Supplier Terms

G-Cloud 15

Contents

SUPPLIER TERMS

These **SUPPLIER TERMS** apply between **THE PARTIES** who have signed a G-Cloud 15 **CALL OFF CONTRACT** including the Part A Order Form under the G-Cloud 15 **THE FRAMEWORK AGREEMENT**, which provides for these SUPPLIER TERMS. The PARTIES are as per the CALL OFF CONTRACT:

(1) **THE SUPPLIER** Corporate Document Services Ltd. whose registered office is situated at Riverside House, 7 Canal Wharf, Holbeck, Leeds LS11 5AS.

and

(2) **THE BUYER**

WHEREAS:

1. The FRAMEWORK AGREEMENT and the CALL OFF CONTRACT contain contractual provisions which apply to and bind the PARTIES.
2. THE BUYER wishes to have certain consultancy design and technical development services provided in connection with the BUYER'S digital platform and presence, (the "SERVICES"); and
3. THE SUPPLIER represents that it has the appropriate expertise, skills and resources to provide, and is willing to provide, the SERVICES.

AND NOW THEREFORE IN CONSIDERATION OF the mutual promises hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, BUYER and the SUPPLIER agree as follows: -

1. DEFINITIONS

The following terms and expressions shall have the meaning respectively assigned to them in this Clause.

1.1. "AFFILIATE" shall mean any subsidiary or parent company of any company or any other subsidiary of such parent company. For the purpose of this definition, "subsidiary" and "parent company" shall have the meaning respectively assigned to them under Section 1161 (5), Companies Act, 2006, as amended by Section 144, Companies Act, 1989.

1.2. "BACKGROUND IPRS" shall mean Intellectual Property, as defined in Schedule 6 of the CALL OFF CONTRACT.

1.3. "COMMENCEMENT DATE" means the go live date stated in the CALL OFF CONTRACT or the STATEMENT OF WORK as the case may be.

1.4. "PROJECT SPECIFIC IPRS shall mean all and any Intellectual Property as defined in in Schedule 6 of the CALL OFF CONTRACT"CONFIDENTIAL

INFORMATION" means Data, Personal Data and any information, which may include (but isn't limited to) any: information about business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential').

1.5. "INTELLECTUAL PROPERTY" or IPRS shall mean Intellectual Property as defined in Schedule 6 of the CALL OFF CONTRACT

1.6. "PARTY" shall mean either BUYER or THE SUPPLIER as the context may require and "PARTIES" shall mean BUYER and THE SUPPLIER.

1.7. "STATEMENT OF WORK" shall mean the statement of work for the SERVICES and any subsequent statements of work, which must be in the form of Schedule 3 which are agreed to between the PARTIES in writing from time to time, and which break down work stated a CALL OFF CONTRACT. All agreed STATEMENTS OF WORK should be numbered consecutively and shall be deemed incorporated herein by reference.

1.8. "SERVICES"" shall mean the G-Cloud Services which are the subject of an order from the BUYER which will be provided by THE SUPPLIER to the BUYER as outlined in the applicable STATEMENT OF WORK.

1.9. "TERM" means the term of the CALL OFF CONTRACT as set out in the Order Form.

1.10. Words capitalised but not defined in these SUPPLIER TERMS shall bear the meaning given to them in the CALL OFF CONTRACT.

2. INCORPORATION OF TERMS

The Call-Off Contract and the G-Cloud 15 Framework Agreement apply to these Supplier Terms and take precedence in accordance with the order of precedence set out in the Call-Off Contract.

3. SERVICES

3.1. THE SUPPLIER shall provide the SERVICES as set out in the CALL OFF CONTRACT and as more fully detailed Schedule 3.

4. DURATION OF SUPPLIER TERMS

4.1. The PARTIES agree that these SUPPLIER TERMS shall continue for the TERM, unless terminated earlier in accordance with the CALL OFF CONTRACT.

4.2. Any initial TERM may be extended for rolling periods upon the mutual written agreement of the PARTIES as provided for in the CALL OFF CONTRACT.

4.3. Any STATEMENT OF WORK will detail the start and end dates and other key information which is relevant to delivery of the SERVICES.

5. THE SUPPLIER OBLIGATIONS

5.1. THE SUPPLIER will provide and perform the SERVICES:

5.1.1. in accordance with the CALL OFF CONTRACT

5.1.2. with due care and diligence and with the skill to be reasonably expected of a provider in the type of services to be provided and performed under these SUPPLIER TERMS; and

5.1.3. in compliance with all applicable legal obligations.

5.2. For the avoidance of doubt, THE SUPPLIER shall comply with any timescales or key dates identified in the applicable STATEMENT OF WORK.

5.3. To the extent that any timescales are impacted by the BUYER, such timescales shall consequently be reasonably extended.

