



## **G-Cloud V - Supplier Terms and Conditions**

## Purpose of Document

This document contains terms and conditions which should be read in conjunction with the Framework Agreement including the Call Off Agreement.

## Structure of Document

This document is structured as follows:

Main Body Section A: applies to all Supplier Services

Main Body Section B: applies to all Cloud & IT Services in addition to Section A

Main Body Section C: applies to all Voice Services in addition to Section A

Main Body Section D: applies to all Connectivity Services in addition to Section A.

Main Body Section E: applies to all Professional Services in addition to Section A.

## Interpretation

Terms defined in the Call off Agreement shall be afforded the same meaning herein as given therein, save where an alternate definition is provided below. The terms and expressions set out below shall have the meanings described below.

<b>“Annual Charge”</b>	the on-going fee for the provision of the Service(s), as detailed on the Order Form (and, if applicable, as amended in line with the Call Off Contract).
<b>“Business Continuity Service”</b>	means the Supplier’s Business Continuity service as explained in the Supplier’s Business Continuity Service Definition.
<b>“Call Off Contract”</b>	an Order Form together with (i) the applicable Service Definition; and (ii) the Call Off Terms (of which these Supplier Terms form part).
<b>“Cloud &amp; IT Services”</b>	the IaaS Service, the Business Continuity Service, the DaaS Service and the Online Backup Service.
<b>“Connectivity Service”</b>	any Supplier connectivity service used by the Customer to receive the Service(s).
<b>“Customer Contact”</b>	the Customer’s authorised representative specified as such in the Call Off Contract, nominated to liaise and work with Supplier in connection with the Service(s).
<b>“Customer Content”</b>	the works of authorship, marks, data, information, materials and other content that is sent, received, transmitted, hosted, stored, replicated or otherwise made available by means of the Service(s), including (without limitation) names, domain names, logos, designs, computer software, recorded visual imagery (including video recordings and photographs), sounds, audio materials (including master recordings), musical compositions (including arrangements and lyrics), graphics (including animation), textual matter, and any combination of the above. For the avoidance of doubt, Customer Content does not include Materials. All Customer Content is and will remain the property of Customer.
<b>“Customer Networks”</b>	the local area network, network equipment, computer systems and local cable infrastructure at the Customer Premises, to which the Service(s), Supplier Equipment or Purchased Equipment will be connected.
<b>“DaaS Service”</b>	means the Supplier’s Desktops as a Service service as explained in the Supplier’s DaaS Service Definition.
<b>“Documentation”</b>	any documentation provided by the Supplier for the purpose of providing the Service(s).

<b>“Due Date”</b>	the due date for payment of an invoice as set out in Clause 4.5.
<b>“End User”</b>	any party who has been given access to the Service(s) by the Customer, and any person who gains access to the Service(s) as a result of the Customer’s failure to use reasonable security precautions, even if such use was not authorised by the Customer.
<b>“Enhanced SIP Trunking Service”</b>	the Supplier’s Enhanced SIP Trunking Service as explained in the Supplier’s Enhanced SIP Trunking Service Definition.
<b>“Exit Management Plan”</b>	any plan agreed between the parties in writing prior to expiry or upon termination of the Call Off Contract to facilitate the orderly provision of Replacement Services.
<b>“Hosted Voice Service”</b>	the Supplier’s hosted voice service as explained in the Supplier’s Hosted Voice Service Definition.
<b>“IaaS Service”</b>	means the Supplier’s Infrastructure as a Service service as explained in the Supplier’s IaaS Service Definition.
<b>“Installation Service”</b>	the preparatory work (if any) to be carried out by the Supplier to enable the Customer to receive the Service(s).
<b>“Licensors”</b>	the third party licensors of the Software (if any).
<b>“Major Change”</b>	any change which has a material negative impact on the performance of the Service(s) and/or results in any additional charges being payable by the Customer.
<b>“Materials”</b>	all literary works or other works of authorship (such as computer programs, program listings, programming tools, Documentation, reports, drawings and similar works) that are developed or provided by the Supplier to Customer pursuant to the Call Off Contract or otherwise in connection with the Service(s).
<b>“Online Backup Service”</b>	the Supplier’s online backup service as explained in the Supplier’s Online Backup Service Definition.
<b>“Pay As You Go Service”</b>	services described as such in the applicable Service Definition, and designated as such on the Order Form, which are provided on the basis that there is no Term and no commitment to paying an Annual Charge.
<b>“Portal”</b>	a Customer-facing control panel which may allow the Customer to have some level of visibility and/or control over the Service(s).
<b>“Professional Services”</b>	the services described in the Supplier’s Cloud Transformation Service Definition.
<b>“Portal Terms of Use”</b>	the terms of use applicable to, and accessible via, any Portal.
<b>“Purchased Equipment”</b>	the equipment (if any) purchased by the Customer and sold by the Supplier under the Call Off Contract, as specified on an Order Form.
<b>“Rate Card”</b>	the details of the Usage Fees (if any) provided in the Supplier’s Pricing Documents submitted in its G Cloud 5 Catalogue.
<b>“Service(s)”</b>	the service(s) to be provided by the Supplier to the Customer as set out on the Order Form and further explained in the applicable Service Definition.
<b>“Service Commencement Date”</b>	the date on which a Service is handed over to the Customer.
<b>“Service Definition”</b>	the description of a Service set out in the document provided by the Supplier as part of Schedule 1 of the Call Off Call Off Contract.
<b>“Set Up Fee”</b>	the one-off charge for the provision of the Service(s), as detailed on the Order Form.
<b>“Supplier Equipment”</b>	the equipment owned by the Supplier and/or its suppliers, used in

<b>“Supplier Site”</b>	order to provide the Service(s). the location(s) where the Service(s) will be provided from (if applicable) as set out on the Order Form or otherwise detailed in the Service Definition.
<b>“Target Service Commencement Date”</b>	the date by which the Supplier shall use reasonable endeavours to handover the Service(s), as detailed in the applicable Service Definition.
<b>“Term”</b>	the initial term for which each Service shall be provided to the Customer (if applicable), as set out on the Order Form and calculated from the Service Commencement Date for that Service or as otherwise specified in the applicable Service Definition. The Term is not applicable to Pay As You Go Services.
<b>“Transition Services”</b>	the services to be provided by the Supplier upon implementation of an Exit Management Plan as set out therein.
<b>“Usage Fees”</b>	the variable fees (if any) for use of a Service, charged in accordance with the Rate Card and calculated on the basis of the usage information collected by the Supplier’s monitoring and reporting systems.
<b>“User Identification”</b>	A unique code or codes, such as a user ID or a password, which enable access to the Portal(s).
<b>“Voice Services”</b>	means the Supplier’s Enhanced SIP Trunking Service and Hosted Voice Service.
<b>“Working Day”</b>	Monday to Friday (inclusive), excluding all public and bank holidays in England and Wales.

