be entitled to interrupt services without prior notice.

### **7.2 Customer Premises Equipment (CPE)**

**7.2.1** If any CPE is installed at a Buyer site (including, where appropriate, any Buyer rack or other facility into which any CPE is to be installed at a Supplier site), but not otherwise.

**7.2.2** The Buyer warrants that it shall allow (and that it is lawfully permitted to allow) the Supplier to install the CPE at the CPE Site.

**7.2.3** The Buyer shall indemnify the Supplier for loss of or damage to the CPE except to the extent caused by the negligence of the Supplier, or that of any of its servants or agents for which the Supplier is vicariously liable in law.

### **7.3 Software and Documentation**

**7.3.1** The Supplier uses software licensed from a third party in providing the G-Cloud Services. Such software is designed to provide backup support to specific operating, database and email systems. The Buyer shall ensure that it promptly (and no later than reasonably required by the Supplier) installs all new versions of, and updates and patches to, that software that the Supplier makes available to the Buyer.

**7.3.2** The Buyer's software providers may issue:

**7.3.2.1** new releases of any of the operating, database or e mail systems installed on the Buyer System(s); or

**7.3.2.2** upgrades or patches (e.g. Microsoft Service Pack) to the Buyer System(s).

**7.3.3** In these circumstances, new or amended software that may be required to support the new releases or upgraded or patched Buyer System(s) may not be immediately available for use by the Supplier in providing the G-Cloud Services. The Buyer acknowledges that if it installs such new releases, upgrades or patches before the required new or amended software is installed by the Supplier, then Buyer Data may not be correctly sent to or received by the G-Cloud Services.

**7.3.4** The Buyer shall inform the Supplier promptly of its intention to install any such new releases, upgrades, or patches. The Supplier will confirm whether the new release or upgraded or patched software is supported by the software or requires a new software.

**7.3.5** The Supplier and/or its representatives shall be permitted to inspect the Buyer System(s) in order to verify compliance by the Buyer with the provisions relating to the use of the software.

**7.3.6** The Buyer may use the Documentation for its use of the G-Cloud Services and no other purpose, and will not duplicate, or cause or permit the duplication of, the Documentation in whole or part. The Buyer will obtain no title to any Documentation.

**7.3.7** At the expiry or earlier termination of the Call-Off Contract the Buyer shall, at its own cost, permanently destroy or return to the Supplier (at the Supplier's option) the software and Documentation.

### **7.4 Communications Link(s)**

**7.4.1** Any Communications Link(s) procured by the Buyer must comply with the Supplier's standards as notified to the Buyer, unless (and to the extent) otherwise agreed by the Supplier. These links shall be made available by the Buyer for the Call-Off Term. The Supplier has no obligation (other than

notifying the Buyer of the Supplier's standards) in relation to any Buyer procured Communications Link(s).

- 7.4.2** If the Supplier is to provide any Communications Link(s), it will do so as set out below.
- 7.4.3** All Supplier provided 'point to point' telecommunications circuits will be connected between the Carrier Demarcation Point (CDP) at the CPE Site and the G-Cloud Services site. The Supplier is not responsible for the availability, timing or quality of transmission or signalling on the Buyer's side of any CDP.
- 7.4.4** Telecommunications providers frequently quote for the provision of services on certain assumptions, which may turn out not to be valid. In the event that a telecommunications provider declines to provide the service on the terms quoted to the Supplier or at all, as a result of such assumptions not being valid, the Supplier shall be entitled to terminate the relevant G-Cloud Services with immediate effect and without cost, penalty or liability to the Buyer.
- 7.4.5** Installation of any communications links to the G-Cloud Services site, that are requested by the Buyer and are in addition to any communications links already available at the G-Cloud Services site may be subject to the consent of the landlord under the Supplier's lease or other agreement governing the Supplier's occupation of the G-Cloud Services site, and (where such consent is granted) shall be conducted at times agreed with the Supplier, and if the Supplier desires, its involvement. The Buyer shall be responsible at its own cost in all things for the provision to any communications supplier of any required consent, way leave, or other matters required by the communications provider, in relation to any Buyer occupied or utilised site, which is linked to the G-Cloud Services.
- 7.4.6** All Communications Link(s) are provided or procured subject to the availability of the necessary services from the Supplier's communications providers. The Buyer acknowledges and agrees that the transfer of data across any Communications Links is subject to the availability of the necessary services from third party telecommunications providers. Accordingly, the Supplier does not guarantee (nor is it a condition or warranty of the Call-Off Contract) that storage to and retrieval from the G-Cloud Services of any data via the Communications Links will always be possible without interruption or error.
- 7.4.7** The Supplier may, without liability, by prior written notice to the Buyer, terminate or withhold the provision of all or part of the G-Cloud Services, if: (a) the Supplier no longer has the legal right to provide the Communications Link(s), or (b) the Supplier's communications providers terminate services to the Supplier; or (c) any regulatory authority asserts jurisdiction over the G-Cloud Services, resulting in the Supplier being required to submit to common carrier, public utility or other regulation to which the Supplier is not now subject.

## **J Additional Terms that apply to Infrastructure Recovery and Physical Workplace Services**

### **1 Application of this Section J**

The provisions that follow only apply to those G-Cloud Services within the Infrastructure Recovery G-Cloud Service Type and the Physical Workplace G-Cloud Service Type; they do not apply to any other G-Cloud Service Type.

### **2 Overview**

The Infrastructure Recovery Services and Physical Workplace Services are part of the Supplier's service portfolio and provides resources for Buyers to recover and continue to provide business activities in the event of a Disaster affecting their production facilities.

### **3 Definitions**

- 3.1** "Backup Capability" means the equipment and other resources specified as such in the Call-Off Contract.
- 3.2** "Backup Site" means the site, specified as such in the Call-Off Contract, at which the Backup Capability is to be made available.
- 3.3** "Buyer Facility" means the facility or site specified as such in the Call-Off Contract.
- 3.4** "Delivery ATOD" means an option on Invocation only, to have elements of the Backup Capability delivered another site.
- 3.5** "Disaster" means, in relation to the Buyer, an unplanned interruption of or inaccessibility to the Buyer Facility, and, in relation to another Subscriber, an event or circumstance entitling the other Subscriber to use all or part of the Backup Capability for disaster recovery purposes.
- 3.6** "Invocation" means receipt by the Supplier from the Buyer of a request to use all or part of the Backup Capability for the Buyer's Disaster recovery purposes.
- 3.7** "Media" means all materials for recording data.
- 3.8** "Multiple Disasters" means unplanned and unforeseen events resulting in competing demands for all or part of the Backup Capability.
- 3.9** "Recovery Period" means the maximum period, as specified in the Call-Off Contract, commencing on Invocation for which the Buyer may use the Backup Capability for Disaster recovery purposes.
- 3.10** "Scheduled Event" means, in relation to the Buyer, a scheduled interruption to the Buyer Facility or non-Disaster use of all or part of the Backup Capability for scheduled event purposes.
- 3.11** "Subscriber" means any third party, which for these purposes may include the Buyer itself under another contract, entitled to use all or part of the Backup Capability for Disaster recovery purposes.
- 3.12** "Testing" means use of the whole or part of the Backup Capability by the Buyer for testing purposes.
- 3.13** "Test Days" means the number of days available each Test Year for the Buyer's Testing as specified in the Call-Off Contract.
- 3.14** "Test Year" means a period of 12 months starting on the Start Date of the Call-Off Contract or an anniversary of the Start Date, and any other period of less than 12 months falling within the Call-Off Term.

### **4 Services**

The G-Cloud Services may include one or more of the following as specified in the Call-Off Contract.

#### **4.1 Infrastructure Recovery**

##### **4.1.1** The G-Cloud Service includes:

- 4.1.1.1** The provision by the Supplier of a Backup Capability at a Supplier Backup Site. The Backup Capability will consist of the computer equipment specified in the Call-Off Contract;
- 4.1.1.2** Testing, to allow the Buyer to test its recovery procedures;

- 4.1.1.3** Invocation, on a first come first served basis, to assist the Buyer's recovery from a Disaster; and
- 4.1.1.4** Such technical assistance, as may be agreed by the Supplier, to assist the Buyer during Testing or following an Invocation;

## **4.2 Physical Workplace**

### **4.2.1 The G-Cloud Service includes:**

- 4.2.1.1** the provision by the Supplier of a Backup Capability at a Supplier Backup Site. The Backup Capability will consist of the workstations equipped with a networked PC and telephone, as specified in the Call-Off Contract;
- 4.2.1.2** Testing, to allow the Buyer to test its recovery procedures;
- 4.2.1.3** Invocation, on a first come first served basis, to assist the Buyer's recovery from a Disaster; and
- 4.2.1.4** Such technical assistance, as may be agreed by the Supplier, to assist the Buyer during Testing or following an Invocation.

## **4.3 Storage of Buyer Equipment (battleboxes)**

- 4.3.1** If agreed in the Call-Off Contract, the Buyer may store small items of Buyer equipment (e.g. Media, documentation, unpowered electrical devices) at the Supplier Backup Site for use in connection with the G-Cloud Services.
- 4.3.2** The Buyer may leave its equipment on the relevant Supplier site for such period as specified in the Call-Off Contract, and if such a period is not specified then for the Call-Off Term or until the Supplier requests that the equipment be removed.
- 4.3.3** Delivery and removal of the Buyer's equipment shall be done by the Buyer at its expense at times agreed with the Supplier. Unless otherwise agreed, the Supplier shall have no responsibility for unpacking, installing, deinstalling or packing the Buyer equipment or for the cost of doing so. The Buyer's equipment may not be connected to any other equipment at the Backup Site without the Supplier's prior consent and, if it so desires, its involvement.
- 4.3.4** The Buyer's access to the Supplier site and the Buyer equipment, and the delivery, any installation, and removal of the Buyer equipment shall be in accordance with the Supplier's applicable access and operational procedures in effect from time to time.
- 4.3.5** The Buyer's equipment shall be at the risk of the Buyer at all times. The Buyer is responsible for insuring the Buyer's equipment against loss and damage.
- 4.3.6** The Buyer shall be responsible for the operation and maintenance of the Buyer equipment.

## **4.4 Remote Console Service**

- 4.4.1** This G-Cloud Service is only available for Infrastructure Recovery. If agreed in the Call-Off Contract, the Buyer may access all, or parts of the Backup Capability as specified in the Call-Off Contract during Testing and on Invocation from a location other than the Backup Site.
- 4.4.2** The location other than the Backup Site can be a Buyer site(s) or the Buyer may contract for Physical Workplace (desks, networked PCs and telephones) at another Supplier site, and a communications link to the Backup Capability.
- 4.4.3** The Buyer may only concurrently use a maximum of the number of sessions specified in the Call-Off Contract.
- 4.4.4** The Buyer will:
  - 4.4.4.1** send its backup tapes, if applicable, to the Backup Site;
  - 4.4.4.2** provide a tape operator responsible for the loading of backup media onto the Backup Capability at the Backup Site or pay the Supplier's fees in accordance with its SFIA Rate Card for the Supplier providing a tape operator if required;
  - 4.4.4.3** be responsible and provide personnel required for the recovery of the Buyer's systems onto the Backup Capability; and
  - 4.4.4.4** collect its backup tapes, if applicable, from the Backup Site at the end of Testing and Invocation.



- 4.4.5** If location other than the Backup Site is not Physical Workplace at a Supplier site, the Buyer will:
- 4.4.5.1** provide PC(s) configured with suitable software and/or client access tools to enable console emulation for the platform being used;
  - 4.4.5.2** provide the appropriate communications link from the Remote Console Site to the Supplier's secure access device at the Backup Site; and
  - 4.4.5.3** be responsible for the availability and operation of all components of the Remote Console Service outside the Backup Site.
- 4.4.6** If location other than the Backup Site is not Physical Workplace at a Supplier site, the Supplier will provide:
- 4.4.6.1** information and assistance to enable the Buyer to install and configure any software and/or client access tools it may require for console emulation on its PC(s) for the platform(s) being used;
  - 4.4.6.2** at the Backup Site, a router and Local Area Network connected to the Backup Capability, separate from any network that the Buyer may operate for recovery purposes, to enable the Buyer to run a remote console session on each of the platforms being used; and (c) telephone access to Supplier technical assistance.