5.4. Save as expressly provided in the CALL OFF CONTRACT and the provisions of these SUPPLIER TERMS, all other warranties relating to the SERVICES, (whether expressed or implied by law, custom or otherwise) are excluded to the fullest extent permitted by law.

6. ASSIGNMENT & SUB-CONTRACTING

6.1. Neither PARTY shall assign these SUPPLIER TERMS or any part of it or any benefit or interest in or under it to any person whatsoever without the prior written consent of the other PARTY, such consent shall not be unreasonably withheld or delayed.

6.2. THE SUPPLIER may sub-contract its obligations to deliver the SERVICES, or any part of them under these SUPPLIER TERMS.

6.3. Excluding that which is stated in clause 7.1(a) below THE SUPPLIER shall be responsible for all work, acts, omissions and defaults of any party to whom any part of the SERVICES is sub-contracted by THE SUPPLIER as if they were work, acts, omissions or defaults of THE SUPPLIER.

7. VARIATION PROCESS

7.1. The Buyer can request in writing a change to this Call-Off Contract if it isn’t a material change to the Framework Agreement/or this Call-Off Contract. Once implemented, it is called a Variation.

7.2. The Supplier must notify the Buyer immediately in writing of any proposed changes to their G-Cloud Services or their delivery by submitting a Variation request. This includes any changes in the Supplier’s supply chain.

7.3. If either Party can’t agree to or provide the Variation, the Buyer may agree to continue performing its obligations under this Call-Off Contract without the Variation or End this Call-Off Contract by giving 30 days’ notice to the Supplier.

7.4. The PARTIES will take note of the Variation Form Schedule 8 of the FRAMEWORK AGREEMENT in respect of any Variation.

8. FORCE MAJEURE

8.1. The meaning of FORCE MAJEURE is as defined in the FRAMEWORK AGREEMENT.

8.2. Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under the CALL OFF CONTRACT (other than a payment of money) to the extent that such delay or failure is a result of a FORCE MAJEURE event.

8.3. A PARTY will promptly (on becoming aware of the same) notify the other PARTY of a FORCE MAJEURE event or potential FORCE MAJEURE event which could affect its ability to perform its obligations under the CALL OFF CONTRACT.

8.4. Each PARTY will use all reasonable endeavours to continue to perform its obligations under the CALL OFF CONTRACT and to mitigate the effects of FORCE MAJEURE.

8.5. If a FORCE MAJEURE event prevents a Party from performing its obligations under the CALL OFF CONTRACT for more than 60 consecutive Working Days, the other Party can End the CALL OFF CONTRACT with immediate effect by notice in writing.

9. OWNERSHIP AND RIGHTS OF USE

9.1. Legal and beneficial title to all BACKGROUND IP shall belong to and remain vested in the owning Party THE SUPPLIER (or, where appropriate, in a third party licensor).

9.2. In consideration of the fees due under these SUPPLIER TERMS, THE SUPPLIER grants to BUYER a perpetual, royalty-free, non-exclusive, non-transferable, irrevocable licence to use the BACKGROUND IP solely for BUYER' internal business purposes and in connection with the receipt of the Services. Maintenance or support of such software or third party licensed property shall be subject to, and contingent on, separate licencing agreement between the PARTIES.

9.3. For the avoidance of doubt, THE SUPPLIER does not take responsibility for and is not liable for the services or delivery third parties licensors.

9.4. All PROJECT SPECIFIC IPRS shall vest in and be owned absolutely by BUYER upon full payment by BUYER of all undisputed monies due and owing under the CALL OFF CONTRACT.

9.5. Subject to that stated below, in consideration of the payment of all sums owing under these SUPPLIER TERMS by BUYER to THE SUPPLIER, THE SUPPLIER assigns and where practicable shall procure the assignment to BUYER of all PROJECT SPECIFIC IPRS.

9.6. BUYER grants to THE SUPPLIER a non-exclusive, irrevocable, royalty-free licence to use BUYER BACKGROUND IPRS of the BUYER during the Term, and thereafter as may be reasonable and necessary for the purposes of providing the SERVICES.

9.7. Neither PARTY shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent

9.8. BUYER acknowledges that any BACKGROUND IP shall be licensed to BUYER only for use in connection with these SUPPLIER TERMS.

9.9. Under no circumstances shall such licence include any licence or right of access in relation to any source code existing in BACKGROUND IP or PROJECT SPECIFIC IPRS or in any such programs except as may be agreed in writing with THE SUPPLIER. The IPRS in such source code shall remain the property of THE SUPPLIER or the relevant third party owner as the case may be. BUYER shall not be entitled (save to the extent permitted by law) to copy, adapt, reverse compile, decode or otherwise translate any such program.

