

## WaterWorks G-Cloud 15 Supplier Licence Terms

Document no: 001  
Version: v1.0

CCS – G-Cloud 15  
12 January 2025



WaterWorks G-Cloud 15 Supplier Licence Terms

**Client name:**

*[Client name]*

**Project name:**

CCS – G-Cloud 15

**Client reference:**

*[Client reference]*

**Document no:**

001

**Version:**

v1.0

**Date:**

12 January 2025

**Project no:**

n/a

**Project manager:**

Hugh McMichael

**Prepared by:**

n/a

**File name:**

WaterWorks G-Cloud 15 Terms

Document history and status

| Version | Date | Description | Author | Checked | Reviewed | Approved |
|---------|------|-------------|--------|---------|----------|----------|
|         |      |             |        |         |          |          |
|         |      |             |        |         |          |          |
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| Version | Issue approved | Date issued | Issued to | Comments |
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## TERMS & CONDITIONS FOR WATERWORKS WEB APPLICATION UNDER G-CLOUD 15 FRAMEWORK AGREEMENT

These terms and conditions ("these Terms") and the applicable Third-Party Licences as defined herein are the applicable "Supplier Licence Terms" referred to in the Call-Off Contract (reference number [xxxxx]) between Jacobs UK Limited (Company number 02594504) ("the Supplier") and the Buyer (as defined in the Call-Off Contract). The Parties have entered into the Call-Off Contract in relation to the Services and accordingly hereby agree to these Terms as part of the Call-Off Contract.

### 1. THE PURPOSE AND THE PARTIES' ACCEPTANCE OF THESE TERMS.

- 1.1 Purpose The Supplier has developed the Web Application and the Buyer wishes to have access to and use of the Web Application for the purpose of [The Buyer's purpose to be agreed at call-off stage and a succinct description to be inserted here.] ("the Purpose"). In order to provide the Buyer with the use of the Web Application the Supplier shall also provide the Web Application Services. The Web Application and the Web Application Services are together referred to as "the Services".
- 1.2 Effective Date These Terms shall be effective as of the Start Date set out in the Call off Contract.
- 1.3 Acceptance Subject to the Buyer's continued compliance with these Terms, the Supplier hereby grants to the Buyer and its Authorised Users (being defined as those Buyer employees, agents and independent third-party consultants and contractors acting on behalf of the Buyer and who are authorised by the Buyer to access the Web Application) access to and use of the Web Application. The Buyer is solely responsible for the acts and omissions of its Authorised Users. Upon the first login to the Web Application, or whenever software updates or changes to these Terms are made, each Authorised User will be required to accept the Web Application Terms of Use governing the use of the Web Application. If Authorised Users do not agree to be bound, they should not indicate acceptance with these Terms or terms of use.

### 2. DEFINITIONS & INTERPRETATION.

#### Part A: Definitions

Capitalized terms used in these Terms shall have the same meaning as set out in the Call-Off Contract unless otherwise stated:

- 2.1 "Call-Off Contract" means the call-off contract between the Supplier and the Buyer reference number [ ] issued pursuant to the G-Cloud 15 Framework Agreement.
- 2.2 "Confidential Information" means (i) any Buyer Content and (ii) any other information which is marked as "Confidential" or "Proprietary" or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure which may include ideas, concepts, trade secrets or knowledge of any other kind whether commercial, financial or technical
- 2.3 "Buyer Content" means any Buyer data or data licensed or lawfully obtained by Buyer from a third-party, or data or information obtained from a third-party on behalf of Buyer, as well as Buyer or third-party information provided by the Buyer to Supplier for the provision of the Web Application.
- 2.4 "Buyer Responsibilities" means the duties and responsibilities of the Buyer as described in part 3 of the Schedule.