## Section A: Terms and Conditions for All Services

### 1. CUSTOMER PREMISES ACCESS

- 1.1 The Customer shall provide the Supplier with such access to the Customer Premises as the Supplier shall reasonably require in order to carry out its obligations and/or exercise its rights, subject to reasonable advance notice. Any period of delay in providing the Supplier with access to the Customer Premises shall be excluded from service level calculations.
- 1.2 The Customer shall ensure that the Supplier personnel have a safe working environment at the Customer Premises. The Supplier will comply with all reasonable health and safety and security policies applicable to the Customer Premises, provided in writing prior to, or at the time of entry to, the Customer Premises.

### 2. RISK, TITLE AND WARRANTY

- 2.1 On delivery of each item of the Purchased Equipment and/or the Supplier Equipment (if applicable), full risk of damage to, or loss of, such equipment shall pass to the Customer. The Customer shall be responsible for the safety, safe custody and safe use of the Purchased Equipment and/or the Supplier Equipment whilst it is in the Customer's custody and the Customer shall be liable to the Supplier for any loss or damage to the Supplier Equipment except for (i) fair wear and tear and (ii) any loss or damage caused by the negligent act or omission of the Supplier.
- 2.2 On full payment of the Set Up Fee, title in the Purchased Equipment shall pass to the Customer. If the Set Up Fee is not paid in full, then title in the Purchased Equipment shall not pass to the Customer. The Customer shall keep the Purchased Equipment wholly identifiable and distinguishable from other goods until such time that title passes to the Customer. For the avoidance of doubt, nothing in the Call Off Contract shall act to transfer ownership of the Supplier Equipment to the Customer.
- 2.3 Purchased Equipment which is subject to a maintenance service by the Supplier (as detailed on the Order Form) shall be maintained as detailed in the Call Off Contract.
- 2.4 Where a manufacturers' warranty applicable to items of Purchased Equipment does not automatically transfer to the Customer upon the sale of the Purchased Equipment, the Supplier shall use all reasonable endeavours to assign to the Customer the benefit of such manufacturers' warranty. The Supplier does not provide any additional warranty for items of Purchased Equipment.

### 3. SERVICE PROVISION, MODIFICATIONS & MAINTENANCE

- 3.1 Where the Service has a Target Service Commencement Date, the Supplier will notify the Customer in writing when it is ready to hand-over a Service to the Customer. Where a Service does not have a Target Service Commencement Date (such as Professional Services) the Supplier shall inform the Customer in writing when it is ready to commence performance of such Services. Following handover of the Service(s), the Customer shall carry out any testing it requires on the Service(s) to verify that the Service(s) have been provided as per the Call Off Contract, as soon as possible and in any event within five (5) Working Days of handover. Any issues advised to the Supplier after the expiry of this five (5) Working Day period will be dealt with as an in-service fault.
- 3.2 The Customer acknowledges that error-free operation of the Service(s) cannot be, and is not, guaranteed.
- 3.3 Where the Supplier agrees to delay the Service Commencement Date following the Customer's written request or the Target Service Commencement Date is not met as a result of the Customer's delay or failure to fulfil its obligations hereunder, the Annual Charge for that Service shall be payable from the Target Service Commencement Date for that Service unless otherwise agreed in writing by the Parties.
- 3.4 The Supplier reserves the right at any time to make any modification, change or addition to, or replacement of, any Service (or part thereof) or the Supplier Equipment, where (i) this is required to conform with any applicable safety or statutory requirements; or (ii) such modification, change, addition or replacement is not a Major Change and provided that it is carried out at the Supplier's expense. The Supplier shall further have the right, by serving notice to the Customer, to amend these Supplier Terms at any time when this is required to comply with any regulations.
- 3.5 The Service(s) (or the component parts thereof) will be subject to the service levels set out in the applicable Service Definition.
- 3.6 Any time incurred by the Supplier in investigating alleged faults or non-conformities with the Service(s)

notified to it by the Customer, which are later found not to have existed, may be charged to the Customer in accordance with the Supplier's then-current standard rates together with any third party costs incurred in investigating the same. The Customer shall be entitled to see reasonable documentary evidence attesting to such third party costs.

#### **4. FEES, PAYMENT AND INVOICING PROCEDURE**

- 4.1 Any one-off or non-recurring charges shall become invoiceable upon signature of the Order Form/change order.
- 4.2 Subject to Clause 3.3, the Annual Charge (where applicable) shall be payable from the Service Commencement Date in accordance with the payment frequency set out on the Order Form.
- 4.3 Usage Charges (if applicable) shall be invoiceable monthly in arrears.
- 4.4 All Charges are payable in sterling and are exclusive of Value Added Tax and any other applicable taxes which shall be payable by the Customer in addition in the manner prescribed by law.
- 4.5 Invoices for the Charges (save where specified otherwise herein) shall be paid by the Customer within 30 days of the date of the invoice. The Customer shall pay all invoiced amounts without any deductions, with-holdings, counter-claims and/or set-offs (sums subject to reasonable and notified dispute in accordance with the Call off Contract excepted).