9.10. Each party at their respective expense shall do all further acts and deeds and execute all such further documents and instruments as may from time to time be required to give effect to the ownership or licence of IP as envisaged by this Clause.

9.11. THE SUPPLIER acknowledges and agrees that no work done or method employed by it in the provision and performance of the SERVICES or any item provided by it as part thereof or as a result thereof or any use made by BUYER or any of its AFFILIATES of any such item provided by THE SUPPLIER under the CALL OFF CONTRACT shall infringe any third party intellectual property right protected by law, including without limitation any letters patent, registered design, trade mark, copyright or design right.

10. CONFIDENTIALITY

10.1. Each PARTY (the “RECEIVING PARTY”) shall treat as confidential any information it acquires from or which is provided to it under or in connection with CALL OFF CONTRACT by the other PARTY (the “DISCLOSING PARTY”) which is identified by the DISCLOSING PARTY as confidential or which by its very nature is confidential and during a period of five years from the date of this THE CALL OFF CONTRACT shall not disclose to, place at the disposal of or use for the benefit of or on behalf of any third party or enable any third party to use, peruse or copy such confidential information or any part thereof without the prior specific written consent of the DISCLOSING PARTY.

10.2. THE SUPPLIER shall not use the Confidential Information of the BUYER for any purpose other than the execution of the SERVICES.

10.3. The provisions of Sub-Clause 10.1 shall not apply to information which:

10.3.1. prior to it being acquired hereunder is part of the public domain or at any time thereafter becomes part of the public domain other than because of breach by the RECEIVING PARTY of its confidentiality obligations under this Clause 10; or

10.3.2. was independently received by the RECEIVING PARTY from a third party whose possession is lawful and who has the full right to disclose and who did not receive it either directly or indirectly from the DISCLOSING PARY or any of its AFFILIATES; or

10.3.3. was developed independently by employees of the RECEIVING PARTY without the benefit of the Confidential Information supplied by the DISCLOSING PARTY; or

10.3.4. was known to the RECEIVING PARTY prior to receipt of Confidential Information of the DISCLOSING PARTY, as evidenced by reasonable written records; or

10.3.5. is required to be disclosed in order to comply with the requirements of any court order or any law, rule or regulation of any governmental body having jurisdiction or of any relevant stock exchange, provided the RECEIVING PARTY first gives reasonable advance notice to the DISCLOSING PARTY and reasonably cooperates with the DISCLOSING PARTY to secure confidential protection of such Confidential Information.

11. INVOICING & PAYMENT

11.1. In consideration of the performance THE SUPPLIER'S obligations under THE CALL OFF CONTRACT by THE SUPPLIER, the BUYER shall pay the Price in accordance with THE CALL OFF CONTRACT, as may be more fully detailed in the STATEMENT OF WORK.

11.2. THE SUPPLIER shall submit a monthly consolidated invoice to the BUYER, which shall include the following detail: item; client; cost code; value; and VAT.

11.3. The amount of each correctly raised invoice shall become due for payment within thirty days from the date on the invoice.

11.4. All sums that become due for payment to THE SUPPLIER under this CALL OFF CONTRACT are exclusive of Value Added Tax which shall be payable by BUYER to THE SUPPLIER, where applicable, at the rate and in the manner prescribed by law from time to time as an addition to such sums.

11.5. If any bona fide undisputed amount payable to THE SUPPLIER by BUYER under the CALL OFF CONTRACT is left outstanding beyond the due date for payment, THE SUPPLIER may, without prejudice to its other rights charge interest pursuant to the Late Payments of Commercial Debts (Interest) Act 1998.

11.6. Should THE SUPPLIER incur any costs in collecting payment of an overdue account, all such costs will be charged to BUYER, who will not have discharged their liability to THE SUPPLIER until such costs are paid.

12. TERMINATION

12.1. BUYER and THE SUPPLIER shall each have the right by giving notice in writing to the other PARTY to terminate all or any part of the SERVICES or these SUPPLIER TERMS at such time or times as the notifying PARTY may consider necessary for any of the reasons, and in accordance with clause 18 of the CALL OFF CONTRACT and ORDER FORM.

12.2. On termination the PARTIES will use reasonable commercial endeavours to agree the completion and payment arrangements in relation to of any Services due to be delivered or being delivered under any Statement of Work.

13. LIMITATION OF LIABILITY

13.1. Nothing contained in these SUPPLIER TERMS shall exclude or limit the liability of either PARTY for death or personal injury resulting from its negligence or the negligence of its employees, its agents and/or sub-contractors.

13.2. The PARTIES agree to the liability provisions and limitations as set out in the ORDER FORM, CALL OFF CONTRACT and clauses 4.1 - 4.3 of the FRAMEWORK AGREEMENT.