- 2.5 "Data Criteria" any data criteria set out in the Buyer Responsibilities and/or to be agreed upon between Supplier and the Buyer following execution of these Terms.
- 2.6 "G-Cloud 15 Framework Agreement" means the G- Cloud framework agreement entered into between the Crown Commercial Services and the Supplier (reference:[Ref TBC]) dated [DATE].
- 2.7 "Intellectual Property Rights or IPR" means any and all, current and future, intellectual and industrial property rights and interests, including but not limited to (a) any patents, design, utility models, database rights, trademarks, service marks, eligible layout rights, designs, copyrights and topographical rights, moral rights, design patents, trading names, internet domain names, source code, rights in the get-up of products (including the screens and user interfaces of software) and other signs and indications of origin, whether registered or unregistered, and any applications for registration of any of them; (b) any discoveries, trade secrets, know-how, software and improvements; (c) together with any rights in server programmes, specifications, formulae, data, analytics, algorithms, libraries, know-how, processes, methods, techniques, development improvement and any other innovation, including but not limited to methodologies, frameworks, metrics, assessment questions, software configuration, customisation codes, images, ideas, confidential information, tools and text that are part of the proprietary content; and (d) all forms of protection of a similar nature or having equivalent or similar effect to any of them, in the UK or the world, for the duration of those rights and interests; and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 2.8 "Output Data" means data or other type of deliverable that is generated by Supplier as a result of the use of Web Application, including, but not limited to, reports, model runs, scenarios, results and materials as more particularly described in Part 1 of the Schedule.
- 2.9 "Permitted Use" means the number of Authorised Users, transactions, volume, revenue and/or other subscription metrics applying to the use of the Web Application by the Buyer set out in the Subscription Details including from time to time any updates, changes as a result of the Web Application Services;
- 2.10 "Schedule" means the schedule of [5] parts annexed to these Terms.
- 2.11 "Scope" means the details of the Web Application described in Part 1 of the Schedule and the scope of the Web Application Services described in Part 3 of the Schedule .
- 2.12 "Subscription Details" means the subscription details regarding the Web Application referred to in Part 2 of the Schedule including from time to time any updates or changes.
- 2.13 "Subscription Term" means the term defined in the Subscription Details.
- 2.14 "Supplier Data" means data owned or otherwise developed or created by Supplier which is provided by Supplier to Buyer as part of the Web Application. Supplier Data does not include Third-Party Material and Buyer Content.
- 2.15 "Supplier IP" means Supplier Data, the Web Application and all IPR owned by Supplier, including any IPR incorporated or used in providing the Web Application, as well as any confidential information disclosed by Supplier to the Buyer under these Terms. Supplier IP does not include Third-Party Material.
- 2.16 "Support Policy" means the support and maintenance policy applicable to the Web Application, a copy of which has been provided to the Buyer.

- 2.17 "Third-Party Material" means any and all software and/or IPR owned or otherwise developed or created by third parties and provided by Supplier to Buyer as part of the Web Application. Third-Party Material does not include Buyer Content.
- 2.18 "Timetable" means the timetable referred to in Part 4 of the Schedule.
- 2.19 "Transparency Notice" means Supplier's statement on data protection linked in the Web Application as may be amended from time to time.
- 2.20 "WaterWorks Brand" means the logo and trading name WaterWorks (or Water Works) used by Jacobs to refer to its Intellectual Property Rights in the Web Application.
- 2.21 "Web Application" means the web application trading under the WaterWorks Brand that was developed by Supplier as a cloud hosted online subscription service as more particularly described in Part 1 of the Schedule including from time to time any updates, changes or added modules or functionality provided as a result of the Web Application Services.
- 2.22 "Web Application Services" means the data integration, configuration, onboarding, training and other services required to support the access and use of the Web Application to be provided by Supplier as described in the Scope.
- 2.23 "Web Application Terms of Use" means the end user agreement linked in the Web Application which the Authorised Users must accept to access the Web Application.

## Part B: Interpretation

- 2.24 Clause, Schedule and paragraph headings shall not affect the interpretation of these Terms.
- 2.25 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.26 The Schedule form part of these Terms and shall have effect as if set out in full in the body of these Terms. Any reference to these Terms includes the Schedule.
- 2.27 References to clauses and the Schedule are to the clauses and Schedule of these Terms and references to paragraphs are to paragraphs of the relevant Schedule.
- 2.28 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.29 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 2.30 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.31 A reference to writing or written excludes faxes, not e-mail.
- 2.32 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Terms.
- 2.33 These Terms form part of and are deemed to be incorporated into the Call-Off Contract
- 2.34 Notwithstanding the terms of the G-Cloud 15 Framework Agreement and/or the Call-Off Contract these Terms shall take precedence over the G-Cloud 15 Framework Agreement and the Call-Off Contract and any other terms and conditions applicable to the Services.

- 2.35 If there is an inconsistency between any of the provisions in the main body of these Terms and the Schedule, the provisions in the main body of these Terms shall prevail.
- 2.36 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 2.37 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 2.38 Any requirement for agreement between the Parties obliges the parties to act reasonably and in a spirit of mutual trust and cooperation.

### **3. WEB APPLICATION SERVICES**

- 3.1 Supplier shall exercise reasonable skill, care and diligence to provide the Web Application Services in accordance with the Scope.
- 3.2 Supplier shall use reasonable endeavours to deliver the Web Application Services in accordance with the performance dates referred to in the Timetable, but the Buyer acknowledges that such dates are Supplier best estimates only, are subject to the Buyer complying with its obligations under these Terms so accordingly are not binding and time shall not be of the essence.