#### **5. NOT USED**

#### **6. INTELLECTUAL PROPERTY, GRANT OF LICENCE AND SOFTWARE**

- 6.1 Title to the Software and the Intellectual Property Rights within the Service(s) (including the Software and the Documentation) shall be held by the Supplier or the Licensors.
- 6.2 The Customer agrees to abide by any third party software conditions of use as set out in any relevant End User License Agreements (EULA) provided or made available to the Customer by the Supplier (whether via the Portal or otherwise). The Customer shall (and shall procure that all users of the Software shall) only use the Software in accordance with such EULA.
- 6.3 The Supplier warrants that it has the right to use and sub-license the Software to provide the Service(s) and grants to the Customer a non-exclusive, non-transferable, non-sub-licensable licence to use the Software in connection with the Service(s). The Supplier shall only be liable in respect of such Software to the extent liability is limited in accordance with the terms of the applicable EULA.
- 6.4 The Customer agrees that the Supplier may provide the Licensors with information regarding the Customer's use of their software, including information on the number of licenses required for the Customer's use or access of the software, the country in which the Customer's is located and the Customer's name and address. The Customer hereby releases the Supplier from any and all liability the Supplier may have to the Customer in relation to any use or other dealing with that information provided pursuant to this Clause 6.4 by Licensors and agrees to co-operate with the Supplier in order to provide this information.
- 6.5 The Supplier and/or a Licensor (or its nominated representatives), may at the Supplier's expense, access the Customer Premises and Customer systems and records relevant to usage of the Software, to ascertain compliance with any EULA and Clause 6.4 above, during Normal Business Hours, subject to reasonable prior notice.
- 6.6 If the Customer uses software it has purchased for itself in the receipt of the Service(s) which has not been licensed by the Supplier, the Customer shall acquire permission to use the software from the person with the rights to the software and must comply with any restrictions regarding license mobility where applicable.
- 6.7 The Customer grants the Supplier a worldwide, irrevocable (except on Call Off Contract termination), royalty-free, non-exclusive, sub-licensable (to the Supplier's authorised subcontractors only) right for the duration of the Call Off Contract to process the Customer Content to the extent reasonably necessary to perform its obligations under the Call Off Contract.
- 6.8 Unless expressly stipulated otherwise, the Customer shall not (i) reverse engineer, disassemble, decompile or otherwise attempt to access or determine the source code of the Software (except as and only to the extent any of the foregoing is permitted by the licensing terms governing use of any open sourced components included with the Software), (ii) copy, "frame" or "mirror" any content available on the Software on any other server or wireless Internet-based device, (iii) re-distribute or sublicense the Software, or any part thereof, to

any third party, (iv) operate the Software for use by third parties or otherwise operate the Software on a service bureau basis, without the Supplier's express prior written consent, (v) copy, or reproduce the Software in any way, in whole or in part, (vi) modify or create any derivative work based on the Software, or (vii) allow, permit or assist any third party to do any of the foregoing.

6.9 Not Used.

6.10 The Customer shall indemnify and hold harmless the Supplier in respect of all claims, losses, reasonable costs and expenses (including reasonable legal fees) that are made against, or incurred by, the Customer as a result of a claim by a third party that the Customer's installation, use, storage or accessing of the Stored Data or third party software used in connection with the Service(s) infringes the Intellectual Property Rights or other rights of a third party. The Customer shall only be liable to indemnify pursuant to this Clause provided that: (i) the Customer is promptly notified of any such claim; (ii) the Customer is given sole control of the claim and the freedom to defend or settle the claim as it deems fit; (iii) the Supplier provides all reasonable assistance to the Customer at the Customer's cost in respect of the claim; (iv) the Supplier makes no statements or admits any liability in respect of the claim.

6.11 The Customer acknowledges that any software may contain known or unknown security vulnerabilities. The Supplier shall not be liable to the Customer or any third party for any loss or damage (including, without limitation, any direct, indirect, special or consequential loss) arising from known or unknown security vulnerabilities with any software (including the Software).

## **7. PORTAL ACCESS & USER IDENTIFICATIONS**

7.1 Access to Portal(s) is governed by terms and conditions of use which are accessible through the Portal(s) via web-links (the "Terms of Use"). The Customer warrants that it will comply with the Terms of Use.

7.2 The Customer has the sole responsibility for putting in place and maintaining the controls that they require around the ability of persons to log into the Portal via the Customer's User Identifications. The Customer shall ensure that the Customer's User Identifications are restricted and protected appropriately. The Customer shall be responsible for the control and distribution of User Identifications to End Users, and shall ensure the confidentiality of any User Identifications and be liable for the consequences of any unauthorised use of such User Identifications or the Service(s). The Supplier shall have no responsibility for misuse of User Identifications provided to Customer.

7.3 The Supplier does not guarantee the availability of any Portal. The Supplier reserves the right to suspend the Customer's access to the Portal(s) without liability at any time in accordance with the Terms of Use and the Call Off Contract.

7.4 All ownership rights in the Portal(s) including without limitation any enhancements and additions thereto shall strictly remain and continue to remain with the Supplier and/or its suppliers.

7.5 The Supplier shall be entitled to amend the Portal(s) howsoever and whensoever it chooses provided that it shall provide reasonable notice to the Customer of any Major Change to the Portal.

## **8. SUPPLIER OBLIGATIONS & WARRANTIES**

8.1 Subject to the Service Definition, the Supplier is free to determine how the Service(s) shall be provided to the Customer.

8.2 The Supplier's obligation to provide the Service(s) is limited to an obligation to use all reasonable endeavours to provide the same.

8.3 The Supplier shall use all reasonable endeavours to meet the Target Service Commencement Date and any other dates or timescales set out in the Call Off Contract, but time shall not be the essence of the Call Off Contract.

8.4 The Supplier shall use the reasonable care and skill expected of a competent information technology and telecommunications provider in exercising its rights and carrying out its obligations under the Call Off Contract.

8.5 The Supplier shall install and configure the Software (if applicable) if it is specified in the Call Off Contract that the Supplier is responsible for installing the Software or (where not so specified) the Supplier shall provide limited remote support to the Customer to enable the Customer to install and configure the Software.

8.6 The Supplier is not responsible to the Customer for unauthorised access to Customer Content or the unauthorised access to, or use of, the Service(s) unless the unauthorised access or use results from the

Supplier's failure to meet any security obligations stated in the Call Off Contract.

- 8.7 The Customer acknowledges and agrees that the Supplier has no knowledge of and accepts no responsibility for the content, quality, value or use of the Customer Content or goods or services provided by Customer or End Users in connection with the Service(s).
- 8.8 The Supplier maintains certain security procedures for the Customer Content while it is stored on or transmitted over equipment and facilities the Supplier controls as set out in the Service Definition. The Customer is responsible for management of the Customer Content stored on or transmitted by means of the Service(s), including selection and use of the security features and options that the Supplier provides as Service(s). Except to the extent included in the Service(s) provided by the Supplier, as identified in the Call Off Contract, the Customer is responsible for developing and maintaining data management and security procedures the Customer deems appropriate, such as application logon security, encryption of data and antivirus protection, and retaining source documents and maintaining a procedure that will allow the Customer to recover lost or damaged data. THE SUPPLIER DOES NOT GUARANTEE THAT ITS SECURITY PROCEDURES WILL PREVENT THE LOSS OF, ALTERATION OF, OR IMPROPER ACCESS TO, DATA.