## **5 Scheduled Events**

- 5.3** The Backup Capability may be used for Scheduled Events in accordance with the Suppliers Price Card. Use of the Backup Capability for Scheduled Events does not impact allocated Test Days and is always subordinate to the rights of other Subscribers who make use of the Backup Capability for Testing or due to a Disaster.
- 5.4** Scheduled Events will be scheduled and conducted in accordance with the Supplier's policies and procedures in effect from time to time. The Supplier may cancel a Scheduled Event when another Subscriber requires use of all or part of the Backup Capability for Testing or Disaster recovery purposes. The Supplier will use its reasonable endeavours to reschedule a Scheduled Event or make alternative facilities available to the Buyer, but no allowances or credits will be given.
- 5.5** At the end of a Scheduled Event, the Supplier will re-initialise any disks used by the Buyer. If the Buyer wishes the data to be deleted from the disks, the Buyer must delete the data before the end of the Scheduled Event.

## **6 Testing**

- 6.3** The Buyer is responsible for ensuring that its operating systems, application software and procedures operate to its satisfaction on the Backup Capability. If Testing is provided, then subject to clause 4.2, the Buyer may use the Backup Capability for the Test Days during each Test Year of the Term for Testing in accordance with the Call-Off Contract.
- 6.4** Testing will be scheduled and conducted in accordance with the Supplier's policies and procedures in effect from time to time. The Supplier may cancel scheduled Testing when another Subscriber requires use of all or part of the Backup Capability for Disaster recovery purposes. The Supplier will use its reasonable endeavours to reschedule cancelled tests, but no allowances or credits will be given.
- 6.5** At the end of Testing, the Supplier will re-initialise any disks used by the Buyer. If the Buyer wishes the data to be deleted from the disks, the Buyer must delete the data before the end of Testing.

## **7 Invocation**

- 7.3** If the Buyer suffers a Disaster, it may give notice to the Supplier, in accordance with the Supplier's Invocation procedures notified to it from time to time, that it wishes to use the Backup Capability for Disaster recovery purposes.
- 7.4** Subject to the Multiple Disasters clauses, following such Invocation the Supplier will make the Backup Capability available to the Buyer. The Buyer may use the Backup Capability for so much of the Recovery Period as it requires, providing it falls within the Call-Off Term, to enable it to recover from the Disaster.
- 7.5** If the Buyer uses the Backup Capability throughout the Recovery Period, it may, subject to Multiple Disasters clauses and the Call-Off Term, continue to use it after the end of the Recovery Period. The Buyer shall pay a usage fee beyond the Recovery Period as may be specified in the Call-Off Contract, and if such fee is not specified then in accordance with the Suppliers Price Card.

- 7.6** Following Invocation, the Buyer shall use all reasonable endeavours to reoccupy the Buyer Facility or locate and occupy a suitable alternative data processing centre (in relation to Infrastructure Recovery) or office area (in relation to Physical Workplace), so as to release the Backup Capability as soon as possible.
- 7.7** In no event may the Buyer continue use of the Backup Capability at a Supplier Backup Site for more than six months after Invocation.

## **8 Multiple Disasters**

- 8.3** The Supplier has multiple Subscribers for its G-Cloud Services. It may sub-contract the provision of part of its G-Cloud Services and the subcontractor may also have multiple subscribers for its services. Accordingly, The Supplier cannot guarantee that there will not be competing demands for the Backup Capability. If Multiple Disasters occur, another Subscriber may already have invoked all or part of the Backup Capability, and it may therefore not be possible for the Supplier to make it available to the Buyer. If Multiple Disasters occur, all Invocation requests shall be dealt with on a 'first come, first served' basis in the order in which they are received.
- 8.4** The Supplier shall not be liable if, due to Multiple Disasters, the Backup Capability is not available for the Buyer's Disaster recovery purposes, but it shall use its reasonable endeavours to make alternative facilities available to the Buyer.
- 8.5** During Multiple Disasters, notwithstanding that the Buyer may have priority, it shall co-operate with the Supplier's reasonable efforts to provide Disaster recovery services to other Subscribers.

## **9 Buyer Responsibilities**

- 9.3** The Buyer is responsible for the provision, control, support, operation, and processing of whatever it deems necessary for its use of the G-Cloud Services. Without prejudice to the generality of the foregoing, the Buyer has sole responsibility for the security, adequacy and accuracy of all data, instructions, programs, and procedures submitted and used by it and the results obtained therefrom. The Buyer shall establish audit controls, data functions, operating methods, and check points appropriate to its use of the G-Cloud Services including, without limitation, the creation of backup files and other desirable security arrangements. The Supplier shall not in any circumstances be obliged to reconstruct or furnish any files, data or programs which may for any reason be required and/or any information or details in respect of any codes or passwords used by the Buyer and shall have no obligation or responsibility in respect of such matters. Without prejudice to the foregoing, the Supplier will be entitled to charge for such G-Cloud Services in accordance with its Professional Services SFIA Rate Card.
- 9.4** The Buyer shall be responsible for supplying any Media required in a form suitable for use on the Backup Capability. The Supplier shall be entitled to reject any unsuitable Media. The Buyer bears all risk of loss of or damage to Media (when located at the Backup Site and when being transported or carried by or on the Supplier's behalf or otherwise).
- 9.5** The Buyer shall operate the Backup Capability in a proper manner and only in connection with its ordinary business and take proper care of the Backup Capability, and not allow any person to use the Backup Capability who is not trained and skilled in operating the Backup Capability.
- 9.6** The Buyer warrants as at the date of the Call-Off Contract that the Buyer Facility is fully operational and that it has and will continue to keep in force an appropriate maintenance agreement for any equipment comprised in the Buyer Facility with a suitable maintenance provider.
- 9.7** Buyers utilising hard disk encryption on the Supplier's equipment shall be responsible for removing all Buyer data and the encryption key from the Supplier equipment at the conclusion of Testing or the Recovery Period (this includes any interruption of Testing due to another customer declaring a Disaster on the Supplier equipment being tested by the Buyer). Notwithstanding anything to the contrary contained in the Call-Off Contract, the Supplier shall have no responsibility for any loss of data due to the failure of the Buyer to delete such data and encryption key as described herein.
- 9.8** The Buyer shall indemnify the Supplier against any damage to the Backup Capability, any Supplier Backup Site, or any equipment, fixtures and fittings located, kept or stored therein caused by a wilful act or negligence of the Buyer, its employees, subcontractors or agents.
- 9.9** In addition to any other charges specified in the Call-Off Contract, the Buyer shall pay ancillary charges, monthly in arrears, for:
- 9.9.2** supplies, including, without limitation, consumables, telecommunications usage, accommodation, and meals, in accordance with the Suppliers Access as a Service Rate Card;

- 9.9.3** shipment of the Backup Capability or other item(s), at the Supplier's rate if stated in the Price Card and performed by the Supplier, or at the Suppliers cost plus 15% if performed by a third-party supply; and
- 9.9.4** technical assistance requested by the Buyer or its personnel which is not within that included in the charges specified in the Call-Off Contract, in accordance with the Suppliers Professional Services SFIA Rate Card.
- 9.10** The Buyer has sole control and visibility over the types of data stored as part of the G-Cloud Services and therefore, has sole responsibility for ensuring that the G-Cloud Services it purchases allows the Buyer to comply with applicable laws or other requirements related to the storage, security, or processing of the same, including, but not limited to, those relating to data protection or payment card information.
- 9.11** The Buyer represents and warrants that it has the full legal right to utilise any Buyer-provided equipment.
- 9.12** The Buyer's right to use the Backup Capability (a) for Scheduled Events or Testing at any time and (b) for its Disaster recovery purposes after the end of the Recovery Period, shall cease within an hour of notice from the Supplier (whether by notification to the Buyer's personnel at the Backup Site or otherwise) that the Backup Capability is required to provide Disaster recovery services to another Subscriber.
- 9.13** In addition to releasing the Backup Capability under the Testing, Invocation and Multiple Disasters conditions, within 10 Working Days of the termination or expiration of the Call-Off Contract, the Buyer will return, at Buyer's expense, all Supplier-provided equipment and software (whether located at a Buyer, Supplier, or other site), return Buyer occupied areas within a Supplier site in the same condition as received (reasonable wear and tear excepted), and remove all Buyer-provided equipment and software. If the Buyer fails to remove its equipment and software as required, the Supplier will provide notice to the Buyer, and the Buyer will have 10 additional Working Days from the date of the Supplier's notice to remove all Buyer provided equipment and software. Upon expiration of the foregoing notice period, the Supplier may dispose of such equipment and any Buyer data or applications without liability to the Buyer. The Supplier may redeploy any Supplier-provided equipment in any manner in its sole discretion and shall delete all Buyer software and data residing on such equipment before redeployment.

## **10 Miscellaneous**

- 10.3** Notwithstanding anything herein, and without limitation, the Supplier shall not be responsible for failure to carry out any of its obligations under the Call-Off Contract (including any failure to meet a Service Level), if the failure is caused by:
  - 10.3.2** a breach of the Call-Off Contract, including these Supplier Terms, by the Buyer, its employees, subcontractors, or agents;
  - 10.3.3** the negligent, intentional or wilful acts or omissions of the Buyer, its employees, subcontractors or agents;
  - 10.3.4** malfunction of equipment or other infrastructure (unless such malfunction was caused by the Supplier's failure to maintain such equipment or such infrastructure);
  - 10.3.5** the failure of any software to perform in accordance with its specifications and such failure is not caused by the Supplier's negligence, wilful misconduct, or failure to maintain such software;
  - 10.3.6** failure of the Buyer's hardware and/or software; or
  - 10.3.7** the absence of a patch, repair, policy, configuration, or maintenance change recommended by the Supplier but not approved by the Buyer, or configurations or architectures that are not supported or recommended by the Supplier or the applicable vendor.
- 10.4** If the Backup Site is a Supplier site, the Supplier shall be entitled to change its location by giving the Buyer no less than 90 days' notice.
- 10.5** Car parking spaces may be available to the Buyer at a Supplier Backup Site. These may be limited to the number indicated in the Call-Off Contract, and there is no guarantee that they will always be available. The Buyer shall ensure that its personnel do not park in spaces other than those allocated, or in any other parts of the estate on which the Backup Site is situated in which parking is restricted. Cars are parked at the Supplier sites at their owner's risk.
- 10.6** The Supplier's delivery and operational model is in English language only. The Supplier can only provide and support this G-Cloud Service for systems with English language and locales. Any Buyer systems with the presence of anything other than English will be removed from scope and the Supplier will not be responsible to provide alternative solutions.

- 10.7** In the event the Buyer has not contracted for operational support services, to the extent requested by the Buyer, the Supplier will provide the requested operational support services in accordance with the Suppliers SFIA Rate Card.

## K Additional Terms that apply to Disaster Recovery as a Service Services

### 1 Application of this Section K

The provisions that follow only apply to those G-Cloud Services within the Disaster Recovery as a Service (DRaaS); they do not apply to any other G-Cloud Service Type.

### 2 Overview

Disaster Recovery as a Service (DRaaS) is part of the Supplier's service portfolio and provides continuous server replication with low RPO and fast RTO enabling Buyers to continue to provide business activities in the event of a Disaster affecting their production facilities.

### 3 Definitions

- 3.1 **"Backup Capability"** means the equipment and other resources specified as such in the Call-Off Contract.
- 3.2 **"Backup Site"** means the site, specified as such in the Call-Off Contract, at which the Backup Capability is to be made available.
- 3.3 **"Buyer Facility"** means the facility or site specified as such in the Call-Off Contract.
- 3.4 **"Disaster"** means, in relation to the Buyer, an unplanned interruption of or inaccessibility to the protected systems at the Buyer Facility, and, in relation to another Subscriber, an event or circumstance entitling the other Subscriber to use all or part of the Backup Capability for disaster recovery purposes.
- 3.5 **"Documentation"** means all documentation provided by the Supplier for the purpose of providing the G-Cloud Services, including without limitation operating manuals, user instructions, technical literature and other related materials supplied to the Buyer by the Supplier or its licensor for aiding the use and application of the G-Cloud Services.
- 3.6 **"Invocation"** means receipt by the Supplier from the Buyer of a request to use all or part of the Backup Capability for the Buyer's Disaster recovery purposes.
- 3.7 **"Multiple Disasters"** means unplanned and unforeseen events resulting in competing demands for all or part of the Backup Capability.
- 3.8 **"Recovery Period"** means the maximum period, as specified in the Call-Off Contract, commencing on Invocation for which the Buyer may use the Backup Capability for Disaster recovery purposes.
- 3.9 **"Subscriber"** means any third party, which for these purposes may include the Buyer itself under another contract, entitled to use all or part of the Backup Capability for Disaster recovery purposes.
- 3.10 **"Testing"** means use of the whole or part of the Backup Capability by the Buyer for testing purposes.
- 3.11 **"Test Days"** means the number of days available each Test Year for the Buyer's Testing as specified in the Call-Off Contract.
- 3.12 **"Test Year"** means a period of 12 months starting on the Call-Off Contract Start Date or an anniversary of the Start, and any other period of less than 12 months falling within the Call-Off Term.