14. GENERAL LEGAL PROVISIONS

14.1. Nothing contained herein shall be construed as creating a joint venture, a legal partnership, or a relationship of principal and agent between BUYER and THE SUPPLIER.

14.2. In the event that any one or more of the provisions of these SUPPLIER TERMS shall, for any reason, be held by any competent authority to be invalid, illegal or unenforceable in any respect, in whole or in part, such invalidity, illegality or unenforceability shall not affect any of the other provisions of these SUPPLIER TERMS or the remainder of the provision in question and these SUPPLIER TERMS shall be construed as if such invalid, illegal or unenforceable provision or invalid, illegal or unenforceable part thereof had never been contained herein.

14.3. Failure or delay in the prompt enforcement of any right hereunder shall in no way be construed as a waiver of such right. No right or remedy of a PARTY shall be deemed waived except pursuant to a written waiver executed by a PARTY against whom the waiver is to be enforced. Waiver of any provision of on any occasion shall not be construed as a waiver of any other provision or that provision on any other occasion.

14.4. The provisions of Clauses 9, 10, 12 and 13 shall survive termination of the SERVICES or termination of these SUPPLIER TERMS for any reason whatsoever.

14.5. Subject to the order of precedence clauses, these SUPPLIER TERMS (including the Schedules) and any clauses incorporated by reference constitutes the entire agreement between the PARTIES with respect to the SERVICES and supersedes all prior negotiations, representations or agreements related to these SUPPLIER TERMS, either written or oral.

14.5.1.1. In the event of any conflict or inconsistency, the order of precedence set out in the Call-Off Contract shall apply.

15. GOVERNING LAW

15.1. These SUPPLIER TERMS shall be construed, take effect and be governed in all respects in accordance with English Law excluding those conflict of law rules and choice of law principles which would deem otherwise and shall be subject to the exclusive jurisdiction of the English Courts, save that any judgement, declaration, award or order obtained in the English Courts may be enforced in any jurisdiction.

IN WITNESS WHEREOF, BUYER and THE SUPPLIER has caused these SUPPLIER TERMS to be signed and executed on their behalf by their duly authorised representatives, in two original counterparts (one for each of the PARTIES) as of the day and year first above written.

Signed for and on behalf of		Signed for and on behalf of
Corporate Document Services Ltd		**BUYER**
Signature:		Signature:
Name:		Name:
Position/Title:		Position/Title:

16. SCHEDULE 1

SERVICES: Cloud Services the SUPPLIER is capable of providing through the Platform - see Schedule 1 of CALL OFF CONTRACT

Examples:

- Business Intelligence services
- Case management implementation
- Cloud hosting services
- Cloud managed services
- CMS implementation
- Content design and strategy services
- Cyber security
- Data strategy and implementation services
- Design and user experience services
- Design and implementation of AI systems
- Project consultancy
- Project management
- Research and insight services.
- Software consultancy
- Software development
- Support services
- Technical consultancy
- Web site development.

17. SCHEDULE 2

Statement of Work Charges Breakdown

[INSERT]

***Note: Call-Off Contract charges**

For each individual Service, the applicable Call-Off Contract Charges (in accordance with the Supplier's Platform pricing document) can't be amended during the term of the Call-Off Contract. For the detailed Charges breakdown for the provision of Services during the Term please see our SFIA Rate card.

18. SCHEDULE 3

Statement of Work

This Statement of Work relates to Supplier Terms signed between the Buyer and the Supplier on [INSERT]

SOW number: [INSERT]

Date: [INSERT]

Note: Where applicable, scope, budget and timescales will be dependent on a fixed price discovery phase.

Deliverables: [INSERT]

Charges for Deliverables: [INSERT]

Acceptance Criteria: [INSERT]

Key Performance Indicators: [INSERT]

Service Levels: [INSERT]

Method of Delivery: The Services will be delivered via a [INSERT]

Timetable/ Phase(s) of delivery:

Start Date [INSERT]

End Date [INSERT]

Go Live Date: [INSERT]

Expenses/Travel/Subsistence: [INSERT]

Travel and subsistence Included in day rate within M25 for London based consultants, otherwise payable at department's standard UK government T&S rates

Mileage As above

Invoicing /Payment Arrangements: [INSERT]

Assumptions/ Derogations:

1. Where the Services include the use of licenced products, including software licences associated with project delivery, these third-party terms and condition may contain provisions that are material to delivery or quality of the service, and these bind the Buyer. The Supplier shall not be held liable for any act,

omission or failure of such third parties regardless of whether it holds the licence with such third party or not.