## **9. CUSTOMER OBLIGATIONS & WARRANTIES**

- 9.1 Upon signature of the Order Form, the Customer shall appoint the Customer Contact and designate at least two suitably qualified and authorised employees, who have access rights to all of the Customer's relevant systems and Customer Assets to provide co-ordination and assistance to the Supplier.
- 9.2 The Customer agrees and warrants that the Customer Contact (and any replacement contact notified to the Supplier in writing) and any further nominated employees have the appropriate level of authority to make decisions relating to the Service(s). The Customer shall notify the Supplier in writing of any updates required to such authorised personnel. The Supplier shall have no liability for failure to deal with requests / respond to instructions from persons not appropriately authorised by the Customer in writing.
- 9.3 The Customer agrees and warrants that it has in place, and shall keep in place for the duration of the Term, all necessary licences and permits to operate the Customer Assets and any software provided by the Customer and to provide the Customer Content to the extent required under the Call Off Contract, reasonable evidence of which shall be supplied to the Supplier upon request.
- 9.4 The Customer shall (and shall procure that End Users shall):
- 9.4.1 not allow any unauthorised user or third party access to, or use of the Service(s) and shall take all reasonable security measures to prevent the same; and/or
- 9.4.2 not add to, modify or interfere in any way with the Supplier Equipment (if applicable) or the Service(s); and/or
- 9.4.3 at all times comply with any reasonable guidelines or rules contained within any Documentation issued by the Supplier; and
- 9.4.4 not use the Supplier Site, the Supplier Equipment, the Customer Assets, or the Service(s) in any way that would or may be harmful or would or may be harmful or detrimental to the reputation of the Supplier and/or its third party suppliers; and
- 9.4.5 not do anything that may be dangerous or a nuisance or inconvenience to other users of the Service(s); and
- 9.4.6 where reasonably required to do so by the Supplier from time to time, promptly make any necessary changes to any configuration files from time to time and/or gives the Supplier any diagnostic information and log files; and
- 9.4.7 follow the Supplier's reasonable instructions in relation to the subject-matter of the Call Off Contract; and
- 9.4.8 provide the Supplier with up-to-date information, co-operation and support as the Supplier may reasonably require pursuant to the Call Off Contract; and
- 9.4.9 maintain any Customer Assets to a safe standard; and
- 9.4.10 promptly provide sufficient technology to enable the Supplier to provide remote support where it is necessary to do so; and
- 9.4.11 promptly install and configure the Software, if (as specified in the Call Off Contract or as otherwise notified to the Customer) the Customer is responsible for installing the Software any apply any updates or patches made available to it by the Supplier; and
- 9.4.12 ensure that, where applicable, the Customer's systems comply with the reasonable hardware and software



- requirements notified to the Customer by the Supplier or detailed in the applicable Service Definition; and
- 9.4.13 ensure that the Software (where applicable) is compatible with the Customer's systems; and
- 9.4.14 use any Customer Assets, the Supplier Equipment and/or Software in a skilful and proper manner by properly trained personnel; and
- 9.4.15 to the extent that the Service(s) is reliant upon the continued provision of other supplier services (such as Connectivity Services), ensure that the Customer continues to Call Off Contract with the Supplier for those other services for the duration of the Service(s); and
- 9.4.16 take all reasonable steps (including testing with the latest commercially available detection software) to ensure that any software used with or in conjunction with the Service(s) is not infected by Malicious Software; and
- 9.4.17 undertake any work required to be carried out by the Customer as specified in the applicable Service Definition(s) in a timely manner; and
- 9.4.18 provide suitable space and environment for the Customer Assets and the Supplier Equipment (other than when located at the Supplier Sites) in a timely manner; and
- 9.4.19 be liable to the Supplier for the acts and omissions of all End Users.
- 9.5 The Customer shall not (and shall procure that all users of the Service(s) shall not) use the Service(s) in any way that:
- 9.5.1 violates any applicable law, regulation, administrative order or treaty; and/or
- 9.5.2 would constitute or contribute to the commission of a crime, tort, fraud or other unlawful activity (including activities deemed unlawful under a complainant's jurisdiction).
- 9.6 The Customer warrants that any material and/or communication received, transmitted, hosted or otherwise processed using the Service(s) (other than entirely unsolicited communications) will not be menacing, of a junk-mail or spam-like nature, illegal, obscene, threatening, defamatory, discriminatory, promote illegal or unlawful activity, be otherwise actionable or in violation of any rules, regulations or laws to which the use of the Service(s) is subject, or infringe the Intellectual Property Rights of the Supplier or any third party.
- 9.7 The Customer agrees to use the Service(s) solely in connection with its general business purposes. The Customer acknowledges that the Service(s) are not designed to be used in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Service(s) or the failure of the Service(s), could lead to death, personal injury, or severe physical or environmental damage. Unless expressly authorized by the Supplier, the Customer agrees not to use the Service(s) for any such purpose.
- 9.8 Breach of this Clause 9 shall be considered a material breach of the Call Off Contract.
- 9.9 If the Customer becomes aware that they are in breach of this Clause 9, the Customer shall advise the Supplier without delay and immediately commence actions to remedy the breach.
- 9.10 The Customer shall indemnify and keep the Supplier indemnified and hold the Supplier harmless from and against all losses, liabilities, damages, costs, claims, demands and expenses arising out of, or in relation to, any breach by the Customer and the End User of the provisions of Clause 9.5 and/or 9.6.

## **10. SUPPLIER'S TERMINATION RIGHTS**

- 10.1 The Supplier may terminate the Call Off Contract upon immediate written notice in the event the Customer has committed a material breach of the Call Off Contract and fails to remedy such breach within twenty-eight (28) days of notice from the Supplier requiring the breach to be remedied. The aforementioned twenty-eight day remedy period shall only apply where a breach is capable of remedy; if it is not capable of remedy, the Call Off Contract shall be terminable by immediate written notice.
- 10.2 The Supplier shall have the right to terminate any Service and/or the Call Off Contract immediately upon written notice if instructed to do so by a court of law, regulator or other appropriate authority.