### **4. CLIENT'S OBLIGATIONS**

- 4.1 The Buyer undertakes to:
  - a) carry out and complete all Buyer Responsibilities;
  - b) provide Supplier with all necessary co-operation in relation to these Terms; and
  - c) provide all necessary access to such reasonable information as may be required by Supplier.
- 4.2 The Buyer undertakes to comply with its obligations under these Terms:
  - a) in a diligent, timely and efficient manner; and
  - b) in accordance with all applicable laws and regulations.
- 4.3 The Buyer acknowledges that for Supplier to provide the Buyer with access to the Web Application and to deliver the Web Application Services in accordance with these Terms it is conditional on the Buyer complying with its obligations under this Clause 4.1 in particular and without limitation completing its Buyer Responsibilities in such a way to support the Supplier and so no act, omission or default of the Buyer shall put Supplier in breach of any of its obligations under these Terms.

### **5. ACCESS TO THE WEB APPLICATION.**

- 5.1 Subject to the terms and conditions of these Terms the Web Application shall be made available to the Buyer for the Subscription Term. The Buyer acknowledges that the functionality of the Web Application may change during the Subscription Term as a result of changes carried out as part of the Web Application Services.
- 5.2 The Buyer is solely responsible for : (i) ensuring that only Authorised Users have access to the Web Application; (ii) ensuring that such Authorised Users have been trained in proper use of the Web Application and the Authorised Users comply in full with these Terms and the Web Application Terms of Use and (iv) ensuring the proper usage of passwords, tokens and access procedures with respect to logging into the Web Application.

- 5.3 Supplier' reserves the right to refuse registration of, or to cancel, Authorised Users access that it reasonably believes to violate these Terms and the Web Application Terms of Use in which case Supplier will promptly inform the Buyer in writing of such refusal or cancellation.
- 5.4 If the Buyer learns or suspects that any Authorised User is not complying with the provisions of these Terms and the Web Application Terms of Use, the Buyer must notify Supplier immediately and terminate such Authorised User's right to use the Web Application.
- 5.5 Any breach by an Authorised User of the Web Application Terms of Use shall be deemed to be a breach by the Buyer of these Terms.
- 5.6 The Buyer shall implement and take measures to maintain reasonable and appropriate administrative, technical, and physical security safeguards, protect against anticipated threats or hazards to the security or integrity of the Web Application and protect against any unauthorised access to, or use of, the Web Application and, in the event of any such unauthorised access or use, promptly notify Supplier.
- 5.7 Third-Party Materials. The Web Application may include applications, software (including open-source software), content, data or other materials including open-source software, including related documentation, that are owned by persons or entities other than Supplier and that are provided to Buyer on license terms that are in addition to and/or different from those contained in these Terms ("Third-Party Licenses"). The applicable Third-Party Licences are identified in the Documentation tab within the Web Application. To the extent required the terms of such Third Party Licences will apply in lieu of the terms of these Terms, including without limitation any provision governing access to source code, modification or reverse engineering. Any breach by Buyer or any of its Authorised Users of any Third-Party License is also a breach of these Terms.
- 5.8 Buyer Content. As part of the Web Application, Buyer will provide Supplier with Buyer Content. Buyer Content must be consistent with the Data Criteria. Buyer understands that if Buyer does not provide Buyer Content pursuant to the Data Criteria, Supplier may be unable to provide Buyer with the agreed upon Output Data. Buyer also understands that if Buyer does not provide Buyer Content pursuant to the Data Criteria, the Output Data may be useless, inaccurate or incomplete.
- 5.9 Limitations on Use. In addition to any limitations set forth in the Web Subscription Details and/or the Scope, Buyer shall not: (a) sell, lease or sublease access to the Web Application , or incorporate, merge or interface the Web Application into any non-authorized third party or self-developed products or allow access to the Web Application , in whole or in part, by other software or other products or services for any purpose; (b) copy, decompile, or reverse engineer any portion of the Web Application ; (c) use the Web Application to provide services to third parties (unless such third-parties are Authorised Users), including, but not limited to, on a timesharing, rental, sharing, or "service bureau" basis; (d) remove any Supplier titles, trademark symbols, copyright symbols and restrictive legends; (e) bypass or disable any protections that may be put in place to provide security for the Web Application or to protect against non-authorized access to the Web Application ; (f) use the Web Application to store, transmit or produce infringing, libellous, vulgar, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights or other rights; (g) use the Web Application to transmit viruses, Trojan horses or other harmful or malicious code; (h) interfere with or disrupt the integrity or performance of the Web Application or third-party data contained therein; (i) impersonate or use the identity of another person or organization, or falsely state or otherwise misrepresent an affiliation with a person or organization; or (j) permit any unauthorized access to, or use of, the Web Application and shall notify Supplier promptly of any such unauthorized access or use.
- 5.10 Reasonable Precautions. Buyer shall implement, and shall take measures to maintain, reasonable and appropriate administrative, technical, and physical security safeguards designed to: (a) ensure compliance with Section 5.4 above (Limitations on Use); (b) protect against anticipated threats or

hazards to the security or integrity of the Web Application; and (c) protect against unauthorized access or use of the Web Application.