### 4 Services

The G-Cloud Services may include one or more of the following as specified in the Call-Off Contract.

#### 4.1 Disaster Recovery as a Service

##### 4.1.1 The G-Cloud Services includes:

- 4.1.1.1 the provision by the Supplier of a Backup Capability at a Supplier Backup Site. The Backup Capability will consist of the resources specified in the Call-Off Contract;
- 4.1.1.2 replication of Buyer data from the Buyer Facility and storage of the replicated data in the Backup Capability;
- 4.1.1.3 remote assistance if required for installation and configuration of software at the Buyer Facility to enable replication;

- 4.1.1.4 analysis as required of the bandwidth between the Buyer Facility and the Backup Capability in so far as the Supplier is able for the purpose of supporting replication of Buyer data;
- 4.1.1.5 monitoring of the replication process;
- 4.1.1.6 Testing, to allow the Buyer to test its recovery procedures;
- 4.1.1.7 Invocation, on a first come first served basis, to assist the Buyer's recovery from a Disaster;
- 4.1.1.8 remote access to the Backup Capability during Testing or the Recovery Period; and
- 4.1.1.9 commercially reasonable efforts to assist with the failback of Buyer data if required from the Backup Capability following an Invocation.

**4.1.2 The Buyer will:**

- 4.1.2.1 obtain appropriate network connectivity from Supplier or a third party, adequate to support the daily average replication Recovery Point Objective;
- 4.1.2.2 configure the VPN or other connection at the Buyer Facility;
- 4.1.2.3 if necessary for Supplier to provide the G-Cloud Service, provide adequate resources and infrastructure at the Buyer Facility;
- 4.1.2.4 provide Supplier with remote access necessary to install and monitor software in Buyer Facility, conduct bandwidth analysis, install patches, and upgrade the software installed;
- 4.1.2.5 maintain operating systems and hypervisor software versions as supported by the Supplier and vendors, and promptly upgrade such software following notice by the Supplier;
- 4.1.2.6 ensure that its hardware and software related to the G-Cloud Service complies with the Supplier and vendor best practices to achieve an acceptable Recovery Point Objective;
- 4.1.2.7 comply with the Supplier's change management policies and procedures in effect from time to time; and
- 4.1.2.8 have primary responsibility for the failback of the Buyer data if required from the Backup Capability following an Invocation.

- 4.1.3** In the event that bandwidth analysis indicates that the amount of bandwidth specified in the Call-Off Contract will not support Buyer's stated Recovery Point Objective, The Buyer will contract for additional bandwidth or Supplier shall be entitled to make an adjustment to the stated Recovery Point Objective it reasonably deems achievable with such bandwidth.  
Any resource use in excess of the Backup Capability will result in the additional usage fee stated in the Call-off Contract or in accordance with the Supplier's Price Card.  
Within fourteen (14) days after termination of the Call-Off Contract, the Supplier will delete all Buyer data in the Backup Capability without any additional notification to the Buyer.

**4.2 Automated Testing**

- 4.2.1 If agreed in the Call-Off Contract, the Supplier will perform automated testing of the Backup Capability to the extent supported by this G-Cloud Service.
- 4.2.2 The automated testing schedule is dependent on the availability of the Backup Capability and other customer's scheduled Testing or Invocations and is determined by the Supplier in its absolute discretion.
- 4.2.3 Service Levels are not applicable during automated testing.
- 4.2.4 Automated testing utilises the same test network used for Buyer scheduled Testing.
- 4.2.5 The Supplier will not access nor modify the Buyer's data.
- 4.2.6 Test Days must be scheduled separately by the Buyer.

## **4.3 Always Running Virtual Machines**

- 4.3.1** For the purposes of these G-Cloud Services, Always Running Virtual Machines are defined as virtual servers running in the Backup Site 24x7 to enable specific application-level replication (most generally AD, DNS, and/or domain controllers) to aid the recovery process.
- 4.3.2** The Supplier will:
  - 4.3.2.1** provide the resources defined in the Call-Off Contract to allow the Buyer to run Virtual Machines in an always-running mode to assist with the recovery process; and
  - 4.3.2.2** maintain and manage the infrastructure hosting the Always Running Virtual Machines.
- 4.3.3** Unless separately contracted with the Supplier, the Buyer will:
  - 4.3.3.1** provide all operating system, application software and licences for the Always Running Virtual Machines;
  - 4.3.3.2** Implement, manage, and monitor suitable replication methodology as required to keep the Always Running Virtual Machines current and suitable for their intended purpose;
  - 4.3.3.3** maintain, manage, update, and upgrade any software patches as and when required as per the Buyer's change management policy;
  - 4.3.3.4** inform the Supplier of any changes or updates to the configuration of the Always Running Virtual Machines; and
  - 4.3.3.5** work with the Supplier to connect the Always Running Virtual Machines to protected servers recovered during Testing or the Recovery Period.

## **5 Testing**

- 5.1** The Buyer is responsible for ensuring that its operating systems, application software and procedures operate to its satisfaction on the Backup Capability. If Testing is provided, then subject to clause 5.2, the Buyer may use the Backup Capability for the Test Days during each Test Year of the Call-Off Term for Testing in accordance with the Call-Off Contract.
- 5.2** Testing will be scheduled and conducted in accordance with the Supplier's policies and procedures in effect from time to time. The Supplier may cancel scheduled Testing when another Subscriber requires use of all or part of the Backup Capability for Disaster recovery purposes. The Supplier will use its reasonable endeavours to reschedule cancelled tests, but no allowances or credits will be given.
- 5.3** At the end of Testing, the Supplier will tear down the test environment used by the Buyer.

## **6 Invocation**

- 6.1** If the Buyer suffers a Disaster, it may give notice to the Supplier, in accordance with the Supplier's Invocation procedures notified to it from time to time, that it wishes to use the Backup Capability for Disaster recovery purposes.
- 6.2** Subject to the Multiple Disasters clauses, following such Invocation the Supplier will make the Backup Capability available to the Buyer. The Buyer may use the Backup Capability for so much of the Recovery Period as it requires, providing it falls within the Call-Off Term, to enable it to recover from the Disaster.
- 6.3** If the Buyer uses the Backup Capability throughout the Recovery Period, it may, subject to Multiple Disasters clauses and the Call-Off Term, continue to use it after the end of the Recovery Period. The Buyer shall pay a usage fee beyond the Recovery Period as Supplier may specify in the Call Off Contract (calculated using the Supplier's Price Card), and if such fee is not specified then in accordance with the Supplier's Price Card.
- 6.4** Following Invocation, the Buyer shall use all reasonable endeavours to restore service at the Buyer Facility or suitable alternative, so as to release the Backup Capability as soon as possible.
- 6.5** In no event may the Buyer continue use of the Backup Capability at a Supplier Backup Site for more than six months after Invocation.

## **7 Multiple Disasters**



- 7.1** The Supplier has multiple Subscribers for its G-Cloud Services. It may sub-contract the provision of part of its G-Cloud Services and the subcontractor may also have multiple subscribers for its services. Accordingly, the Supplier cannot guarantee that there will not be competing demands for the Backup Capability. If Multiple Disasters occur, another Subscriber may already have invoked all or part of the Backup Capability, and it may therefore not be possible for the Supplier to make it available to the Buyer. If Multiple Disasters occur, all Invocation requests shall be dealt with on a 'first come, first served' basis in the order in which they are received.
- 7.2** The Supplier shall not be liable if, due to Multiple Disasters, the Backup Capability is not available for the Buyer's Disaster recovery purposes, but it shall use its reasonable endeavours to make alternative facilities available to the Buyer.
- 7.3** During Multiple Disasters, notwithstanding that the Buyer may have priority, it shall co-operate with the Supplier's reasonable efforts to provide Disaster recovery services to other Subscribers.

## **8 Buyer Responsibilities**

- 8.1** The Buyer is responsible for the provision, control, support, operation, and processing of whatever it deems necessary for its use of the G-Cloud Services. Without prejudice to the generality of the foregoing, the Buyer has sole responsibility for the security, adequacy and accuracy of all data, instructions, programs, and procedures submitted and used by it and the results obtained therefrom. The Buyer shall establish audit controls, data functions, operating methods, and check points appropriate to its use of the G-Cloud Services including, without limitation, the creation of backup files and other desirable security arrangements. The Supplier shall not in any circumstances be obliged to reconstruct or furnish any files, data or programs which may for any reason be required and/or any information or details in respect of any codes or passwords used by the Buyer and shall have no obligation or responsibility in respect of such matters. Without prejudice to the foregoing, the Supplier will be entitled to charge for such Services in accordance with its SFIA Rate Card and/or Price Card.
- 8.2** The Buyer shall operate the Backup Capability in a proper manner and only in connection with its ordinary business and take proper care of the Backup Capability, and not allow any person to use the Backup Capability who is not trained and skilled in operating the Backup Capability.
- 8.3** The Buyer warrants as at the date of the Call-Off Contract that the Buyer Facility is fully operational and that it has and will continue to keep in force an appropriate maintenance agreement for any equipment comprised in the Buyer Facility with a suitable maintenance provider.
- 8.4** Buyers utilising hard disk encryption on Supplier equipment shall be responsible for removing all Buyer data and the encryption key from the Supplier equipment at the conclusion of Testing or the Recovery Period (this includes any interruption of Testing due to another customer declaring a Disaster on the Supplier equipment being tested by the Buyer). Notwithstanding anything to the contrary contained in the Call-Off Contract, the Supplier shall have no responsibility for any loss of data due to the failure of the Buyer to delete such data and encryption key as described herein.
- 8.5** The Buyer shall indemnify the Supplier against any damage to the Backup Capability, any Supplier Backup Site, or any equipment, fixtures and fittings located, kept, or stored therein caused by a wilful act or negligence of the Buyer, its employees, subcontractors, or agents.
- 8.6** In addition to any other charges specified in the Statement of Work, the Buyer shall pay ancillary charges, monthly in arrears, for technical assistance requested by the Buyer or its personnel which is not within that included in the charges specified in the Call-Off Contract, in accordance with the Suppliers SFIA Rate Card and/or Price Card.
- 8.7** Buyer has sole control and visibility over the types of data stored as part of the G-Cloud Services and therefore, has sole responsibility for ensuring that the G-Cloud Services it purchases allows the Buyer to comply with applicable laws or other requirements related to the storage, security, or processing of the same, including, but not limited to, those relating to data protection or payment card information.
- 8.8** The Buyer represents and warrants that it has the full legal right to utilise any Buyer-provided equipment.
- 8.9** The Buyer's right to use the Backup Capability (a) for Testing at any time and (b) for its Disaster recovery purposes after the end of the Recovery Period, shall cease within an hour of notice from the Supplier (whether by notification to the Buyer's personnel at the Backup Site or otherwise) that the Backup Capability is required to provide Disaster recovery services to another Subscriber.
- 8.10** In addition to releasing the Backup Capability under the Testing, Invocation and Multiple Disasters conditions, within 10 Working Days of the termination or expiration of the Call-Off Contract, the Buyer will return, at the Buyer's expense, all Supplier-provided equipment and software (whether located at a Buyer,

Supplier, or other site), return Buyer occupied areas within a Supplier site in the same condition as received (reasonable wear and tear excepted), and remove all Buyer-provided equipment and software. If the Buyer fails to remove its equipment and software as required, the Supplier will provide notice to the Buyer, and the Buyer will have 10 additional Working Days from the date of the Supplier's notice to remove all Buyer-provided equipment and software. Upon expiration of the foregoing notice period, the Supplier may dispose of such equipment and any Buyer data or applications without liability to the Buyer. The Supplier may redeploy any Supplier-provided equipment in any manner in its sole discretion and shall delete all Buyer software and data residing on such equipment before redeployment.