## **11. CUSTOMER CANCELLATION**

- 11.1 In the event that the Customer wishes to cancel a Service, the Customer should send an email to [cancellations@Supplier.com](mailto:cancellations@Supplier.com) specifying the Customer's name, the site (including postcode) at which the relevant Service is provided and what the Service is. The Supplier will provide the Customer with a cancellation form specifying the Service details and the applicable Service termination date (the "Cancellation Form"). The Customer shall sign and return the Cancellation Form to the Supplier within five (5) Working Days of receipt,

unless the details on the Cancellation Form are not correct in which case this should be advised to [cancellations@Supplier.com](mailto:cancellations@Supplier.com) prior to the expiry of the aforementioned five (5) Working Day period. The Supplier is not able to cancel a Service without first having a signed Cancellation Form. Any Cancellation Form not signed and returned to the Supplier within five (5) Working Days shall be voidable by the Supplier.

## **12. CONSEQUENCES OF TERMINATION**

- 12.1 Subject to anything to the contrary in Sections B, C, D and E of these Supplier Terms, from the effective date of termination of the Service(s), the Supplier shall cease the Customer's access to the Service(s) including disabling any User Identifications and access to the Portal.
- 12.2 The Customer shall (at the Supplier's option, acting reasonably) (a) return to the Supplier within fourteen (14) days of the date of termination; or (b) confirm in writing the destruction of, any Documentation and/or Software in the Customer's possession.
- 12.3 Upon termination of the Call Off Contract:
  - 12.3.1 Licences granted to the Customer by the Supplier under the Call Off Contract shall immediately terminate; and
  - 12.3.2 The Customer shall, if required by the Supplier, allow the Supplier personnel to enter the Customer Premises during Normal Business Hours, subject to reasonable advance notice, for the purpose of removing the Supplier Equipment and de-installing the Service(s); and
  - 12.3.3 The Customer shall, within five (5) Working Days of termination of the Call Off Contract, return to the Supplier by same day courier the Supplier Equipment (if applicable) or pay the Supplier for the Supplier Equipment at its then-current new purchase price if not so returned.

## **13. SUSPENSION**

- 13.1 The Supplier may, without terminating the Service(s) or the Call Off Contract, suspend provision of any Service(s), in whole or in part:
  - 13.1.1 with immediate effect if the Customer is in breach of Clause 9.5 and/or Clause 9.6; and/or
  - 13.1.2 with immediate effect if the Customer is in breach of any other material obligation under the Call Off Contract and, in the case of remediable breach, the Customer fails to remedy that breach within five (5) Working Days of written notice of the breach; and/or
  - 13.1.3 with immediate effect if the Customer's use of the Service(s) may damage or disrupt the proper functioning of the infrastructure and/or equipment used to provide services to the Supplier's other customers; and/or
  - 13.1.4 with immediate effect if the Supplier is obliged to comply with the order, instruction or request of a court, government, emergency services organisation or other competent judicial, governmental, administrative or regulatory authority; and/or
  - 13.1.5 for operational reasons (including but not limited to, planned and emergency works).
- 13.2 The Supplier's right to suspend a Service(s) pursuant to Clause 13.1 above is without prejudice to the Supplier's termination rights under the Call Off Contract or at law.
- 13.3 Although the Supplier cannot routinely access Customer Content, the Supplier will notify the Customer if it becomes aware of any of Customer Content that violates the terms of the Call Off Contract ("Prohibited Content") and will request that the Prohibited Content be removed from the Service(s). If the Customer fails to promptly remove the Prohibited Content, the Supplier may (without liability) remove the Prohibited Content from the Service(s) or disable the Customer's access to the Prohibited Content. Notwithstanding the foregoing, the Supplier may (without liability) remove or disable access to the Prohibited Content without prior notice or as required by applicable legislation or to comply with any judicial, regulatory or other governmental order.

## **14. SERVICE MIGRATION**

- 14.1 Upon termination of a Service and/or the Call Off Contract for any reason the Supplier shall:
  - 14.1.1 reasonably assist the Customer in preparing an Exit Management Plan and agree provisions including providing the Transition Services upon request provided that the Customer will pay a reasonable fee (to be agreed in advance) for such Transition Services where applicable; and
  - 14.1.2 comply with its obligations contained in such Exit Management Plan and to prepare for an orderly replacement of the Service(s).

## Section B: Additional Terms for all Cloud & IT Services

<b>“Customer Assets”</b>	for the purpose of this Section, Customer Assets shall also include the Customer Servers in addition to the definition in the Call Off Agreement.
<b>“Customer Servers”</b>	the servers belonging to the Customer (if any) used in the delivery of the applicable Service(s).
<b>“Fixed Billing Model”</b>	the billing model described as such in the relevant Service Definition, if applicable.
<b>“Hybrid Billing Model”</b>	The billing model described as such in the relevant Service Definition, if applicable.
<b>“Stored Data”</b>	the Customer Content that is stored (if any) using the applicable Service(s).

### 1. GENERAL SERVICE PROVISION

- 1.1 The Supplier shall provide a reasonable amount of training (subject to agreement between the Parties regarding costs and time) in the use of the Service(s) to the Customer. Training may be provided in person or by way of training Documentation.
- 1.2 The Customer shall, where reasonably required to do so by the Supplier and where applicable to the Service(s), promptly make any changes to configuration files and/or give the Supplier diagnostic information and log files.
- 1.3 If, in providing the Cloud & IT Services, the Supplier is ‘caching’ or ‘hosting’ as described in the Electronic Commerce (EC Directive) Regulations 2002, and if, in order for the Supplier and/or its suppliers not to be liable for any damages or any other pecuniary remedy or criminal sanction referred to in Regulations 18 and 19, the Supplier needs to act expeditiously to remove or disable access to the relevant information, the Supplier shall be entitled in its sole discretion to do so, without prejudice to any other rights or remedies it may have and without liability for so doing but it shall serve notice on the Customer as soon as reasonably practicable after any such exercise of this right.
- 1.4 The Supplier has no responsibility for, or liability in respect of, the content of, or faults or errors with, the Stored Data. Subject to the terms of the Call Off Contract, the Supplier is responsible for data integrity only.