- 5.11 Privacy. Supplier Transparency Notice governs all personal data and information received or collected by Supplier when the Buyer accesses the Web Application. Our Transparency Notice contains important information regarding the collection, use, disclosure and protection of personal data provided by the Buyer. If there is a conflict between these Terms, the Schedule, and the Transparency Notice, the Transparency Notice shall take precedence with respect to the subject matter that it covers.
- 5.12 Permitted Use. Excess Use. The Subscription Details prescribe the Permitted Use associated to the Web Application. If Buyer exceeds its Permitted Use, notwithstanding Supplier' rights under Section 5.13 (Suspension of Web Application) below, Buyer will promptly notify Supplier and, within thirty (30) days after learning of such unpermitted use, shall cease and disable all unpermitted use or purchase additional subscriptions therefor.
- 5.13 Suspension of Web Application. Supplier may review Buyer's use of the Web Application to verify Buyer's compliance with these Terms, including use of the Web Application subject to the Permitted Use, and Buyer shall provide any reasonable assistance with any such review. If Supplier identifies any non-compliance in such review or has other reasonable grounds to suspect that Buyer's registration data is inaccurate or incomplete, that Buyer or any Authorized User has violated or threatens to violate the terms and conditions of these Terms, the Buyer exceeds its Permitted Use or other terms and conditions applicable to the Web Application, or that the performance, integrity or security of the Web Application is being adversely impacted or in danger of being adversely impacted as a result of Buyer's or any such Authorized User's access or use, Supplier may suspend or terminate Buyer's and/or any such Authorized User's use of the Web Application , in addition to any other rights or remedies Supplier may have.
- 5.14 Changes to the Web Application. Supplier may change or discontinue the Web Application and any features of the Web Application at any time, and if such changes are material, Supplier will notify Buyer by sending an email to the last email address provided to Supplier. If Buyer does not wish to continue using the modified Web Application or if the Web Application is discontinued, Buyer may terminate the Web Application and will be entitled to a refund only of the amounts prepaid in respect of the Web Application for the period remaining of the Subscription Term, no refund will be provided in respect of monies paid for the Web Application Services. Supplier may change the terms of these Terms upon notification to the Buyer at any time. The new terms will be effective on the first day of the next billing cycle and will apply thereafter. By continuing to use the Web Application after any such changes, Buyer agrees to be bound by such changes. If Buyer does not wish to agree to the new terms, Buyer must stop using the Web Application immediately.

## 6. ACCOUNT AND PASSWORDS.

In order to access the Web Application, Buyer and each Authorised User of Buyer will receive an email and will be provided credentials to access the Web Application. Buyer and each Authorised User Authorised User must provide Supplier with complete and accurate information when prompted by Supplier. Authorised User. All access credentials are confidential information and shall be used solely by Buyer and its Authorised Users to access the Web Application. Buyer shall take reasonable steps to prevent unauthorized access to the Web Application. Buyer will immediately notify Supplier of any unauthorized access to the Web Application. Supplier is not responsible for any losses due to stolen or hacked credentials.

## 7. WEB APPLICATION SUPPORT SERVICES.

- 7.1 Web Application Support Services. Maintenance and/or support services will be provided pursuant to the Support Policy and/or as more particularly described in the Scope.