## 9 Service Level Agreements

- 9.1 The Supplier will perform the failover of the Backup Capability following an Invocation as quickly as the technology allows, and in addition check and if necessary, troubleshoot Virtual Machines booting to the operating system login, providing there are no competing demands for the Backup Capability. The G-Cloud Service may have captured a recent history of data changes allowing option of recovery to a previous point in time.
- 9.2 When the Supplier accepts the Buyer's request for recovery of the Buyer's most recent copy of the Buyer's data, the Supplier will make the Backup Capability available to the Buyer within the time frames set forth below following commencement of the failover.
- 9.3 The Service Level Agreement covers the recovery of the replicated servers, the associated operating system, and data, as per the Buyer request and tested recovery plans.

Service component	Starting SLA	Extended quantities
Server Replication	2 hours ≤ 50 servers	+1 hour for every additional 25 servers or part thereof
Virtual Replication	2 hours ≤ 100 servers	+1 hour for every additional 100 servers or part thereof

- 9.4 The Service Level Agreement only applies:
  - 9.4.1 following the completion of a successful user acceptance test after implementation of the services;
  - 9.4.2 the completion of scheduled Testing post-implementation; and
  - 9.4.3 when recovering the most recent copy of the Buyer's data.
- 9.5 The Service Level Agreement does not apply if:
  - 9.5.1 There is a failure in correctly replicating data and creating consistent replicas in the Backup Capability;
  - 9.5.2 The Buyer uses software and hardware not supported by the Supplier or vendors;
  - 9.5.3 The Buyer uses any backup or deduplication technology that requires restoration in conjunction with the service;
  - 9.5.4 manual intervention required for servers to boot (for example entering BitLocker keys);
  - 9.5.5 The Buyer makes configuration changes to their production environment which have not been communicated to, and accepted by, the Supplier;
  - 9.5.6 The Buyer makes changes to the recovery plan that exceed the contracted resources; or
  - 9.5.7 The Buyer has not conducted scheduled Testing for at least 60% of the replicated servers in the previous 12 months.
- 9.6 If the Supplier fails to meet the Recovery Time Objective Service Level Agreement as defined above one (1) or more times in a calendar month, The Buyer is entitled to a credit equal to 50% of the monthly charge for the Service for the month in which the failure occurs, regardless of how many failures in said month.
- 9.7 Where the charges payable in relation to a particular G-Cloud Service are bundled with charges payable for other G-Cloud Services or other services, or the charges payable in relation to specific items of equipment are bundled with those for other equipment, and the Buyer becomes entitled to a service credit, then in calculating that credit, the applicable charge shall be the monthly charge that the Supplier would have charged for the individual G-Cloud Service, or item of equipment, to which the Service credit relates, had it not been bundled with other G-Cloud Services or other services or other equipment.

- 9.8** The Buyer may terminate the affected Service if Supplier fails to meet the Recovery Time Objective Service Level Agreement as defined above three (3) consecutive times within any twelve (12) month period by providing the Supplier advance written notice no later than sixty (60) days following the third failure.

## **10 Software and Documentation**

- 10.1** The software and Documentation are copyrighted and licenced (not sold) to the Supplier to provide the G-Cloud Services. The Buyer is given access to and the use of the software (in object code form only) and Documentation by the Supplier for the sole purpose of receiving the G-Cloud Services. Neither title nor licence to the software and/or its associated Documentation is transferred to the Buyer.
- 10.2** All Intellectual Property Rights in the Documentation subsist in the Supplier and/or its licensor. The Call-Off Contract does not grant to the Buyer any right, title or interest in any Intellectual Property Rights subsisting in the Documentation.
- 10.3** The Buyer will not delete or in any manner alter any Intellectual Property Right notices appearing in the Documentation. No licence to use such notices is granted by the Supplier under the Call-Off Contract or otherwise, and the Buyer shall not use the same without the Supplier's prior written consent.
- 10.4** The Buyer will not:
- 10.4.1** copy (except as expressly permitted by this clause 10) and/or modify the Documentation (in whole or part);
  - 10.4.2** use the Documentation other than to receive the G-Cloud Services;
  - 10.4.3** lease, sublicense, transfer or otherwise distribute the Documentation to any third party;
  - 10.4.4** use the Documentation to provide service bureau, time-sharing or other computer services to third parties; or
  - 10.4.5** otherwise cause or permit the breach this clause 10 by a third party.
- 10.5** The Buyer acknowledges that the software or parts of it (e.g. encryption software) and/or Documentation may be subject to UK and European export controls from time to time. The Buyer shall not use any of them in breach of such controls.
- 10.6** At the Supplier's request and at the Buyer's cost and expense, the Buyer will provide to the Supplier a certificate signed by an officer of the Buyer verifying that the software and its associated Documentation is being used by it in accordance with the terms of this clause 10.
- 10.7** On at least twenty (20) days prior written notice, the Supplier and/or its licensor may audit the Buyer's use of the software and its associated Documentation to ensure that the Buyer is in compliance with the terms of this clause 10. Any such audit will be conducted during regular business hours and will not unreasonably interfere with the Buyer's business activities.
- 10.8** On termination or expiry of the Call-Off Contract:
- 10.8.1** the Buyer's right to access and use the Documentation and any Supplier Confidential Information will terminate automatically;
  - 10.8.2** the Buyer will destroy or return (at the Supplier's option) all copies of the Documentation and
  - 10.8.3** Supplier Confidential Information to the Supplier within fourteen (14) days; and
  - 10.8.4** an officer of the Buyer will certify in writing that no such Documentation, Confidential Information or material have been retained or copied by the Buyer.
- 10.9** The Buyer acknowledges that the Supplier is not the developer of any of the software and agrees that the Supplier shall not be responsible for any failure of or defect in the software unless it is caused by the Supplier's negligence or wilful misconduct.

## **11 Miscellaneous**

- 11.1** Notwithstanding anything herein, and without limitation, the Supplier shall not be responsible for failure to carry out any of its obligations under the Call-Off Contract (including these Supplier Terms and/or any failure to meet a Service Level), if the failure is caused by:
- 11.1.1** a breach of the Call-Off Contract by the Buyer, its employees, subcontractors, or agents;

- 11.1.2** the negligent, intentional, or wilful acts or omissions of the Buyer, its employees, subcontractors, or agents;
  - 11.1.3** malfunction of equipment or other infrastructure (unless such malfunction was caused by the Supplier's failure to maintain such equipment or such infrastructure);
  - 11.1.4** the failure of any software to perform in accordance with its specifications and such failure is not caused by the Supplier's negligence, wilful misconduct, or failure to maintain such software;
  - 11.1.5** failure of the Buyer's hardware and/or software; or
  - 11.1.6** the absence of a patch, repair, policy, configuration, or maintenance change recommended by the Supplier but not approved by the Buyer, or configurations or architectures that are not supported or recommended by the Supplier or the applicable vendor.
- 11.2** If the Backup Site is a Supplier site, the Supplier shall be entitled to change its location by giving the Buyer no less than 90 days' notice.
- 11.3** The Supplier's delivery and operational model is in English language only. The Supplier can only provide and support this G-Cloud Service for systems with English language and locales. Any Buyer systems with the presence of anything other than English will be removed from scope and the Supplier will not be responsible to provide alternative solutions.
- 11.4** In the event the Buyer has not contracted for operational support services, to the extent requested by the Buyer, the Supplier will provide the requested operational support services in accordance with the Supplier's SFIA Rate Card.

## **L Additional Terms that apply to Managed Cloud Services for UK Government**

### **1 Application of this Section L**

- 1.1** These provisions cover only Managed Cloud Services for UK Government and depending on network services must be taken together with Public Sector Network (PSN) Networking Services set out in Sub-Section B of these terms and conditions.
- 1.2** Unless otherwise specified, any of the G-Cloud Services specified in sub-sections B, C, D, E and F is only provided if specifically selected in the Call-Off Contract.

### **SUB-SECTION A: GENERAL**

#### **1 Definitions:**

- 1.1** In the clauses set out below:

- 1.1.1** “**Managed Cloud Services for UK Government**” means “The G-Cloud Service” incorporating Redcentric Cloud and PAAS;
- 1.1.2** “**Contended Virtual Machine(s)**” means a Virtual Machine(s) that has undedicated resources and therefore, available capacity at peak times may influence performance;
- 1.1.3** “**Buyer Designees**” means any of the Buyer’s employees, consultants, contractors, agents and other authorised representatives as the Buyer may from time to time notify the Supplier in writing as reasonably needing access to the Buyer Virtual Data Centre(s) (VDC);
- 1.1.4** “**Buyer Portal**” means a web-based service accessible via the PSN Network that the Supplier provides to the Buyer to access information in relation to Managed Cloud Services for UK Government;
- 1.1.5** “**Buyer Software**” means Buyer provided software;
- 1.1.6** “**IAAS**” means Infrastructure As A Service;
- 1.1.7** “**Equipment**” means the Supplier Equipment;
- 1.1.8** “**Initial Term**” means the Call-Off Term;
- 1.1.9** “**Managed Physical Host**” means a physical machine that provides a system which supports the execution of a complete operating system dedicated to one customer.
- 1.1.10** “**Core Operating System**” means the core components of the basic installation of an operating system, excluding additional server “roles” such as DHCP Server, DNS Server, and Internet Information Server;
- 1.1.11** “**PAAS**” means Platform As A Service where Supplier manages the OS and/or Application/Software (not the Buyer end user application/software) in the Buyer’s VDC on their behalf;
- 1.1.12** “**Policies**” means all reasonable rules or instructions given by the Supplier, including the Supplier’s site access, security, confidentiality, operational, health and safety and other regulations then in effect as amended from time to time;
- 1.1.13** “**Redcentric Cloud**” means the Supplier’s IaaS Service as described within these Supplier Terms and the relevant Service Definition.
- 1.1.14** “**Resilient**” means Equipment, Software or infrastructure that is duplicated in such a way as to avoid any single points of failure;
- 1.1.15** “**Secondary Site Compute Reservation**” means CPU and RAM resources for virtual machines will be reserved like for like at the secondary site for all high availability (Live) virtual machines;
- 1.1.16** “**Service Level Commitments**” means the target for provision of particular elements of specific G-Cloud Services as identified in Sub-Section H;
- 1.1.17** “**Software**” means the Buyer Software and Supplier Software;

- 1.1.18** “**Standard Bandwidth**” means the speed (in bits per second) of a communications link as specified in the Call-Off Contract”;
- 1.1.19** “**Supplier Equipment**” means the Supplier equipment used to provide the Managed Cloud Services for UK Government;
- 1.1.20** “Supplier Software” means the Supplier software used to provide the Managed Cloud Services for UK Government;
- 1.1.21** “**Storage Infrastructure**” means the Supplier Storage equipment used to provide the Managed Cloud Services for UK Government to the Buyer;
- 1.1.22** “**Uncontended Virtual Machine(s)**” means a Virtual Machine(s) that has specified resources dedicated to its use;
- 1.1.23** “**VDC**” means the Buyer virtual data centre; this will be dedicated to a single customer and hosted on the Supplier’s Managed Cloud Services for UK Government Platform;
- 1.1.24** “**Virtual Machine(s)**” means a software implementation of a machine (i.e. a computer) like a physical machine that provides a complete system platform which supports the execution of a complete operating system (OS);
- 1.1.25** “**Virtual Firewall**” means the segmentation through virtualisation of a physical firewall system to provide a virtual firewall dedicated to the Buyer.

## 2 Services

- 2.1** The purpose of the G-Cloud Services is to make available to the Buyer various elements of the following services if selected in the Call-Off Contract and as supplemented in the sections below:
  - 2.1.1** Network Connectivity Services to allow the Buyer to connect into the Managed Cloud Services for UK Government platform
  - 2.1.2** IP Network Services to enable the connectivity and balancing of IP services;
  - 2.1.3** Infrastructure resources and managed services to provide processing and storage functionality for customer systems and the management of these systems;
  - 2.1.4** Storage Services to facilitate the read, write and storage of Buyer data;
  - 2.1.5** Incident Resolution Services to detect and resolve incidents associated with the G-Cloud Services
  - 2.1.6** Service Levels commitments to provide high availability of the Network connectivity, IP Network services, Infrastructure resources.