### 2. SERVICE MODIFICATIONS & MAINTENANCE

- 2.1 The Supplier reserves the right to modify the Service(s) where required to do so by a third party supplier, or in order to improve, maintain or develop the Service(s). The Supplier shall be entitled to change the location of the Customer Assets and/or the Supplier Site on giving the Customer not less than ninety (90) days’ notice provided that the new position does not materially impair the operation of the Customer Assets and/or the Service(s). The Supplier shall ensure that any Supplier-provided Connectivity Service to the original location of the Supplier Site is backhauled over a resilient network to the new location of the Supplier Site, at no additional charge to the Customer. The Customer accepts that its use of the Service may be interrupted during the relocation.
- 2.2 The Supplier shall be entitled to change its equipment, systems and/or infrastructure at the location of the Supplier Site, and will give the Customer as much notice as is reasonably possible but at least sixty (60) days’ notice of any changes where such changes may adversely affect the Service(s). The Supplier shall be responsible for the Customer’s reasonable costs directly and solely occasioned by such change.

### 3. FEES AND PAYMENT

- 3.1 The Supplier shall be entitled to increase the Annual Charge only where the Supplier can reasonably demonstrate that such an increase is due to any applicable legal or regulatory changes (including any regulated price increases by suppliers) upon as much written notice as is reasonably practicable. For the avoidance of doubt, any such increase will not exceed the increased cost incurred by the Supplier in providing the Service(s). The Supplier will provide reasonable documentary evidence to support such

price increase to the Customer, upon request.

#### **4. TERM AND TERMINATION**

4.1 Upon termination of a Service and/or the Call Off Contract for any reason:

4.1.1 at the Customer's option, provided that there are no outstanding undisputed Charges at the date of termination, the Supplier shall either (a) promptly return to the Customer all Customer Content (including Stored Data) in the Supplier's possession related to the terminated Service(s) in the format and on the media in use as of the date of such termination, provided that the Customer shall pay the cost of any media on which the Customer data is stored and a reasonable administration fee and for the shipment thereof to Customer and provided also that risk shall pass to the Customer upon the departure of the media from the Supplier Site; or (b) allow the Customer to immediately remove or delete any Customer Content and Stored Data registered and stored using the Service(s), at the Customer's own responsibility and cost provided that if the Customer fails to remove or delete any of the Customer Content within fourteen (14) days of termination, the Supplier shall be entitled to remove the Customer Content and shall have no liability to the Customer or any other person if it does so; and

4.1.2 the Customer shall (at the Supplier's option) either (a) return to the Supplier within fourteen (14) days of the date of termination; or (b) confirm in writing the destruction of, any Documentation and/or Software in the Customer's possession.

4.2 Any provision of these Additional Terms which expressly or by implication is intended to come into or continue in force on or after termination of the Call Off Contract, including 4 (Term and Termination) and 5 (Limitation of Liability) shall survive termination and remain in full force and effect.

#### **5. LIMITATION OF LIABILITY**

5.1 SUBJECT TO THE OPERATION OF ANY RULES OF LAW PERTAINING TO THE AWARD OF DAMAGES, INCLUDING WITHOUT LIMITATION, REMOTENESS OF DAMAGE, MITIGATION AND CAUSATION, ANY LOSS OF THE STORED DATA OCCURRING AS A DIRECT RESULT OF THE BREACH OR NEGLIGENCE OF THE SUPPLIER, SHALL BE DEEMED TO BE A DIRECT LOSS OF THE CUSTOMER ONLY WHEN THE CUSTOMER HAS PURCHASED CLOUD & IT SERVICES. 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 CUSTOMER'S OPTION): (I) EMPLOYING EXTERNAL THIRD PARTY CONSULTANTS IN ORDER TO HELP RESTORE SUCH LOST DATA OR (II) THE SUPPLIER USING 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 CLAUSE SHALL BE THE SUPPLIER'S SOLE OBLIGATION (AND THE CUSTOMER'S SOLE REMEDY) IN RESPECT OF SUCH LOSS OF THE STORED DATA.

5.2 ANY LOSS OF STORED DATA MUST (I) BE NOTIFIED TO EXPONENTIAL-E VIA EMAIL TO [LEGAL@EXPONENTIAL-E.COM](mailto:LEGAL@EXPONENTIAL-E.COM) WITHIN 2 DAYS OF THE LOSS OCCURRING AND (II) BE EVIDENCED ALONG WITH THE PURPORTED COST OF REINSTATEMENT TO THE REASONABLE SATISFACTION OF EXPONENTIAL-E'S PROFESSIONAL INDEMNITY INSURER'S. FOR THE AVOIDANCE OF DOUBT, EXPONENTIAL-E SHALL NOT BE LIABLE FOR ANY LOSS OF DATA THAT OCCURS AS A RESULT OF THE MALFUNCTION OF THE INFRASTRUCTURE USED TO PROVIDE THE CLOUD & IT SERVICES UNLESS THE MALFUNCTION WAS CAUSED BY EXPONENTIAL-E'S FAILURE TO MAINTAIN THE SAME IN ACCORDANCE WITH THE CALL OFF CONTRACT OR SUCH FAILURE WAS CAUSED BY EXPONENTIAL-E'S NEGLIGENCE OR WILFUL DEFAULT.

5.3 NOTWITHSTANDING THAT THE SUPPLIER IS PROVIDING CLOUD & IT SERVICES THAT MAY (SUBJECT TO THE TERMS OF THE CALL OFF CONTRACT) BE USED BY THE CUSTOMER TO ASSIST IN CIRCUMSTANCES THAT WOULD OTHERWISE CAUSE AN INTERRUPTION TO THE CUSTOMER'S BUSINESS, THE CUSTOMER ACKNOWLEDGES THAT IT IS NOT INTENDED THAT THE SUPPLIER WILL OR SHOULD PROVIDE BUSINESS INTERRUPTION (OR ANY OTHER KIND OF) INSURANCE TO THE CUSTOMER (OR UNDERTAKE ANY LIABILITY THAT WOULD HAVE THE EFFECT OF DOING SO).

## Section C: Additional Terms and Conditions for all Voice Services

- “Number”** any telephone number allocated by the Supplier for the purpose of obtaining the Service(s) and includes short codes.
- “Call”** means a signal, message or communication which can be silent, visual (including text) or spoken.
- “General Conditions”** the general conditions of entitlement as set out in the notification issued by the Director General For Telecommunications on 22<sup>nd</sup> July 2003, in accordance with section 48(1) of the Communications Act 2003.