Signed for and on behalf of		Signed for and on behalf of
SUPPLIER		**BUYER**
Signature:		Signature:
Name:		Name:
Position/Title:		Position/Title:

APPIAN PLATFORM TERMS AND CONDITIONS

These Appian Platform Terms And Conditions ("Agreement") govern the use of the Appian Cloud Offering (defined below) by the Subscriber identified on the applicable Order Form referencing this Agreement and Appian's obligations in providing access to the Cloud Offering. This Agreement is effective as of the Effective Date of the first Order Form referencing this Agreement ("Effective Date"). Appian and Subscriber may be referred to individually as a "Party" or jointly as the "Parties."

1. DEFINITIONS The terms defined in this Section 1 and any other capitalized terms defined in the other sections of this Agreement have the meanings stated.

1.1 "**Agreement**" means, collectively, this Agreement and any Order Forms referencing it.

1.2 "**Cloud Offering**" means Appian's software platform (including all updates and enhancements to the same that Appian provides under section 4 of this Agreement), the Documentation, and the information technology infrastructure used to make Appian's software available to Subscriber over the Internet.

1.3 "**Data**" means the data, information or material that Subscriber or its Users submit to the Cloud Offering under this Agreement. Data shall not include anything initially provided to Subscriber by Appian.

1.4 "**Documentation**" means the contents provided under the documentation section of the Appian Community website, https://docs.appian.com, or other URL as notified to the Subscriber in writing from time to time.

1.5 "**Order Form**" means one or more order forms signed by the Parties that reference this Agreement.

1.6 "**User**" means an employee, contractor or subcontractor of Subscriber who has a user account in the Cloud Offering allowing him/her to authenticate into the Cloud Offering.

2. SUBSCRIPTION

2.1 **License**. During the term of the subscriptions that Subscriber purchases, Appian grants Subscriber a non-transferable, nonexclusive license to access the Cloud Offering via a username and password over the Internet. Subscriber may use the licenses purchased under this Agreement for Subscriber's general business purposes, unless the applicable Order Form restricts Subscriber's use to a particular application, in which case Subscriber may only use the Cloud Offering in connection with the specified application.

2.2 **Restrictions.** Except to the extent expressly authorized in this Agreement or in the Documentation, Subscriber may not: (i) reverse engineer, disassemble, decompile or otherwise attempt to access or determine the source code of the Cloud Offering, (ii) operate the Cloud Offering for use by third parties or otherwise operate the Cloud Offering on a service bureau basis, (iii) modify, copy, reproduce or create a derivative from the Cloud Offering, in whole or in part, or (iv) allow, permit or assist any party to do any of the foregoing. In addition, unless expressly authorized by Appian in the applicable Order Form, Subscriber agrees not to use the Cloud Offering in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Cloud Offering or the failure of the Cloud Offering, could lead to death, personal injury, or severe physical or environmental damage.

2.3 **Users Accounts.** Only the identified individual associated with a particular User account can access the Cloud Offering using that account. User accounts may not be shared among individuals, or used to provide access to the Cloud Offering to individuals who are not the individual associated with the corresponding User account. Subscriber may not activate and deactivate User accounts on a daily or other regular basis in order to circumvent license restrictions. To the extent that Subscriber configures Appian's software to be accessed or used through a separate system or interface (e.g. "headless"), users of the Appian software through such separate system or interface must be licensed under this Agreement, regardless of whether such person has an Appian User account or authenticates into the Cloud Offering. If Subscriber exceeds the number of licensed Users set forth in the effective Order Form(s), Subscriber shall purchase such additional User subscriptions necessary to bring Subscriber into compliance, with the date of such purchase retroactive to most recent Order Form between the parties and for a term equal to the longer of the remainder of the term of Subscriber's current subscription or one year. Such additional User subscriptions shall be at Appian's current list fees irrespective of any discounts offered to Subscriber in any Order Form.

2.4 **Subscriber Responsibilities.** Subscriber must use the Cloud Offering in accordance with all applicable laws.   Subscriber is responsible for the password security of User accounts and the level of access granted to an individual User by Subscriber's Cloud Offering administrators, as well as any other security configurations set by Subscriber.   Subscriber is responsible for any violation of this Agreement by its Users. Subscriber shall promptly report to Appian any copying or distribution of the Cloud Offering in violation of this Agreement that is known or suspected by Subscriber and provide Appian with reasonable assistance to stop such violation.

2.5 **Security**. Appian will maintain an annual Service Organization Control (SOC) Report (or other similar or replacement report as the industry adopts) in connection with the Cloud Offering ("SOC Report"). Subject to agreed upon usage terms, Appian will provide Subscriber with Appian's then current SOC Report. During the term of this Agreement, Appian will maintain such security measures identified in the then current SOC Report or, if Appian determines that more effective measures should be implemented, apply such replacement security measures. Subscriber may perform security testing with respect to the Cloud Offering, but only with Appian's prior written consent, not to be unreasonably withheld.