## 3 Term and Termination

- 3.1** On expiration or termination of the Call-Off Contract for any reason and provided the Buyer is not in default of its payment obligations under the Call-Off Contract, the Supplier will provide the Buyer with reasonable and orderly transition services ("Transition Services") and information and documentation as agreed and defined at service take-on that the Buyer requires in connection with the orderly and expeditious transition of the G-Cloud Services. Excluding information that is commercially sensitive or of a proprietary nature to the Supplier. The Transition Services will be provided for a period of up to one hundred and twenty (120) days, provided the Buyer continues to make timely payments of the subscription charges attributable to the G-Cloud Services on a pro-rata basis.
- 3.2** Notwithstanding anything to the contrary, in the event that the Buyer terminates the Call-Off Contract prior to the end of the Call-Off Term for any reason, the Buyer acknowledges that it is responsible for payment to the Supplier of all charges relating to the Buyer VDC(s) and Managed Physical Host(s), until it is closed down and the associated Supplier Equipment, Supplier Software, and Storage Infrastructure is no longer utilised by the Buyer

## 4 Monitoring

- 4.1** The monitoring components of the Cloud Services may require a monitoring agent be installed on the asset, operating system and/or application(s). The Buyer will install the agent and vendor required upgrades or updates unless the asset, operating system and/or application(s) are managed by the Supplier.



- 4.2** Monitoring is conducted at 5-minute intervals. The Buyer notification is triggered by two consecutive negative polling responses.
- 4.3** Monitoring detects only positive or negative ICMP/SNMP responses from direct NIC polling. Additionally, devices send SNMP traps which are processed in the same way as polled events. Monitored devices may generate false-positive alerts that are caused by network congestion or application activity.

## **5 Software**

- 5.1** For all Supplier Software licensed from Microsoft, the Buyer shall comply with Microsoft's Service Provider Use Rights ("SPUR"), the terms of which are available at <http://www.microsoftvolumeicensing.com/> , or such other source as Microsoft may from time to time make available. The Buyer will not: a) remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Supplier Software; b) reverse engineer, decompile, or disassemble the Supplier Software, except to the extent that such activity is expressly permitted by applicable law; c) perform any act which is not in compliance with the terms of the SPUR; nor d) use the Supplier Software except as part of the G-Cloud Services. The Buyer acknowledges and agrees that, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft or its suppliers is disclaimed for any damages, whether direct, indirect, or consequential, arising from the Buyers use of the Supplier Software. The Buyer acknowledges that the Supplier Software is not fault tolerant. The Supplier Software is neither designed nor intended for use in a situation where its failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). The Buyer is not permitted to use the G-Cloud Services in, or in conjunction with, High Risk Use. High Risk Use includes, for example: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the U.S. Food, Drug, and Cosmetic Act. The Buyer shall indemnify the Supplier against any loss, damage, cost or expense (including legal costs), which the Supplier incurs, suffers or becomes liable for as a result of any breach by the Buyer of this clause 5.1 which causes a breach of any third party's intellectual property rights.
- 5.2** For all other Supplier software licenced from other providers the Buyer shall comply with the terms of the licence management scheme as detailed in section 6.4
- 5.3** Where the Supplier provides the Managed OS service, the Supplier does not include the support of Buyer Software installed on the OS. The Supplier does not guarantee a time to fix Buyer Software.

## **6 Buyer Responsibilities**

- 6.1** Buyer Designees: The Buyer is responsible for ensuring that the list of Buyer Designees is up to date at all times, including (without limitation) promptly notifying Supplier in writing of any persons that are to be removed from the list. The Buyer shall not, and shall procure that the Buyer Designees shall not, in any way impede the use of the VDC(s). If any Buyer Designee does something or fails to do something which results in the Buyer breaching this clause 6.1 or any other provision of the Call-Off Contract (including for the avoidance of doubt, these Supplier Terms), the Supplier shall be entitled (without prejudice to any other rights or remedies it may have) to require that such person immediately lose access to the VDC(s). The Buyer shall not allow any persons, not authorised to do so, to gain access. If unauthorised persons gain access to the Buyer VDC(s), the Buyer shall be responsible for any resulting loss, damage or expense suffered or incurred by Supplier or any other Subscriber to the Managed Cloud Services for UK Government Services.
- 6.2** Buyer Software: The Buyer shall be responsible for the operation and maintenance of the Buyer Software. The Buyer shall ensure it is lawfully entitled to use the Buyer Software on all the Supplier Equipment, and that, where necessary, the Supplier is permitted to use the Buyer Software on the Supplier Equipment for the purpose of providing the G-Cloud Services to the Buyer. The Buyer shall, at the Supplier's request, promptly provide to the Supplier written confirmation from the proprietor(s) of the Buyer Software of such entitlement and permission. The Buyer shall indemnify the Supplier for any loss, damage, costs, claims or proceedings that the Supplier may incur as a result of any breach by the Buyer of this clause 6.2 The Buyer shall ensure that the Buyer Software is compatible with the G-Cloud Services.
- 6.3** Supplier Software: The Supplier uses software licensed from third parties in providing the G-Cloud Services. Title to the Supplier Software remains with Supplier or its third-party licensors and is subject to copyright. It is a condition of the Call-Off Contract that the Buyer shall accept and comply with the provisions relating to the Supplier Software specified in the Call-Off Contract and/or these terms and conditions, or otherwise made known by the Supplier to the Buyer from time to time in writing. The Buyer consents to the Supplier providing details of the Buyer's name and address to such third parties for reporting purposes.
- 6.4** The Buyer confirms that: -



- 6.4.1** It will not contact the Software provider directly; otherwise, the Supplier shall be entitled to charge the Buyer the cost that the Supplier incurs from the provider;
- 6.4.2** That access to the Supplier Software service will cease upon termination and the Buyer will not use the G-Cloud Services beyond this period;
- 6.4.3** It will ensure that it uses the Supplier Software in accordance with all applicable laws and regulations;
- 6.4.4** It will not use copy, reproduce in whole or in part, adapt and modify any documentation received;
- 6.4.5** It will not reverse engineer, disassemble or decompile the software, nor attempt to derive or determine the source code or the logic therein;
- 6.4.6** It will not use the Supplier Software other than for its own internal business purposes;
- 6.4.7** it will not use the Supplier Software in association with safety critical applications which include but are not limited to, medical systems, transport management systems, vehicle and power generation applications and nuclear power applications; and
- 6.4.8** It will not in relation to the Supplier software sub-licence, rent, sell, lease, distribute or otherwise transfer to a third party.
- 6.5** Database licenses are provided by Buyer unless listed in the Call-Off Contract as Software Licensing.
- 6.6** On the expiration/cancellation of a Call-Off Contract for any reason, Buyer will delete or migrate all Buyer data resident on the Supplier Managed Cloud Services for UK Government. The Supplier will securely delete all Buyer data and Software from the Buyer VDC(s). The Supplier will not be able to recover any data once this action has been undertaken.
- 6.7** On expiration or termination of the Call-Off Contract for any reason, the Buyer must immediately discontinue all use of the G-Cloud Services, the Supplier will close access to the Buyer VDC(s), de-install all Supplier Software and Buyer Software.
- 6.8** The Supplier shall be entitled to audit the Buyer's use of the G-Cloud Services for the purpose of ensuring the Buyer's compliance with its obligations under the Call-Off Contract.
- 6.9** PSN Code of Connection (CoCo) and Compliance. The Buyer is responsible for maintaining their PSN CoCo in order to use Supplier' Managed Cloud Services for UK Government and should notify the Supplier if this ceases. The Buyer must ensure that the OS and application/software that are deployed and supplied by, and on, Supplier' Managed Cloud Services for UK Government PAAS platform are included in their ITHC. The Buyer's ITHC covering the Platform and Applications will sit alongside Supplier ITHC covering the Infrastructure (as part of its PSN CoCo) to provide PSN full assurance of the overall Buyer solution.

## **7 Support**

- 7.1** The Supplier will provide technical support; problem resolution and change management for the Managed Cloud Services for UK Government via its ISO20000 aligned Service Management solution.
- 7.2** Managed Cloud Services for UK Government does not include support for configurations or architectures that are not supported or recommended by the applicable vendor

## **8 Policies**

- 8.1** The G-Cloud Services shall at all times be used in compliance with Supplier' Managed Cloud Services for UK Government Service Code of Connection, the PSN Code of Connection (CoCo) and current general policies and guidelines ("Policies") where applicable. The Buyer agrees to be bound by the Policies, as amended, and communicated by the Supplier from time to time.
- 8.2** Notices of changes to the Policies will be communicated to the Buyer via electronic means
- 8.3** The Supplier shall be entitled to change the Managed Cloud Services for UK Government. The Supplier shall give the Buyer at least 60 days' notice of any significant changes. If any such change substantially and adversely affects the Buyer's ability to utilise the G-Cloud Services it may, within 30 days of the Supplier's notice to it, terminate the Call-Off Contract with respect to the affected G-Cloud Services by notice. Without prejudice to any accrued rights and obligations, neither party shall be liable to the other for such termination. If the Buyer does not give any such notice within 30 days of the Supplier' notice, it will be deemed to have accepted the change.

## **9 VDC Infrastructure and Maintenance**

- 9.1** From time to time, the Supplier may need to perform maintenance on or make adjustments to the infrastructure (including without limitation, any Supplier provided telecommunications links, Supplier Equipment and Supplier Software, on which the Buyer VDC(s) relies and shall be entitled to do so at its discretion, without incurring liability for so doing. In the event of any such maintenance or adjustment being needed, then except in the case of emergency maintenance, the Supplier will give the Buyer reasonable prior notice and shall use reasonable endeavours to limit the interruption. If emergency maintenance is needed, the Supplier shall be entitled to interrupt services without prior notice.

## **10 Ancillary Charges**

- 10.1** In addition to the Charges specified in the Contract, the Buyer shall pay ancillary Charges, monthly in arrears, for technical assistance requested by the Buyer or Buyer Designees which is not within that included in the Charges specified in the Contract, at Supplier' applicable staff rates in accordance with its SFIA Rate Card.

## **11 Miscellaneous**

- 11.1** Notwithstanding anything herein, and without limitation, the Supplier shall not be responsible for failure to carry out any of its obligations under the Call-Off Contract (including any failure to meet a Service Level Commitment target), if the failure is caused by:
- 11.1.1** a breach of the Call-Off Contract (for the avoidance of doubt, including these Supplier Terms) by the Buyer, its employees, subcontractors, or agents ("Buyer Representatives");
  - 11.1.2** the failure of the Buyer to provide any assistance where required in accordance with the Call-Off Contract (for the avoidance of doubt, including these Supplier Terms);
  - 11.1.3** the negligent, intentional, or wilful acts or omissions of the Buyer or Buyer Representatives (including Buyer retention of root or admin access and changes to data or configurations);
  - 11.1.4** malfunction of equipment or other infrastructure at the Replication Site (unless such malfunction was caused by Supplier' failure to maintain such equipment or such infrastructure);
  - 11.1.5** the failure of any software to perform in accordance with its specifications and such failure is not caused by Supplier' negligence, wilful misconduct, or failure to maintain a maintenance contract on such software. In the event of a Software Failure, if in the reasonable discretion of the Supplier and Buyer, such Software Failure cannot be corrected, the Buyer may, as its sole and exclusive remedy, terminate the Call-Off Contract without penalty, upon written notice to the Supplier;
  - 11.1.6** scheduled or emergency maintenance (including upgrades, repair or component replacement or scheduled backups) or other mutually agreed-to downtime. Scheduled maintenance on the Supplier's shared infrastructure, applications, and platforms ("Lifecycle Maintenance") is currently scheduled every third Sunday during the hours of 01:00am and 06:00am (local time) and no further notice to Buyer is required. If the Supplier changes its Lifecycle Maintenance window, the Supplier will provide the Buyer with 30 days' advance notice;
  - 11.1.7** failure of the Buyer's hardware and/or Software (including downtime) except where the Supplier is responsible under the applicable Call-Off Contract for the management or operation of the same, or where such failure results from a breach by the Supplier of its obligations under the applicable Call-Off Contract and excluding any such failure that occurs as a result of: (i) Buyer-made changes to applications or Data; (ii) the Buyer retaining ROOT or ADMIN privileges; (iii) the Buyer requiring the Supplier to maintain, or continuing to run, unsupported software or hardware releases; (iv) the Buyer refusing Supplier maintenance changes for any reason, or (v) the Buyer retaining access control to any devices comprised within the Buyer System for which the Supplier is providing the G-Cloud Services; or
  - 11.1.8** the absence of a patch, repair, policy, configuration, or maintenance change recommended by the Supplier but not approved by the Buyer, or configurations or architectures that are not supported or recommended by the applicable vendor.
- 11.2** The Supplier shall be entitled to cease or suspend the provision of the Services without liability if it reasonably believes that its provision of the G-Cloud Services would cause it to infringe the law, having used all reasonable endeavours to avoid any such infringement.
- 11.3** In addition to any other Charges specified in the Contract, the Buyer shall pay ancillary Charges, monthly in arrears, for: (a) shipment of item(s), at commercial rates if performed by Supplier, or at Supplier' cost plus 15% if performed by a third party supplier; and (b) technical assistance requested by the Buyer or its personnel which is not within that included in the charges specified in the Schedule, at Supplier' applicable staff rates in effect from time to time.