## 8. FEES; LATE FEES; TAXES.

- 8.1 Fees. Buyer will pay to Supplier the fees referred to in Part 5 of the Schedule for the Web Application Services and the Web Application pursuant to the Permitted Use set forth therein. Except in the cases set forth in Section 13 (Termination) and Section 13.3(a) (Effects of Termination), fees paid by the Buyer are non-refundable. Supplier shall submit invoices to the Buyer in accordance with the invoicing schedule referred to in Part 5 of the Schedule. The Buyer shall pay each invoice in full within thirty (30) days after the date of invoice. All sums payable shall be in pounds sterling. If Buyer is late in payment of amounts owed hereunder, Supplier may give written notice to Buyer of such late payment, and Buyer will have thirty (30) days from receipt of Supplier' written notice to pay all sums due. Any and all rates, fees and charges applicable under these Terms shall be firm and binding for the Subscription Term.
- 8.2 Late Fees. Supplier will be entitled to late payment fees on undisputed amounts due if payment is not received within thirty (30) days after the date of invoice. Late payment fees are payable in the amount of 3% per annum above the Bank of England base rate during the period in which the undisputed amount remains unpaid. Buyer will promptly notify Supplier of any amounts disputed in good faith. The parties will make a good faith attempt to amicably resolve any disputes regarding amounts billed.
- 8.3 Taxes. All charges will be exclusive of any taxes, and Buyer shall be financially responsible for all sales or services taxes that are assessed on Buyer's access to and use of the Web Application.

## 9. PROPRIETARY RIGHTS.

- 9.1 Ownership; Reservation of Rights. As between Supplier and Buyer, all rights, title, and interest in and to all intellectual property rights in Supplier' Confidential Information, Supplier IP, Supplier Data and Web Application are owned exclusively by Supplier and its licensors. As between Supplier and Buyer, all Buyer Content shall be owned by Buyer and its licensors, subject to the limited use rights granted to Supplier under Section 9.2 (Buyer Content). Supplier reserves all rights, title and interest in Supplier' Confidential Information, Supplier IP, Supplier Data and the Web Application that are not expressly granted to Buyer by these Terms.
- 9.2 Buyer Content. As between Supplier and Buyer, all Buyer Content shall be owned by Buyer, subject to the limited use rights granted to Supplier under this Section 9.2 (Buyer Content). Buyer represents that Buyer Content does not infringe the intellectual property rights or personal rights (including copyright, trademark, trade dress, patent or other rights) or any other rights of any third party. Buyer acknowledges that Supplier makes no independent assessment or evaluation of any Buyer Content, nor does Supplier examine the sources of the Buyer Content to determine whether it may incur liability to third parties from delivery or use thereof as permitted herein. Buyer shall be solely responsible for the accuracy, quality, integrity and legality of Buyer Content and of the means by which Buyer Content was acquired. Buyer also represents that it has all rights, permissions and licenses to provide Supplier with access to Buyer Content pursuant to the terms and for the purposes set forth in these Terms. Buyer hereby grants to Supplier a limited, perpetual, non-exclusive, royalty-free right and license to use the Buyer Content for the purposes of providing training services and performing analytics with regard to the Web Application, and to improve and enhance the Web Application and other products and services offered by Supplier.
- 9.3 Output Data. Subject to the terms of Section 8 (Fees) and Section 13.3 (Effects of Termination), as between Supplier and Buyer, Buyer shall retain ownership, title and interest in and to any Output Data (not including any Supplier IP). Buyer acknowledges that the Output Data may not be unique and may be substantially similar in whole or part to results produced for other Supplier' Buyers obtaining similar services as Supplier is providing under these Terms. Subject to the terms of Section 8 (Fees) and 3.3 (Effects of Termination), to the extent that any Supplier IP is incorporated in or otherwise

required for the access to or use of the Output Data, Supplier hereby grants Buyer a limited, perpetual, royalty-free, nonexclusive, license to such data only to the extent necessary to allow Buyer to view and have access to the Output Data. Supplier shall also retain the right to use the Output Data for the purposes of providing training services and performing analytics with regard to the Web Application, and to improve and enhance the Web Application and other products and services offered by Supplier.

- 9.4 Feedback. Buyer hereby assigns to Supplier all right, title, and interest (including all rights in copyright and resulting patents) in any suggestions, enhancements, recommendations or other feedback provided by Buyer or any Authorized Users of Buyer with regard to the Web Application and/or the Web Application Services.

## 10. CONFIDENTIALITY.

Each party shall keep in strict confidence all Confidential Information disclosed by the other party in connection with the Web Application, the Web Application Services or these Terms. Upon the termination of these Terms, each party will, at the request of the other party, return or destroy all documents, information or software containing confidential information of the other party, and delete confidential information from all memory devices. Notwithstanding the foregoing, Supplier shall be entitled to retain and use Buyer and Output Data as permitted under Sections 9.2 (Buyer Content) & 9.3 (Output Data). Neither party shall disclose, offer or transfer to any third party the Confidential Information of the other party without the prior written consent of the other party.