### 1. SERVICE PROVISION

- 1.1 In order for Calls to be successfully made using the Service(s), the Customer shall ensure that the Customer Network is optimised so that voice traffic is prioritised over other data traffic.

### 2 NUMBERS

- 2.1 Where the Customer is issued with Numbers:
- 2.1.1 the Customer does not acquire any proprietary rights in such Numbers and cannot sell or transfer the Numbers; and
- 2.1.2 the Numbers may be changed or decommissioned in accordance with any regulatory requirements; and
- 2.1.3 upon termination of the Call Off Contract, the Numbers shall cease to be available for use by the Customer unless ported to a replacement service provider. The Supplier shall use reasonable endeavours to comply with any number porting request made by the Customer upon termination of the Call Off Contract, subject to the existence of a relevant Number Porting Agreement with the replacement service provider.

### 3. ADDITIONAL CUSTOMER OBLIGATIONS

- 3.1 The Customer shall:
- 3.1.1 comply with the General Conditions as issued and updated from time to time by Ofcom; and
- 3.1.2 ensure that any equipment owned by the Customer not forming part of the Service(s) connected (directly or indirectly) to the Service(s) will be technically compatible with the Service(s) and approved for such use under applicable law; and
- 3.1.3 obtain and maintain all permissions, licences and permits and to pay all rates, rents, taxes and charges which may from time to time be required in connection with the use of the Supplier Equipment at the Customer Premises; and
- 3.1.4 keep the Supplier Equipment at the Customer Premises; and
- 3.1.5 not (and shall procure that all End Users of the Service(s) shall not) use the Service(s) to make any unwanted or hoax Call that causes annoyance to the receiver of the Call, and/or is of an offensive, spiteful, abusive, indecent, defamatory, obscene or menacing nature including unauthorised or ‘spam’ Calls and ‘silent’ Calls as defined by Ofcom in its ‘Statement of policy on the persistent misuse of an electronic communications service’ published 1 March 2006, and any subsequent update.
- 3.2 The Customer shall indemnify and keep the Supplier indemnified and hold the Supplier harmless from and against all losses, liabilities, damages, costs, claims, demands and expenses arising out of, or in relation to, any breach by the Customer or any End User of the provisions of Clause 3.1.1, 3.1.3 and/or 3.1.5. This Clause shall survive termination and continue in full force and effect.
- 3.3 The Customer’s compliance with this Clause 3 shall be entirely at the Customer’s cost. The Customer shall inform the Supplier of any actual or suspected breach of this Clause 3 of which the Customer is aware.

## Section D: Additional Terms and Conditions for all Connectivity Services

<b>“Access Circuits”</b>	the access mechanisms that connects the Customer Premises (usually by fibre, copper or broadband) to the Supplier network.
<b>“Customer Premises Equipment (CPE)”</b>	Supplier Equipment or Purchased Equipment located at the Customer Premises.
<b>“Permissions”</b>	the permissions granted to a telecommunications operator pursuant to the Communications Act 2003 or, in relation to any non-UK services, any regulatory framework applicable to the Service(s) in the country of provision.

### 1. SERVICE PROVISION

- 1.1 Provision of Access Circuits and the Charges for Connectivity Services are subject to site survey following order placement.
- 1.2 The Supplier (and/or its suppliers) will conduct Customer Premises survey(s) to ascertain whether cabling and/or associated infrastructure is required to be installed at the Customer Premises in order to provision the Smart Wires Service(s) and as a result additional costs (known as “ECC’s” or “Excess Construction Costs”) apply.
- 1.3 Where ECC’s apply, the Supplier will submit to the Customer a Change Order detailing what additional works are required and the Charges payable.
- 1.4 Any signed Change Order shall supplement the original Order Form and together they will be considered to comprise one single Order Form (with the details on the Change Order taking precedence in the event of conflict).
- 1.5 If the Customer does not sign and return a Change Order detailing ECCs within five (5) Working Days of submission by the Supplier, the original Order Form in so far as it pertains to the Customer Premises that are the subject of the detailed ECCs will immediately be considered cancelled without liability on the part of either Party.
- 1.6 Following the completion of a Customer Premises survey and, if required, the signing of a Change Order, the Supplier will advise any required changes to the Target Service Commencement Date to the Customer.
- 1.7 To enable the Supplier to provide the Connectivity Services, the Customer shall:
  - 1.7.1 prepare the Customer Premises and the Customer Networks in accordance with the Supplier’s reasonable instructions; and
  - 1.7.2 connect any tail circuits to the CPE in accordance with the Supplier’s reasonable instructions; and
  - 1.7.3 procure (and be responsible for the cost of procuring) any third party consents that may be required for the Supplier (and/or its Contractors and suppliers) to install and retain the Service(s) and, if applicable, the Supplier Equipment at the Customer Premises, including without limitation, any landlord wayleave consents.
- 1.8 Failure or delay of the Customer to install and/or connect any Customer Premises Equipment shall not result in any delay to the Service Commencement Date or the Customer’s obligation to pay the Annual Charge.
- 1.9 The Supplier and its suppliers, in accordance with best industry practice, operate a two-week network freeze during late December and/or early January and consequently, no Service(s) can be handed-over or changes effected to existing Service(s) during this period and lead-times shall be extended accordingly. For the avoidance of doubt, existing Service(s) will continue to be provided and supported as usual during the network freeze.

### 2. ABORTED CUSTOMER PREMISES VISITS

- 2.1 In respect of Access Circuits, the Customer shall reimburse the Supplier for any charges levied on the Supplier by the relevant tail circuit supplier as a result of that tail circuit supplier not being given access to a Customer Premises as previously arranged and agreed with the Customer. The Customer shall be entitled to see reasonable documentary evidence attesting to such incurred charges for aborted Customer Premises visits by the tail circuit supplier.

**3. FEES AND PAYMENT**

3.1 As from the Service Commencement Date, the Annual Charge and the Usage Fees shall, subject to Clause 3.2 below, be firm and fixed for the duration of the Term.

3.2 The Supplier shall be entitled to increase the Annual Charge and the Usage Fees where the Supplier can reasonably demonstrate that such an increase is due to an increased cost of providing the Service(s) solely caused by a legal or regulatory change (including a regulated price increase by a supplier). Any such increase will not exceed the increased cost incurred by the Supplier in providing the Service(s). The Supplier will provide reasonable documentary evidence to support such price increase to the Customer, upon request.