- 11.4** Notwithstanding any other limitations of liability set out in the Call-Off Contract, any loss of the Buyer's Data occurring as a direct result of the breach or negligence of the Supplier, shall be deemed to be a direct loss of the Buyer. However, in the event of any such loss, the Supplier's aggregate liability under the Call-Off Contract shall be limited to the reasonable cost of either (at the Buyer's option): (i) employing external third party consultants in order to help restore such lost data, or (ii) the Supplier using its reasonable endeavours to restore (where possible) such lost data itself, provided however that in either case, such costs shall not exceed the total aggregate sum of fifty thousand pounds (£50,000) plus VAT thereon. The payment by the Supplier of such restoration costs up to the maximum amount specified in this sub clause shall be the Supplier's sole obligation (and the Buyer's sole remedy in respect of such loss of the Data). For the avoidance of doubt, the payment by the Supplier of the restoration costs specified herein up to the maximum amount of fifty thousand pounds (£50,000) shall be included when calculating any limit of liability.
- 11.5** The Buyer has sole control and visibility over the types of data stored as part of the G-Cloud Services and therefore, has sole responsibility for ensuring that the G-Cloud Services it purchases allows the Buyer to comply with applicable Laws or other requirements related to the storage, security, or processing of the same, including, but not limited to, those relating to data protection or payment card information.
- 11.6** The Buyer must apply all security patches within 28 calendar days of the patch release. If the patch is not applied within the foregoing timeframe, the Supplier will apply the patch and shall not be responsible for any service delivery issues, including the failure to meet a relevant SLA.
- 11.7** Within 10 Working Days of the termination or expiration of the Call-Off Contract, the Buyer will return, at Buyer's expense, all Supplier-provided equipment and software (whether located at a Buyer or Supplier facility), return Buyer occupied areas within a Supplier facility in the same condition as received (reasonable wear and tear excepted), and remove all Buyer-provided equipment and software. If Buyer fails to remove its equipment and software as required, the Supplier will provide notice to Buyer, and Buyer will have 10 additional Working Days from the date of Supplier' notice to remove all Buyer-provided equipment and software. Upon expiration of the foregoing notice period, the Supplier may dispose of such equipment and any Buyer data or applications without liability to the Buyer. The Supplier may redeploy any Supplier-provided equipment in any manner in its sole discretion and shall delete all Buyer software and data residing on such equipment before redeployment.
- 11.8** The Buyer represents and warrants that it has the full legal right to utilize any Buyer-provided equipment and software.
- 11.9** The Buyer will not interfere with any other Supplier customer's use of the Supplier's facilities or services.
- 11.10** The Supplier shall perform such janitorial services, environmental systems maintenance, power maintenance and other services as are reasonably required to maintain the Supplier facilities used to provide G-Cloud Services.
- 11.11** The Call-Off Contract does not create any interest in real estate and is strictly an agreement for the provision of services, which are personal in nature to the parties. The Buyer will not permit any Buyer-related third-party liens to be placed against all or any portion of the G-Cloud Services or any Supplier-provided equipment or software.

## **12 Service Delivery & Implementation**

- 12.1** Promptly following the execution of the applicable Call-Off Contract, Buyer agrees to make its technical staff available, as reasonably required by the Supplier, to review and document the requirements and timelines for implementation of the G-Cloud Services. In the event: (i) the Buyer does not make its staff available or otherwise does not participate in the pre-implementation planning; (ii) as a result of the planning, a material change in the scope or requirements is discovered; or (iii) the original design of the solution jointly agreed by the Parties creates a failure in the G-Cloud Services which needs to be corrected, then the Supplier will not be liable for any failure to implement the G-Cloud Services and the Buyer shall remain liable for payment of the fee(s) identified in the Call-Off Contract on the due dates set out therein. If any change to the G-Cloud Services is required as a result of (i)-(iii) above, an amendment to the applicable Call-Off Contract must be executed.
- 12.2** The Buyer will cooperate with the Supplier, as requested from time to time, in connection with the Supplier's change, delivery and improvement of the services. The Supplier will not be responsible for service delivery issues related to the Buyer's failure to reasonably cooperate.
- 12.3** The Supplier's global delivery and operational model is in English language only. The Supplier can only provide and support this G-Cloud Service for systems with English language and locales. Any Buyer systems with the presence of anything other than English will be removed from scope and the Supplier will not be responsible to provide alternative solutions.

- 12.4** The Supplier may deploy technology to support the Supplier's internal monitoring and reporting platform. The settings and configurations associated with such technology will be managed and maintained by the Supplier. The Supplier will not be responsible failing to meet a relevant SLA due to Buyer modifications to the settings, accounts, or configurations of such technology.
- 12.5** In the event the Buyer has not contracted for Operational Support Services, to the extent requested by the Buyer, The Supplier will provide the requested Operational Support Services at the rate set out in the Supplier's SFIA Rate Card.
- 12.6** For Managed Services, or Cloud Services, The Supplier will provide technical support, problem resolution and change management in accordance its Support and Infrastructure Guide located in the Buyer Portal.

## **SUB-SECTION B: NETWORK CONNECTIVITY SERVICES**

### **1 Shared PSN Connectivity**

- 1.1** If Shared PSN connectivity is selected in the Call-Off Contract, the Supplier shall provide the Buyer with Managed Access to the PSN Shared Services VRF as set out in clause 3 below to allow for a publicly accessible connection through the PSN to the Managed Cloud Service for UK Government platform.

### **2 Private PSN Connectivity**

- 2.1** If private PSN connectivity is selected in the Call-Off Contract, the Buyer will procure (or procure through the Supplier) a private VRF on the PSN network as set out below in clause 3. to allow for a privately accessible connection to the Managed Cloud Services for UK Government platform. The private VRF will transmit through the PSN Direct Network Service Provider (DNSP) infrastructure and terminate at the Buyer's wide area network to the VDC(s). The private VRF will terminate onto the Supplier Equipment and be routed to the Buyer VDC(s) within the Managed Cloud Services for UK Government platform. The Buyer will be provided with a Virtual Firewall on the Supplier Equipment.

### **3 Services**

- 3.1** The G-Cloud Services may include one or more of the services described in the following sub clauses. Note: These descriptions are summaries only and are supplemented by other clauses in these terms and conditions and the Call-Off Contract.
- 3.2** PSN access Services: These include:
- 3.2.1** allocated PSN Assured (no encryption) or PSN Protected (with encryption) bandwidth on the Supplier Managed Cloud Services for UK Government PSN connections with the specified amount of Bandwidth,
  - 3.2.2** monitoring of PSN availability at Supplier sites;
  - 3.2.3** tracking and reporting of usage of the Standard Bandwidth; and
  - 3.2.4** if 'RIPE IP Addresses' are specified, providing the specified number of such addresses; and
  - 3.2.5** if PSN Registered DNS zones are specified, providing configuration of DNS zones and records in accordance with configuration instructions supplied by the Buyer for the domains specified and associated with the PSN Access Services.
- 3.3** Inter-site Services: These include:
- 3.3.1** allocated Standard Bandwidth on the Supplier telecommunications connections between Supplier sites.
  - 3.3.2** provision of routing and firewall management to support Buyer application replication traffic (subject to Managed Firewall Services)
  - 3.3.3** tracking and reporting of usage of the Standard Bandwidth; and
  - 3.3.4** monitoring of link availability.

### **4 Monitored links and Managed Services**

- 4.1** This clause explains when and why the Supplier can monitor links or provide managed services for such links. Unless the link complies with the criteria set out below, then notwithstanding anything to the contrary, the Supplier will not be able to monitor the link or (as the case may be) provide a managed service in respect of it.

- 4.2 If the Supplier provides an 'Inter-Site' link between Supplier sites, it controls the link end to end and it is therefore able to monitor the link.
- 4.3 The Supplier' ability to monitor a link does not imply that there is redundancy in the service i.e. duplication of elements to provide alternative functional channels in case of failure. The link itself may still be a potential single point of failure.
- 4.4 For certain services ("Managed Services"), the Supplier can take on responsibility for the monitoring, performance, and maintenance of the services up to the relevant Supplier Demarcation Point, except that its responsibility for the availability, timing or quality of transmission or signalling on the circuit or network may cease at a different point e.g. the Carrier Demarcation Point at the Buyer (or third party) end of the link.

## **5 PSN Access Services**

- 5.1 The Standard Bandwidth provided for PSN Internet Access Services will be capped. The Supplier shall have no obligation to provide a PSN connection exceeding the Standard Bandwidth unless the Buyer contracts for additional capacity by way of a written amendment to the Call-Off Contract.
- 5.2 None of the PSN services is or are owned, operated, or managed by, or in any way affiliated with, the Supplier or any of the Supplier's affiliates. The PSN is a dedicated computer network of inter-operable packet switched data networks for use by the UK Public sector. The Supplier cannot guarantee that the G-Cloud Services that the PSN access services from third party providers are sufficient to meet the Buyer's needs. The Buyer agrees that it uses the PSN from third party providers solely at its own risk and subject to the PSN Code of Connection and warrants that it will comply with all such requirements as defined by the PSN/Cabinet office in its use of the G-Cloud Services.
- 5.3 Buyers consuming Supplier' Managed Cloud Services for UK Government across the PSN are responsible for gaining and maintaining their own PSN connection compliance certification for the end user systems that they deploy on Supplier Managed Cloud Services for UK Government platforms and consume over the PSN.
- 5.4 The Supplier is responsible for gaining and maintaining its own PSN Connection and PSN Service Provision compliance certifications.

## **6 Public Service Network (PSN) Traffic Management**

- 6.1 The Supplier will provide PSN traffic management services that are specified in the Call-Off Contract as covered by such G-Cloud Services. These G-Cloud Services include:
  - 6.1.1 provision of PSN traffic management service,
  - 6.1.2 policy configuration; and
  - 6.1.3 Resolution of traffic management problems by the application of readily available fixes and patches supplied and supported by relevant vendors.

## **7 Dedicated Internet Access Services:**

- 7.1 These include:
  - 7.1.1 a connection from the Site to the Internet, across the specified Standard Bandwidth, which may be fixed or burstable;
  - 7.1.2 monitoring of Internet availability;
  - 7.1.3 tracking and reporting of usage of the Standard Bandwidth; and
  - 7.1.4 if 'Internet IP Addresses' are specified in the Call-Off Contract, providing the specified number of such addresses; and
  - 7.1.5 if 'DNS Administration Services' are specified in the Call-Off Contract, providing configuration of DNS zones and records in accordance with configuration instructions supplied by the Buyer for the domains specified in the Call-Off Contract associated with the Dedicated Internet Access Services.

## **8 DDoS Mitigation Service**

- 8.1 It is a condition to the Supplier (or its contractor) in performing this G-Cloud Service that this is only provided with Supplier' Managed Internet Access.