## 11. DISCLAIMER OF WARRANTIES.

- 11.1 Notwithstanding the provisions of the G-Cloud 15 Framework Agreement, and/or any other terms of the Call-off Contract (including without limitation these Terms), the Web Application is provided "as is" without warranty, and Supplier expressly excludes and disclaims any other warranties, whether express, implied or statutory, including, without limitation, warranties of merchantability, accuracy, title, non-infringement, or fitness for a particular purpose, or any warranties arising from usage of trade, course of dealing or course of performance. Without limiting the generality of the foregoing, Supplier specifically does not warrant that the Web Application will meet the requirements of Buyer or any third party, that the services or any reports or Output Data generated by the Web Application will be complete or accurate, or that such services, reports or Output Data constitute professional engineering services or that access to or operation of the Web Application will be without interruption, secure or error-free. The Buyer acknowledges that any such services, reports and/or Output Data are for informational purposes only. Buyer also acknowledges that on entering into the Call-off Contract and accepting these Terms it has not relied on any promise, warranty or representation not expressly set forth herein or incorporated into these Terms by reference.
- 11.2 The Web Application Services are to be carried out with reasonable skill, care and diligence. Notwithstanding any responsibilities and obligations which the Buyer may have under any other contract, nothing in the G-Cloud 15 Framework Agreement, the Call-off Contract (including without limitation these Terms), or in any proposal, report or other document is to be construed as a warranty or guarantee by Supplier other than to use (or to have used) such reasonable skill care and diligence and accordingly no warranties of merchantability/satisfactory quality or fitness for purpose are provided in relation to the Web Application and/or the Web Application Services.

## 12. INDEMNIFICATION; LIMITATION OF LIABILITY.

- 12.1 Indemnification.
- a) By Buyer. Buyer shall indemnify and defend Supplier and its directors, officers, agents and employees, and hold them harmless, against any and all third-party claims, suits, actions,

loss, damages, liabilities, costs or expenses (including reasonable attorneys' fees) ("Losses") to the extent arising out of: (i) Buyer's non-compliance with or violation of any applicable laws or regulations; (ii) misuse or unauthorized use of the Web Application by Buyer or any person who accesses the Web Application through Buyer; (iii) Buyer's breach of its confidentiality obligations or any other term of the Call-Off Contract; or (iv) any claim that the Buyer Content violates or misappropriates the intellectual property rights or other rights of a third party.

- b) By Supplier. Supplier shall indemnify and defend Buyer and its directors, officers, agents and employees, and hold them harmless, against any Losses to the extent arising out of: (i) any third-party claim that the Web Application infringes or allegedly infringes the copyright or other intellectual property rights or other rights of any third party; or (ii) Supplier' breach of its confidentiality obligations or any other term of these Terms. If the Web Application , or any portion thereof become subject to any third-party suit, claim, action or demand ("Claim") or in Supplier' reasonable judgment is likely to become subject to a Claim, alleging that the Web Application infringe, misappropriate or violate a third party's intellectual property rights, Supplier may within a reasonable time, at its sole option and expense: (i) secure for Buyer the right to continue the use of such item; (ii) replace such item with a substantially equivalent item not subject to any such Claim; (iii) modify such item so that it becomes no longer subject to any such Claim; and/or (iv) contest the Claim. If Supplier determines, in Supplier' reasonable discretion, that it is not commercially feasible to procure the right to continued use of the applicable item or to replace or modify the applicable item as provided in clauses (i), (ii) and (iii) of the preceding sentence, Supplier may terminate access to the item, and Supplier' sole liability under this Section shall be to refund Buyer all fees and expenses paid by Buyer to Supplier for such item.
- c) Process. All of the foregoing indemnity obligations of Supplier and Buyer are conditioned on: (a) the indemnified party notifying the indemnifying party promptly in writing of any actual or threatened Claim, provided that failure to give prompt notice shall not relieve the indemnifying party's obligation hereunder unless the indemnifying party's ability to defend the Claim is prejudiced in a material way; (b) the indemnified party giving the indemnifying party sole control of the defence thereof and any related settlement negotiations, and (c) the indemnified party cooperating and, at the indemnifying party's request and expense, assisting in such defence.
- d) Exclusive Remedy. This section 12.1 states each party's entire liability and the other party's exclusive remedy for third-party infringement claims and actions arising out of or in connection with the Web Application, the Web Application Services and/or the Call-Off Contract.