2.6 **Intellectual Property Rights.** The Cloud Offering and all intellectual property rights therein are licensed to Subscriber, not sold. All rights in the Cloud Offering not provided to Subscriber under this Agreement are retained by Appian and its licensors.

3. DATA As between the Parties, the Data belongs to Subscriber. Subscriber is responsible for responding to any notices sent to Subscriber (or any User) by any third party claiming that the Data violates such party's rights. Subscriber grants Appian a worldwide, irrevocable, royalty-free, nonexclusive, sublicensable right during the term of this Agreement to use the Data for the purposes of providing the Cloud Offering to Subscriber. Appian shall backup the Data on a nightly basis. The Data shall be retained for at least twenty eight (28) calendar days.

4. MAINTENANCE SERVICES

4.1 **Maintenance Services.** Appian shall provide Subscriber with the following maintenance services ("Maintenance Services") during the term of the Subscriber's subscription to the Cloud Offering:

a. Updates**.** Appian will install the upgrades and patches to the Cloud Offering that become available.

b. Technical Support**.** Subscriber may designate up to the number of Subscriber employees allowed by the Service Level Agreement to coordinate Subscriber's requests for Maintenance Services. Subscriber's Maintenance Services contacts may report problems and seek assistance regarding Subscriber's use of the Cloud Offering using Appian's online technical support case management system, by telephone using Appian's authorized technical support phone line, or using any other means that Appian may authorize from time-to-time. Subscriber's Maintenance Services contacts may track Technical Support requests using Appian's case management system. Subscriber shall email support@appian.com with Subscriber's Maintenance Services contacts promptly on or after the Effective Date. Subscriber may change its Maintenance Services contacts using Appian's case management system.

c. Remote Maintenance Only. Maintenance Services do not include on-site or in-person assistance, training or consultation.

d. Self-Managed RPA Robots. To the extent that Subscriber's purchased subscriptions include the right to deploy Appian RPA, the self-managed Appian RPA Robots are not subject to the availability guarantees in the Service Level Agreement. Subscriber is responsible for correcting defects in the Appian RPA robots created by Subscriber and its contractors.

4.2 **Scheduled Maintenance.** Appian may specify up to a contiguous four (4) hour period during off peak hours when the Cloud Offering will not be available and during which Appian can provide any needed maintenance. Appian will use reasonable efforts to provide one week prior notice of all scheduled maintenance periods, provided that Appian may without prior notice suspend the Cloud Offering to install emergency patches or other urgent corrective measures.

5. CHARGES AND PAYMENT OF FEES Fees and charges are due and payable within 30 calendar days of Appian's invoice date. Amounts not timely paid shall incur interest at the lower of 1.5% per month, or the highest amount permitted under applicable law. All fees and charges are exclusive of all taxes, levies, or duties imposed by taxing authorities ("Taxes"). Subscriber is responsible for paying all such Taxes, excluding only Taxes based solely on Appian's income, at point of sale. Any exemption to such Taxes is dependent upon Appian's receipt of legally required documentation of such exemption. All payments due under this Agreement shall be made without any withholding, unless required by law. If Subscriber is required to withhold, Subscriber will provide Appian with documentation evidencing payment. If, and to the extent, that Appian is unable to claim an income tax credit for the full amount withheld, Subscriber shall pay the unrecouped amount to Appian. Except as expressly set forth in this Agreement, all orders for licenses and services are non-cancelable and all payments are non-refundable.

6. CONFIDENTIALITY

6.1 **Confidential Information.** "Confidential Information" means any information disclosed in writing or orally by one Party (the "Discloser") to the other Party (the "Recipient") and includes (a) information marked as confidential, (b) the Cloud Offering, (c) the terms of this Agreement (except as necessary to enforce the terms hereof), and (d) information that is reasonably understood to be confidential under the circumstances of disclosure or the nature of the information disclosed.

6.2 **Non-Disclosure.** The Recipient agrees to use the same degree of care to avoid unauthorized use or disclosure of the Discloser's Confidential Information as it uses to protect its own information and data of like importance, but in no event using less than a reasonable degree of care (with respect to Appian's obligations in connection with the Cloud Offering, such reasonable degree of care shall be defined as the measures identified in the then current SOC Report). Acting in accordance with the foregoing standard, the Recipient agrees to disclose the Discloser's Confidential Information only to its employees or Users (or, in the case of Appian, authorized subcontractors) who (i) have a need to know the same, and (ii) are subject to binding confidentiality obligations with the Recipient that are at least as restrictive regarding limitations on use and disclosure as those in this Section.