- 8.2** The G-Cloud Service monitors for potential denial of service attacks by alerting, diagnosing, and filtering internet traffic for the purpose of cleaning and eliminating malicious traffic immediately prior to Supplier' internet facing routers through a process of signature analysis and dynamic profiling for up to 50 Gb of traffic. Once the 50Gb of traffic threshold has been reached the Supplier may be unable to mitigate against further threats and bears no liability in this event.
- 8.3** On-Boarding: The Supplier requires the Buyer to provide its shared IP address allocations by server type. In addition, the Buyer is required to notify the Supplier of any changes, additions, or deletions to its IP address allocations.
- 8.4** The Supplier monitors the Buyer's average incoming internet traffic levels over the previous 12-month period and in the event that this increases by 125% or greater, the Supplier shall be entitled to increase the Charges as per the Suppliers Price Card.
- 8.5** The Supplier will provide the Buyer with reports only in the event of a High-Level Alert ("High Level Alert" means a critical alert which commences the mitigation). Such reports shall contain the attack size, duration, source, type, mitigation technique deployed, geography, timings, and volume of cleansed traffic.
- 8.6** Fair Use: In the event that a Buyer is deemed to be a very high risk of high-volume attacks, the parties shall review the contracted arrangement, and, in the event, they are unable to agree, the Supplier may suspend the G-Cloud Service.

## **9 Inter-Site Services**

- 9.1** The specified Standard Bandwidth of Supplier provided 'Inter-Site' links is capped and may not be increased unless otherwise agreed in writing and subject to payment of the Supplier' additional Charges in relation thereto as per the Suppliers Price Card. Subject to any other applicable terms and conditions, Supplier provided 'Inter-Site' links will be available to the Buyer on a 24-hour, 7-day per week basis (excluding downtime attributable to previously scheduled routine and preventative maintenance).
- 9.2** Certain Network Services are provided subject to the availability of the necessary services from the Supplier's telecommunications providers. Accordingly, the Supplier does not guarantee (nor is it a condition or warranty of the Call-Off Contract) that transmission of data via the Communications Links will always be possible without interruption or error. The Supplier may, by written notice to the Buyer, terminate or withhold the provision of such Network Services (or any part of them), without liability, if: (a) The Supplier's telecommunications providers terminate services to the Supplier or withdraw or substantially alter any underlying tariff(s); or (b) any regulatory authority asserts jurisdiction over the Network Services, with the result that the Supplier would be required to submit to common carrier, public utility or other regulations to which the Supplier is not then subject, or (c) the Supplier no longer has the legal right to provide the Network Services. If requested by the Buyer, the Supplier will work with the Buyer to help it secure replacement Network Services from a replacement telecommunications provider.

## **10 RIPE IPV4 (IP Addresses)**

- 10.1** Any RIPE addresses provided by the Supplier will be from a Supplier IP network block and are non-portable. These addresses will be for the use of the Buyer only and shall not without the Supplier's prior written consent (given in the Supplier's absolute discretion) be used by or assigned to any third party. RIPE addresses allocated by the Supplier must be promptly returned to the Supplier if the Buyer discontinues the applicable G-Cloud Services for any reason, or on expiration or termination of the Call-Off Contract.
- 10.2** The Supplier procures its IPv4 IP address allocation from RIPE (Réseaux IP Européens) which is given by the Supplier agreeing to conform with the policies and guidelines for assignments by RIPE. The number of IPv4 address allocations given by RIPE to the Supplier is based on the perceived Buyer utilisation rates. In the event that the Buyer does not employ these utilisation rates, the Supplier reserves the right to withdraw the unutilised IP addresses in order for it to conform with RIPE.

## **SUB-SECTION C: NETWORK SERVICES**

### **1 Managed Firewall Services**

- 1.1** Included in the Managed Firewall Services are:
- 1.1.1** all equipment and software required to provide the relevant G-Cloud Services;
  - 1.1.2** monitoring of the firewall availability;
  - 1.1.3** firewall rules/policy configuration upon Buyer request; and
  - 1.1.4** resolution of firewall incidents.

- 1.2 Buyer system administration access to firewalls infrastructure is not permitted.

## 2 Managed Load Balancing Services

- 2.1 Included in the Managed Load Balancing Services are:

- 2.1.1 all equipment and software required to provide the relevant G-Cloud Services;
- 2.1.2 monitoring of the load balancing availability;
- 2.1.3 load balancer policy configuration upon Buyer request; and
- 2.1.4 resolution of load balancer incidents.

- 2.2 Buyer system administration access to load balancer infrastructure is not permitted.

## SUB-SECTION D: INFRASTRUCTURE RESOURCES AND MANAGED SERVICES

### 1 Compute Resources

- 1.1 The Supplier will provide the following in connection with the number of contended and/or uncontended Virtual Machine(s) identified in the Call-Off Contract:
  - 1.1.1 The quantity of vCPUs, RAM and storage, each as identified in the Call-Off Contract
- 1.2 The Supplier will provide the following in connection with the number of Managed Physical Host(s) identified in the Call-Off Contract:
  - 1.2.1 The quantity of Processors, cores, RAM and storage, each as identified in the Call-Off Contract.
- 1.3 The Supplier will notify the Buyer via email when the Buyer's use of the Managed Cloud Services for UK Government Service can commence ("**Service Commencement Date**") and provide credentials to log into the Buyer VDC(s) cloud environment and Buyer Portal.
- 1.4 The Supplier is responsible and will maintain the ongoing patches of all Operating Systems and/or Application/Software templates and the virtual and physical machines deployed from these templates, within the core management zones of the platform.
- 1.5 The Supplier will undertake an Annual IT Health Check (CHECK) to ensure that the supported Operating Systems and/or the Application/Software templates and the machines in the core management zones deployed from these templates are adequately patched to the required state.

### 2 Managed Operating System Services

- 2.1 The Supplier will provide for the number of Virtual Machine(s), and/or Managed Physical Host(s) identified in the Call-Off Contract:
  - 2.1.1 Initial operating system build, and agent installation (if applicable).
- 2.2 The Supplier will provide the following for the number of Virtual Machine(s) and/or Managed Physical Hosts identified in the Call-Off Contract:
  - 2.2.1 Core Operating system configuration changes upon Buyer request;
  - 2.2.2 Management of the Supplier system administration access (e.g., root or administrator access in order to undertake management of the OS of Virtual Machine(s) within Buyer VDC(s);
  - 2.2.3 Installation of antivirus software on Microsoft Windows operating system servers; see Section 4
  - 2.2.4 Monitoring operating system patch alerts and providing Buyer notification of such patches;
  - 2.2.5 Execution of Virtual Machine(s) snapshot schedules as defined by the Buyer, and retention of the number of Snapshots defined by the Buyer, file restore from Snapshots upon Buyer request; and modification(s) to the snapshot schedule upon Buyer request, 1 initial data restoration test;
  - 2.2.6 Operating system problem resolution and incident management; and monitoring of availability & thresholds identified in Buyer-completed design requirements form and Buyer notification if the Supplier detects non-responsiveness or exceeded thresholds;
  - 2.2.7 For Buyers who purchase the Platform As A Service (PAAS), the Supplier will maintain the ongoing patches of all supported Operating Systems running in the Buyer's virtual data centres (VDC's) on



behalf of the Buyer, but the Buyer is responsible for maintaining the ongoing patches of their user application/systems that sits on top of the platform Operating Systems;

**2.2.8** Where the Buyer requests the Supplier not to patch the supported Operating Systems, the Supplier will inform the PSN if patching is delayed, where the delay exceeds the requirements of PSN, as per the guidelines, and; reserves the right to suspend the service to the Buyer;

**2.2.9** The Buyer is also responsible for any Annual IT Health Check (CHECK) required on their end user applications including the OS that are deployed and supplied by, and on, Supplier Managed Cloud Services for UK Government PAAS platform and, the Buyer is to share the ITHC results with the Supplier on request.

**2.3** For all Virtual Machine(s)s and Managed Physical Hosts receiving Managed Services the Buyer will:

**2.3.1** Provide verification of licenses and necessary license keys applicable to Buyer-provided software prior to the G-Cloud Service provision by the Supplier;

**2.3.2** Provide the Supplier with system administration access (e.g., administrator or root) level access for each Virtual Machine(s) within the VDC(s) and, permit such access to be traced and recorded by the Supplier; and

**2.3.3** Obtain and maintain 24x7 maintenance agreements with the original software vendor, for Buyer-provided software and notify the vendor of the Supplier's authorization to act as Buyer's agent under the maintenance agreements.

**2.3.4** Be responsible for the approval and/or testing of all software patching which is identified as available for installation as part of the G-Cloud Services prior to the Supplier installing on the live managed OS server. The Supplier reserves the right to apply critical patches to the managed OS where this is required for security or performance reasons without the Buyer having completed test.

### **3 Managed Anti-Virus Services (AVS)**

**3.1** The Supplier will provide Managed Anti-Virus Services (AVS) for the number of managed OS instances that the Supplier manages as specified in the Call-Off Contract.

**3.2** Managed Anti-Virus Services include:

**3.2.1** installation and configuration of anti-virus software on Supplier managed OS instances in accordance with Supplier's standard minimum configuration;

**3.2.2** identification by the software of software patches and notification of Software updates

**3.2.3** on-going signature updates; and

**3.2.4** Review of alerts and notification of such to the Buyer to allow incident response and management.

**3.3** The Buyer shall authorise the removal or deletion of any identified or infected files on the Buyer Virtual Machine(s) or Managed Physical Host(s) prior to the Supplier addressing the incident. Infected files will be quarantined pending Buyer instructions.

### **4 Managed Microsoft Runtime Application Services**

**4.1** The Supplier will provide for the number of Virtual Machine(s), and/or Managed Physical Host(s) identified in the Call-Off Contract:

**4.1.1** Initial design, build, service take-on and ongoing monitoring and management of the supported Microsoft Applications as defined in the service schedule and/or Service Description.

**4.2** For Buyers who purchase the Platform As A Service (PAAS), the Supplier will maintain the ongoing patches of all supported application/software running in the Buyer systems within the Buyer' virtual data centres (VDC's) on behalf of the Buyer, but the Buyer is responsible for maintaining the ongoing patches of their user application/systems that sits on top of the platform Operating System and/or supported application/software;

**4.3** Where the Buyer requests the Supplier not to patch the supported application/software deployed and supplied by the Supplier, the Supplier will inform the PSN if patching is delayed, where the delay exceeds the requirements of PSN, as per the guidelines and; reserves the right to suspend the service to the Buyer;

**4.4** The Buyer is also responsible for any Annual IT Health Check (CHECK) required on their end user applications including the OS and application/software that are deployed and supplied by, and on, Supplier

Managed Cloud Services for UK Government PAAS platform and, the Buyer is to share the ITHC results with the Supplier on request.

## **SUB-SECTION E: STORE SERVICES**

### **1 Managed Storage Services**

- 1.1** The Supplier will provide Managed Storage Services for the Buyer VDC(s) and/or Managed Physical Hosts which shall be provided in multiple gigabytes as identified in the Call-Off Contract.
- 1.2** The Supplier will provide Managed Storage Services for Object Based Storage accessed by Virtual Machine(s) and/or Managed Physical Hosts.
- 1.3** The Buyer acknowledges that it may be necessary to allow the Equipment vendor onto the Storage Infrastructure for the purpose of maintenance and support. Any access will be controlled and monitored by the Supplier and be in accordance with the Managed Cloud Services for UK Government security operating procedures.

### **2 Storage Snapshots**

- 2.1** The Supplier will provide for the number of Virtual Machine(s) and/or Managed Physical Hosts Initial configuration of the snapshot frequencies and the retention periods.
- 2.2** The Supplier will provide for the number of Virtual Machine(s) identified in the Call-Off Contract.
  - 2.2.1** Changes to snapshot frequencies and retention periods via a chargeable service request.
  - 2.2.2** Machine or data restoration from a snapshot via a chargeable service request.