## 12.2 Limitation Of Liability.

- a) Limitation Of Liability. Notwithstanding any other provisions of the G-Cloud 15 Framework and/or the Call-Off Contract except for claims relating to a party's breach of confidentiality obligations or indemnification, to the extent permitted by law, the total, cumulative liability of each Party arising out of or related to the Call-Off Contract, whether based on contract, in tort or any other legal or equitable theory, shall be limited to the amount paid by Buyer to Supplier during the twelve (12) months preceding the date when the first such claim against such party first accrued. the existence of more than one claim shall not enlarge this limit.
- b) Notwithstanding any other provisions of the G-Cloud 15 Framework and/or the Call-Off Contract in no event shall the Supplier be liable to the Buyer, including by way of indemnity, by virtue of any fiduciary duty, tort (including without limitation negligence), breach of contract or under any other legal doctrine or principle or otherwise at law and whether or not foreseeable at the date of entering into these Terms, for any
  - i. any special, indirect, incidental or consequential loss or damage; and/or

- ii. any loss of profit or anticipated profit or savings, loss of revenue, loss of contracts or reputation, loss of production, loss of product, loss or corruption of data or information, loss of use or opportunity or loss of efficiency, loss of savings (whether anticipated or otherwise), loss of or damage to goodwill, loss of business, any claims by the Buyer's suppliers, contractors, customers whether based on alleged Supplier fault or otherwise, any financing or interest costs, increase in running and/or operating costs, costs of plant downtime, business interruption or downtime or any similar losses or claims and any pure economic loss, in each case whether direct or indirect, howsoever arising and regardless of cause including without limitation by the fault, breach of contract, tort (including concurrent or sole and exclusive negligence) breach of duty, strict liability or otherwise of Supplier and whether a claim is based on contract, at law, in equity or otherwise,

which may arise out of or in connection with the Web Application, the Web Application Services, and/or the Call-Off Contract.

## 13. TERM AND TERMINATION.

13.1 Term. These Terms shall be effective as of the Effective Date and shall continue in full force and effect until (a) the end date set forth in the Subscription Details or, if no end date is specified, then upon the expiration or termination of these Terms; or (b) termination in accordance with the terms of these Terms.

### 13.2 Termination.

- a) Uncured Breach. If any material breach of these Terms occurs, and such breach is not cured within thirty (30) days after written notice from the non-defaulting party, the non-breaching party shall have the right to terminate the Call-Off Contract by giving written notice of termination to the breaching party, which termination shall be effective thirty (30) days after receipt of such written notice of termination.
- b) Violation of Limitations on Use. If Supplier reasonably believes that Buyer is violating or has violated Section 5.9 (Limitations on Use) in any material way, Supplier may suspend Buyer's access to the Web Application immediately. Supplier shall provide written notice of any such suspension promptly to Buyer. If after good-faith discussion with Buyer, Supplier believes in its sole discretion that Buyer is violating or has violated Section 5.9 (Limitations on Use) in any material way, Supplier may terminate the Call-Off Contract effective immediately upon written notice to Buyer.
- c) Insolvency, Etc. Either party may terminate the Call-Off Contract immediately upon written notice to the other party if the other party becomes insolvent; is dissolved or liquidated; has a petition in bankruptcy, reorganization, dissolution or liquidation, or similar action filed by or against it; is adjudicated a bankrupt; has a receiver appointed for its business; or makes an assignment for the benefit of creditors.

### 13.3 Effects of Termination.

- a) Termination of Web Application: Upon expiration or other termination of the Call-Off Contract for any reason, Buyer shall immediately stop using, and Supplier shall be authorized to stop providing access to, the Web Application. Unless otherwise stated and subject to Buyer's full compliance with the terms of the Call-Off Contract, including, without limitation Section 6 (Fees) of these Terms, Buyer may continue to use indefinitely any and all Output Data obtained prior to the effective date of expiration or termination, whether in printed format or stored by Buyer on its servers outside of the Web Application. If the Call-Off Contract is terminated by Buyer due to Supplier' uncured material breach under Section 13.2(a) above, then Supplier shall refund to Buyer, within thirty (30) days after the effective date of termination, all prepaid fees for the remaining portion of any terminated Web

Application and Web Application Services. If the Call-Off Contract is terminated by Supplier due to Buyer's uncured material breach under Section 13.2(a), then Buyer shall pay to Supplier, within thirty (30) days after the effective date of termination, any unpaid fees that would have been payable for the remainder of the Subscription Term after the effective date of termination.