6.3 **Exceptions.** The foregoing restrictions will not apply to information that (a) is known to the Recipient at the time of receipt, (b) has become publicly known through no wrongful act of the Recipient, (c) has been rightfully received from a third party authorized to make such communication without restriction, (d) has been independently developed by the Recipient as evidenced by written records, (e) has been approved for release by written authorization of the Discloser, or (f) is required by law to be disclosed; provided that if the Recipient is required to disclose the Discloser's Confidential Information pursuant to an order under law, the Recipient must, if lawful, promptly notify the Discloser and cooperate in all reasonable respects with the Discloser's requests in connection with obtaining a protective order.

7. TERM, TERMINATION AND SUSPENSION

7.1 **Term**. This Agreement shall commence on the Effective Date and, unless terminated earlier as set forth below, shall continue for the duration of any subscription purchased in an applicable Order Form.

7.2 **Termination**.

a. <u>For Cause</u>. Either Party may terminate this Agreement if the other Party breaches any material terms and conditions of this Agreement, and fails to cure such breach within 30 days of receiving written notice thereof from the non-breaching Party.

b. <u>Suspension.</u> Upon providing Subscriber with written notice, Appian may immediately suspend Subscriber's privilege to use the Cloud Offering, which suspension shall be without any liability to Appian if Appian has reason to believe: (i) Subscriber is using the Cloud Offering in any manner to (A) interfere or attempt to interfere with the functionality or proper working of the Cloud Offering, including but not limited to participating in any flooding or denial or service activities of any kind, or (B) engage in, promote or facilitate illegal activities; or (ii) the Data (A) infringes, violates or misappropriates any rights of Appian or any third party; (B) constitutes defamation, invasion of privacy or publicity, or otherwise violates any applicable law or regulation, or (C) contains malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code.

c. <u>Effect of Termination</u>. Upon the effective date of termination, Appian may terminate Subscriber's use of the Cloud Offering, and Subscriber agrees to pay the balance due on Subscriber's account computed in accordance with applicable Order Form.

8. LIMITED WARRANTIES AND DISCLAIMERS

8.1 **Service Level Agreement**. Appian shall provide the Service Level Agreement available online at **https://appian.com/legal/cloud-SLA** on the Effective Date of the applicable Order Form in connection with the Cloud Offering.

8.2 **Virus**. Prior to delivery of the Cloud Offering to Subscriber, Appian will first scan the same using commercially available up to date virus detection software, and will remediate any issue discovered by such software.

8.3 **Disclaimer**. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES PROVIDED IN CONNECTION WITH THE CLOUD

OFFERING AND MAINTENANCE SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES ARE DISCLAIMED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. LIMITATION OF LIABILITY IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY CAUSE OR ACTION (INCLUDING CONTRACT, NEGLIGENCE, TORT OR STRICT LIABILITY) ARISING FROM OR OUT OF THIS AGREEMENT FOR (a) ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, AND (b) AGGREGATE LIABILITY OF GREATER THAN THE FEES ACTUALLY PAID BY SUBSCRIBER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. OBLIGATIONS UNDER SECTION 10 OF THIS AGREEMENT AND SUBSCRIBER'S OBLIGATION TO MAKE PAYMENTS AS DUE SHALL NOT BE SUBJECT TO THE LIMITATION SET FORTH IN 9(b) ABOVE. IN ADDITION, DAMAGES ASSOCIATED WITH EITHER PARTY VIOLATING THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER PARTY, SHALL NOT BE SUBJECT TO THE LIMITATION SET FORTH IN SECTIONS 9(a) OR 9(b) ABOVE. THE LIMITATIONS SET FORTH IN THIS SECTION ARE INDEPENDENT OF ANY LIMITED REMEDY SET FORTH HEREIN, SHALL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10. INDEMNIFICATION

10.1 **By Appian**.

a. <u>Indemnity</u>. Appian shall at its expense indemnify and defend Subscriber against any claims, legal actions, damages, losses and other expenses (a "Claim") brought by a third party against Subscriber alleging that the Cloud Offering or Maintenance Services (the "Offerings") infringe any United States patent, copyright, or trademark rights of such third party. Subscriber must provide Appian prompt notice of any Claim for which defense is sought hereunder, and provide Appian with sole control of the defense against any such Claim, provided that Appian may not enter into a settlement requiring Subscriber to make payment, take an action, or refrain from acting without Subscriber's consent, which shall not be unreasonably withheld, conditioned or delayed. If Subscriber is prohibited by lawful order from continued use of an Offering, or Appian concludes that an Offering infringes the foregoing intellectual property rights of a third party, Appian will, at its option and expense either: (i) procure for Subscriber the right to continue using the Offering, (ii) replace or modify the Offering so that it is no longer infringing, as long as it provides equivalent functionality, or (iii) if options (i) and (ii) are not commercially viable, terminate Subscriber's license to use the infringing Offering and refund to Subscriber the amount of the then current subscription license fee that was prepaid and unearned as of the date of termination.