### **3 Storage Replication**

- 3.1** The Supplier will provide for the number of Virtual Machine(s) and/or Managed Physical Hosts identified in the Call-Off Contract.
  - 3.1.1** Initial configuration of the storage replication frequencies and the retention periods.
- 3.2** The Supplier will provide for the number of Virtual Machine(s) and/or Managed Physical Hosts identified in the Call-Off Contract.
  - 3.2.1** Changes to storage replication frequencies and retention periods via a chargeable service request.
  - 3.2.2** Machine or data restoration from the replicated storage in the event of a site failover.
- 3.3** Where the Buyer subscribes to dual site object storage, the Supplier will configure and manage Object Storage replication.

### **4 Managed Backup and Archiving Services**

- 4.1** The Managed Backup and Archiving Services for Managed Cloud Services for UK Government Redcentric Cloud and PaaS provide for day-to-day support and management of the Buyer's data backup and archiving needs in support of business operations and compliance requirements.
- 4.2** The service has four service options:
  - 4.2.1** Virtual Machine backup;
  - 4.2.2** Application backup;
  - 4.2.3** File Archiving;
  - 4.2.4** Email Archiving
- 4.3** The back-end storage is provisioned as a common target resource to store the data generated by the backup and archive service.
- 4.4** The G-Cloud Services are consumed via a usage-based model based upon the amount of storage consumed plus a management charge based on the volume of source data in gigabyte. The management charge includes all licensing, support, and infrastructure to run the service. Additional fees apply per archived mailbox, the unit price per mailbox as set out in the pricing document.

- 4.5** The backup service is currently only available on the assured zone (a security domain of the Managed Cloud Services for UK Government platform) and is a chargeable service.

#### **SUB-SECTION F: INCIDENT RESOLUTION SERVICES**

- 1** Eligibility Incident Resolution Services shall be provided for those services or Supplier Equipment as specified in the Call-Off Contract.
- 2** Detection and Notification Where the Supplier detects an incident with eligible services or Supplier Equipment, then the Supplier will notify the Buyer's nominated personnel (previously notified to the Supplier in writing by the Buyer for this purpose) of the incident.
- 3** The Managed Cloud Services for UK Government use the criteria for prioritisation of incidents as defined in the Supplier – Managed Cloud Services for UK Government Service Description.
- 4** Time to Respond Depending upon the categorisation of the incident associated with the eligible item then within the corresponding timescale to respond from the Supplier's detection or having been notified by the Buyer of the incident, the Supplier will engage its then available technical support personnel to assist (in conjunction with the Buyer's personnel) in incident diagnosis within the Service Level Agreement detail in the Call-Off Contract. The Buyer shall also as soon as reasonably possible, make available its personnel to assist in incident diagnosis.
- 5** Incidents are responded to, resolved, and reported, according to the Key Performance Indicator (KPI) specifications as shown in the Service Description.
- 6** Time to Fix the Supplier does not give any guarantee or warranty and nor is it a condition of the Call-Off Contract that the Supplier will be able to fix any detected or notified incident with any eligible service or Supplier Equipment within any timescale, as resolution will depend upon the nature and circumstances of the incident, the Buyer's timely assistance and response times from Equipment and Software vendors. However, where it is able to do so, the Supplier will use its reasonable endeavours to fix the incident as soon as reasonably possible and will otherwise liaise with the Equipment and Software vendors, the Buyer, and the Buyer's suppliers to enable them to do so. Furthermore, until resolution of the incident, the Supplier will internally escalate the incident in its attempts to remedy any incident.

## M Additional Terms that apply to Managed Public Cloud AWS

### 1 Application of this Section M

The provisions that follow only apply to those G-Cloud Services within the Managed Public Cloud AWS G-Cloud Service Type; they do not apply to any other G-Cloud Service Type.

### 2 Definitions

**2.1** "AWS" means Amazon Web Services

**2.2** "AWS Infrastructure Services", "AWS Resources" or "Infrastructure Services" mean the applicable virtual infrastructure services selected under the Call-Off Contract which are provided by AWS, as detailed in the current version of AWS Service Terms and Service Offerings as found at <https://aws.amazon.com> and <https://aws.amazon.com/legal/>

**2.3** "G-Cloud Managed Public Cloud AWS Services" means the Services provided to the Buyer by the Supplier in respect of AWS Infrastructure Services, as described in the applicable Service Definition

### 3 General Provisions

**3.1** In order for the Supplier to provide the G-Cloud Managed Public Cloud AWS Services, the Supplier must provide AWS the following information on a monthly basis: (i) Buyer name and contact information (including end-customer name, telephone number, email address, city, state/region, country and zip/postal code), and (ii) Buyer's AWS account ID associated with the Supplier's AWS reseller account. Accordingly, by utilising the G-Cloud Managed Public Cloud AWS Services, the Buyer consents to Supplier's collection, use, and disclosure of this information. The collection and processing of such information shall be handled in accordance with the Supplier's Data Privacy Policy (as set out in the applicable Service Definition).

**3.2** The Buyer acknowledges that the Infrastructure Services are strictly subject to the availability of the same from AWS and that accordingly the Infrastructure Services and Service Level Agreements relating thereto may be subject to change, suspension, or cancellation by AWS. This includes the termination or suspension of the Call-Off Contract and the Buyer's AWS account immediately if AWS or the Supplier determines the Buyer is in breach of its obligations under these terms, the Call-Off Contract or any AWS policies or terms referenced below, such termination is necessary to comply with applicable law, a security or intellectual property issue, or if AWS no longer permits resale of the AWS Infrastructure Services. The Supplier shall endeavour to give as much prior notice of any change or cancellation of AWS Infrastructure Services as such is provided by AWS. The Buyer acknowledges and agrees that the Supplier shall have no liability for a failure to provide the Services or any part thereof where such failure relates to a change or discontinuance by AWS.

**3.3** In connection with the use of the AWS Infrastructure Services, the Buyer will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a U.S. company, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, the Buyer is solely responsible for compliance related to the manner in which it chooses to access and use the AWS Infrastructure, including the Buyer's transfer and processing of its data and confidential information and the AWS region in which any of the foregoing occur. The Buyer represents and warrants that it and its financial institutions, or any party that owns or controls the Buyer or its financial institutions, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council and the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce).

**3.4** The Buyer acknowledges that AWS retains and reserves all rights, title, and interest in and to the AWS Infrastructure Services, and all related technology and intellectual property rights. The Buyer agrees that it will not, nor will attempt to (a) modify, distribute, alter, tamper with, repair, or otherwise create derivative works of any content included in the AWS Infrastructure Services (except to the extent content included in the AWS Infrastructure Services is provided to the Buyer under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the AWS Infrastructure Services or apply any other process or procedure to derive the source code of any software included in the AWS Infrastructure Services (except to the extent applicable law doesn't allow this restriction), or (c) access or use the AWS Infrastructure Services in a way intended to avoid incurring fees or exceeding usage limits or quotas.

**3.5** Except to the extent caused by the Supplier's breach of Supplier's obligations, (a) the Buyer is responsible for all activities that occur under the use of its account and credentials, regardless of whether the activities

are authorized or undertaken by the Buyer, its employees or a third party (including contractors or agents), and (b) the Supplier and its affiliates are not responsible for unauthorized access to the Buyer's account.

- 3.6** The Buyer is responsible for ensuring that it requests the Supplier to take the appropriate action to secure, protect and backup its accounts and content/data in a manner that will provide appropriate security and protection, which might include use of encryption to protect its content/data from unauthorized access and routine archiving of the same.
- 3.7** The Infrastructure Services are provided by AWS. By entering into the Call-Off Contract, the Buyer acknowledges that the Supplier is subscribing to the Infrastructure Services purely for and on behalf of the Buyer, acting in its capacity as a solution provider. The Buyer acknowledges and agrees that the Infrastructure Services and the Buyer's use thereof are strictly subject to the Buyer's compliance with all laws, rules and regulations applicable to the use of the AWS Service Offerings as well as terms of use and policies (including, without limitation AWS' acceptable use policy) of AWS set out at <https://aws.amazon.com> and <https://aws.amazon.com/legal/> including (but not limited to) the applicable AWS Service Terms for the Service Offering utilized together with any Service Level Agreements relating thereto (and the same shall be deemed accepted upon use of the Infrastructure Services (without need for signature or inclusion herein). The Buyer will ensure that the content information or data that it stores or processes using the Services and/or requires the Supplier to process on its behalf will not violate any of the AWS policies or any applicable law. The Buyer is solely responsible for the development, content, operation, maintenance, and use of such content.
- 3.8** The Buyer will defend, indemnify, and hold harmless the Supplier, its affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any losses arising out of or relating to any third-party claim concerning the Buyer's use of the AWS Infrastructure (including any activities or processing of data or confidential information under its AWS account and use by its employees and personnel).
- 3.9** The Buyer is prohibited from reselling the Infrastructure Services, or from selling, transferring or sublicensing the Buyer's, the Supplier's or AWS account credentials to any other party (save to agents and subcontractors performing work on the Buyer's behalf).
- 3.10** Notwithstanding anything stated to the contrary in the the Call-Off Contract or the Framework Agreement with respect to order of precedence, limitations of liabilities, or warranties and their disclaimers, the parties agree that the following terms shall prevail and apply to the G-Cloud Managed Public Cloud AWS Services.
- 3.10.1** The Buyer acknowledges and accepts that the AWS Infrastructure Services are provided "as is." Except to the extent prohibited by law, or to the extent any statutory rights apply that cannot be excluded, limited or waived, the Buyer's sole and exclusive remedy for any unavailability, non-performance, or other failure by AWS to provide the Infrastructure Services is the receipt of a credit pursuant to the terms of the relevant AWS Service Level Agreements as set out in the Service Level section below. The Supplier, AWS, and either party's respective affiliates and licensors will not be liable to the Buyer for any direct, indirect, incidental, special, consequential or exemplary damages (including damages for loss of profits, revenues, customers, opportunities, goodwill, use, or data) relating to the use of the AWS Infrastructure Services, even if a party has been advised of the possibility of such damages. Further, the Supplier, AWS, and either party's respective affiliates or licensors will not be responsible for any compensation, reimbursement, or damages arising in connection with: (a) an inability to use the AWS Infrastructure Services, including as a result of any (i) termination or suspension of the Call-Off Contract or Buyer's use of or access to the AWS Infrastructure, (ii) AWS' discontinuation of any or all of the AWS Infrastructure Services, or, (iii) without limiting any obligations under the AWS Infrastructure Service Level Agreements, any unanticipated or unscheduled downtime of all or a portion of the AWS Infrastructure for any reason; (b) the cost of procurement of substitute goods or services; (c) any investments, expenditures, or commitments by the Buyer in connection with the Call-Off Contract or Buyer's use of or access to the AWS Infrastructure; or (d) any unauthorized access to, alteration of, or the deletion, destruction, damage, loss or failure to store any of the Buyer's content or other data.
- 3.10.2** Accordingly, neither the Supplier nor AWS makes any representations or warranties of any kind, whether express, implied, statutory or otherwise as to the Infrastructure Services including any warranty that the Services or third party materials will be uninterrupted, error free or free of harmful components, of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement, or quiet enjoyment or that any materials, including Buyer materials or the third-party materials, will be secure or not otherwise lost or damaged.
- 3.11** The Buyer will comply with the third-party vendor licensing terms and conditions applicable to the software package.
- 3.12** Upon termination of the Call-Off Contract, the Buyer will de-install and immediately discontinue all use of

the software provided under G-Cloud Managed Public Cloud AWS Services.

## **4 Service Level Agreements**

- 4.1** The Buyer will be entitled to claim service credits from AWS (via the Supplier, acting as agent for the Buyer in its capacity as AWS Reseller to the Buyer) for failures of the Infrastructure Services in accordance with the AWS Service Level Agreements for the applicable AWS services detailed here <https://aws.amazon.com/de/legal/service-level-agreements/>. The Buyer must notify the Supplier of any service level requests by the end of the next billing cycle after which the service incident occurred. The Supplier will make a claim on behalf of the Buyer with AWS and will notify the Buyer of any credits, confirmed by AWS as owing, within sixty (60) days of its request for such credits. Notwithstanding the standard treatment of any other service credits that Buyer may receive from the Supplier for other non-G-Cloud Managed Public Cloud AWS Services, confirmed service credits shall be applied only against future purchases of the G-Cloud Managed Public Cloud AWS Services from the Supplier. The Supplier accepts no liability to the Buyer in the event that AWS rejects any such service level request.

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