## 14. MISCELLANEOUS.

- 14.1 Governing Law. These Terms will be governed by the laws of England and Wales, without regard to the principles of conflicts of laws thereof. The parties submit to the exclusive jurisdiction of the English courts. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement hereunder and are hereby expressly excluded.
- 14.2 Relationship of Parties. These Terms does not create a joint venture, partnership, employment relationship or other agency relationship between the parties.
- 14.3 Compliance with Laws. Each party will comply with all applicable federal, state and local laws, rules and regulations, including export regulations and privacy laws as applicable to that party and the Web Application ("Laws"). Buyer will be solely responsible for the compliance of Buyer Content with Laws and will comply with all Laws relating to the use, disclosure and transmission of such Buyer Content.
- 14.4 Force Majeure. Except for Buyer's payment obligations, neither party is responsible from any delay or failure to perform resulting from any act, event or circumstance or combination of acts, events or circumstances, the cause of which is neither of such party's making nor within that party's reasonable control which could not reasonably be planned for or avoided, including, without limitation, acts of God, acts of any governmental or supra-national authority, war or national emergencies, riots, civil commotion, fire, explosion, flood, epidemic or pandemic ("Force Majeure Event"). The delayed party will promptly notify the other party of any such event. If the Force Majeure Event prevents, hinders or delays the affected party's performance of its obligations for a continuous period of more than 8 weeks, the party not affected by the Force Majeure Event may terminate these Terms forthwith on written notice to the affected party.
- 14.5 No Waiver. Any failure or delay on the part of either party in the exercise of any right or privilege hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise of any such right or privilege preclude other or further exercise thereof or of any other right or privilege. All waivers and consents, if any, given hereunder shall be in writing.
- 14.6 Assignment. Neither party shall assign the Call-Off Contract nor any of its rights, interests, privileges, licenses or obligations hereunder without the other party's prior written permission; notwithstanding the foregoing Supplier may assign the Call-Off Contract to an affiliate of Supplier, and each party may assign its rights and obligations hereunder to any successor-in-interest to all or substantially all of such party's assets to which these Terms pertains.
- 14.7 Headings. The headings in these Terms are inserted for convenience of reference only, and are not intended to be a part of, or to affect the meaning or interpretation of, these Terms.
- 14.8 Severability. In the event that any provision of these Terms is found to be invalid, voidable or unenforceable by any court of law with competent jurisdiction, the parties agree that unless it materially affects the entire intent and purpose of these Terms, such invalidity, voidability or unenforceability shall not affect either the validity of these Terms or the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

- 14.9 Equitable Relief. The parties each acknowledge that any breach of Section 5 (Access to the Web Application) or Section 10 (Confidentiality) cannot adequately be compensated by damages in an action at law and that a breach or threatened breach of any such provision would cause the non-breaching party irreparable injury and damage. The parties, therefore, agree that the non-breaching party shall be entitled, in addition to any other remedies it may have under these Terms or otherwise, to preliminary and permanent injunctive and other equitable relief to prevent or curtail any actual or threatened breach of license terms or Section 8; *provided, however*, that no specification in these Terms of a specific legal or equitable remedy shall be construed as a waiver or prohibition against the pursuit of other legal or equitable remedies in the event of such a breach.
- 14.10 Survival. Any rights and obligations which by their nature survive and continue after the end of these Terms shall survive and continue and shall bind the parties and their successors and assigns, until such obligations are fulfilled. Without limiting the foregoing, upon the expiration or termination of these Terms for any reason, Section 5 (Access to the Web Application ), 8 (Fees; Late Fees; Taxes), 9 (Proprietary Rights), 10 (Confidentiality), 11 (Disclaimer of Warranties), 12 (Indemnity; Limitation of Liability) and 13 (Term and Termination) of these Terms, together with any other provision required for their construction or enforcement, shall survive termination of these Terms for any reason.
- 14.11 Entire Agreement. The Call-Off Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter.
- 14.12 Notices. Unless otherwise provided in these Terms, all notices, requests, consents and other communications required or permitted under these Terms will be in writing and will be sent to each party at the address set out in the preamble of these Terms, or any address later provided by such party as provided herein. All notices will be sent by registered or certified mail, or reputable overnight courier. All notices sent by registered or certified mail will be deemed effective on the fifth day after deposit in the mail. All notices sent by overnight carrier will be deemed effective the day after deposit or transmission, as applicable.

**This is the schedule of [5] parts referred to in the foregoing terms between the Supplier and the Buyer in relation to the Web Application and Web Application Services.**

[The details to be completed in the following parts of the schedule should where applicable be the same as the details included in the order form for the call-off contract, e.g. pricing. Those parts of the schedule can also be completed by cross referencing to the relevant part of the order form.]

## Schedule

### Part 1

#### Web Application Details

WaterWorks is a fully hosted and supported water resource modelling user interface that allows easy use of the Buyer's Pywr water resource model.

The Web Application enables users to create, review and edit scenario data, initiate four different types of model runs and review results of scenarios modelled with Pywr.

## **Part 2**

### **Subscription Details and Term**

## **Part 3**

### **Scope of Web Application Services**

## **Part 4**

### **Timetable**

## **Part 5**

### **Pricing**