b. Limitation. Notwithstanding the provisions of Section 10.1(a) above, Appian assumes no liability for (i) infringement arising from combinations of an Offering with non-Appian software or hardware, including any of Subscriber's software or code, (ii) modifications to an Offering made by any party other than Appian, (iii) use of a prior version of an Offering where Appian has offered or provided such current version to Subscriber at no additional cost, or (iv) trademark infringements involving any marking or branding applied by Subscriber or its agents or by Appian at Subscriber's request.

c. Entire Liability. THIS SECTION 10.1 STATES THE ENTIRE LIABILITY AND OBLIGATIONS OF APPIAN AND THE EXCLUSIVE REMEDY OF SUBSCRIBER WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS BY AN OFFERING, OR ANY PART THEREOF.

10.2 **By Subscriber.** Subscriber shall at its expense indemnify and defend Appian against any claim brought by a third party against Appian alleging that the Data infringes the rights of any third party. Appian shall provide prompt notice of any claim for which defense is sought hereunder and will provide Subscriber with sole control of the defense against any such claim, provided that Subscriber may not enter into a settlement requiring Appian to make payment, take an action, or refrain from acting without Appian's consent, which shall not be unreasonably withheld, conditioned or delayed.

11. NOTICE

Any formal legal notices required or permitted to be given under this Agreement shall be in writing and shall be sufficiently given if sent by first class certified mail, or overnight delivery service using a reputable courier service, postage prepaid to Appian Corporation at 7950 Jones Branch Drive, McLean Virginia 22102, attention: General Counsel or to Subscriber at the address indicated on the applicable Order Form. Each Party will inform the other in writing of any change in the address to which notices should be sent.

12. GENERAL

12.1 **Governing Law and Arbitration**. The validity, construction, and interpretation of this Agreement and the rights and duties of the Parties shall be governed by the laws of the Commonwealth of Virginia, excluding its principles of conflict of laws, and the controlling laws of the United States of America, as applicable. This Agreement will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is expressly excluded. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in the County of Fairfax, Virginia in accordance with the Rules of the American Arbitration Association (“AAA”) by a single arbitrator to be designated by AAA, and judgment upon the decision rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any decision by the arbitrator shall be final and binding, and except in cases of fraud or gross misconduct by the arbitrator, the decision rendered shall not be appealable.

12.2 **Relationship**. This Agreement does not create a joint venture, partnership, employment, or agency relationship.

12.3 **Marketing.** (a) Appian may publicly identify Subscriber as an Appian customer and use its logo on Appian’s website and in presentations to current or prospective customers or investors; (b) Appian may issue a mutually agreed upon press release announcing Subscriber’s status as an Appian customer; (c) subject to Subscriber’s consent, Subscriber agrees to serve as a reference to prospective non-competitive Appian customers; and (d) upon successful launch of an application in the Cloud Offering, Appian may record and produce a video concerning Subscriber’s use of Appian for such application, which may be distributed via Appian.com.

12.4 **Severability**. If any provision of this Agreement is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision’s essential purpose.

12.5 **Waiver**. The waiver by either Party of a breach or right under this Agreement will not constitute a waiver of any other or subsequent breach or right.

12.6 **Assignment**. This Agreement shall be binding and inure to the benefit of the Parties and their respective and permitted successors and assigns. Appian may use subcontractors to assist in performing this Agreement, provided Appian remains responsible for any subcontractor’s compliance with the applicable terms of this Agreement. Neither Party may assign this Agreement without the consent of the other Party, except in the event of a corporate reorganization, merger, acquisition, or sale of all or substantially all of such Party’s assets.

12.7 **Entire Agreement.** This Agreement is the final, complete and exclusive agreement between the Parties relating to the subject matter hereof, and supersedes any previous communications, representations or agreements between the Parties, whether oral or written. This Agreement may be amended only through a written agreement signed by authorized representatives of the Parties. If an Order Form conflicts with this Agreement, this Agreement shall take precedence unless the Order Form expressly identifies select provisions of this Agreement to be superseded. The terms of any purchase order supplied to Appian will be null and void.

12.8 **Force Majeure.** Neither Party is liable for failure to perform or for any delay in performing this Agreement due to events outside its reasonable control and not caused by its fault or negligence.

12.9 **Signature/Counterparts**. The Parties agree that electronic signature of Order Forms shall be valid signatures for all purposes hereunder and shall bind the Parties. Any Order Forms may be executed in counterparts.

12.10 **Survival**. Provisions herein which by their nature extend beyond the termination of this Agreement shall remain in effect until fulfilled.

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