**4. ADDITIONAL CUSTOMER OBLIGATIONS**

4.1 The Customer shall supply, at its cost, on an on-going basis, all space, power supplies, cables, trunking, electricity and air-conditioning as are required to receive the Service(s) and ensure the correct operation of the CPE.

**5. IMPOSED AMENDMENTS**

5.1 The Supplier shall have the right, by serving notice to the Customer, to amend this Section D at any time when this is required to comply with any regulations or requirements imposed upon the Supplier or its suppliers under its Permissions.

## Section E: Additional Terms and Conditions for Professional Services

<b>“Customer Materials”</b>	any and all materials or Technology that is provided by the Customer to the Supplier that relate to the provision of the Service(s) and the completion of the Deliverables. Customer Materials shall not be included in the Deliverables unless expressly stated in the Call Off Contract.
<b>“Deliverables”</b>	all products and materials developed by the Supplier relation to the Project in any media including any Prior Technology incorporated therein.
<b>“Initial Term”</b>	the initial term for which each Service shall be provided to the Customer, starting on the relevant Service Commencement Date and ending (i) when the number of Man Days purchased have expired (where a fixed number of days have been purchased as set out on the Order Form) or (ii) upon completion of the Project (where the Customer has chosen to purchase the Professional Services on a ‘Time and Materials’ basis). For the avoidance of doubt, for the purpose of Professional Services only, this definition replaces the definition contained within Section A.
<b>“Man Day”</b>	a day of not less than seven and a half hours spent working on the Project.
<b>“Prior Technology”</b>	means any and all Technology incorporated into the Deliverables that is developed or otherwise created by or on behalf of the Supplier or licensed by the Supplier, and which may be improved or modified in the course of developing the Deliverables.
<b>“Project”</b>	the project, as described in the Call Off Contract
<b>“Project Milestone”</b>	if applicable to the particular Project, a target date by which a part of the Project shall be completed, as specified in the Call Off Contract.
<b>“Supplier Materials”</b>	Means the Prior Technology and the Deliverables.
<b>“Technology”</b>	means algorithms, approaches, code, concepts, data, designs, developments, documentation, discoveries, expressions, inventions, know how, methodologies, multi-media files, object codes, processes, programs, skills, software, techniques, technology, text, tools, and web pages.

### 1. SERVICE PROVISION

- 1.2 The Supplier shall manage and complete the Project, and deliver the Deliverables, in accordance with the Call Off Contract.
- 1.3 The Supplier shall reasonably co-operate with the Customer in all matters relating to the Project and shall appoint a Project Manager, who shall have authority to commit the Supplier on all day-to-day matters relating to the Project.
- 1.4 The Supplier shall use reasonable endeavours to ensure the continued availability of each member of the Supplier’s project team during the Project.

### 2. FEES AND PAYMENT

- 2.1 Where the Service(s) are provided on a time-and-materials basis:
  - 2.1.1 the charges payable for the Service(s) shall be calculated in accordance with Service Definition; and
  - 2.1.2 The Supplier shall be entitled to charge on a pro-rata basis for part-days worked by the Supplier’s project team; and
  - 2.1.3 the Supplier shall be entitled to charge at 1.5 times the prevailing standard daily/hourly fee rates for work performed outside of Normal Business Hours at the Customer’s request on a Working Day; and
  - 2.1.4 the Supplier shall be entitled to charge at 2 times the prevailing standard daily/hourly fee rates for work performed outside of the Working Day at the Customer’s request; and
  - 2.1.5 The Supplier shall, upon the Customer’s request, ensure that the members of the Supplier’s project team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice; and



- 2.1.6 The Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials for the month concerned, calculated as provided in this Clause 2.1. Each invoice shall set out the time spent by each member of the Supplier's project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 2.2 Where the Service(s) are provided for a fixed price or fixed number of Man Days, the total price for the Service(s) shall be the amount set out in the Order. The Charges shall become invoiceable upon signature of the Order Form unless otherwise agreed between the Parties in the Call Off Contract. Where the Supplier, at its sole discretion, agrees to allow the Customer to pay in stages, the relevant stages and Project Milestones to be completed prior to an invoice being issued at each stage shall be agreed between the Parties and detailed in the Call Off Contract.
- 2.3 The Supplier's charges on a time-and-materials basis exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by members of the Supplier's project team in connection with the Service(s), and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Service(s). Such expenses, materials and third party services shall be invoiced by the Supplier at cost price.
- 2.4 The Supplier shall be entitled to increase the charges where the Supplier can reasonably demonstrate that such an increase is due to an increased cost of providing the Service(s) solely caused by a legal or regulatory change. Any such increase will not exceed the increased cost incurred by the Supplier in providing the Service(s). The Supplier will provide reasonable documentary evidence to support such price increase to the Customer, upon request.
- 2.5 Due to the nature of the work to be undertaken by the Supplier both Parties accept that it may be necessary to alter or adapt such services and that any additional works required may not be included in any fixed Charges detailed in an Order (such as where the Customer requests Service(s) which are 'out of scope'). The Parties therefore agree that the Supplier may revise the Charges in light of any to the Service(s) made pursuant to the Change Management Process. Until such revised Charges are accepted in writing by the Customer, the Supplier shall not be obliged to commence work or alter or adapt the Service(s) and shall not be liable for any delay caused by the Customer failing to approve such additional Charges.
- 2.6 The Customer shall provide the Supplier's project manager with prior notice of postponements or delays at least ten (10) Working Days in advance of the scheduled event. If the Supplier is not reasonably able to 'work-around' the postponement or delay, especially in instances where the Service(s) require participation by Customer personnel that become unavailable, the Supplier shall be entitled to charge the Customer for the time lost and the reasonable additional expenses incurred due to such delays or postponements at the Supplier's standard hourly rates.
- 3. ADDITIONAL SUPPLIER OBLIGATIONS AND WARRANTIES**
- 3.1 The Supplier warrants that the Services to be performed hereunder will be done in a workmanlike manner and shall conform to the standards of the information technology and telecommunications industry. The Customer must notify the Supplier of any failure to so perform within five (5) days of the completion of the Services. The Supplier's entire liability and Customer's sole remedy for the Supplier's failure to so perform shall be for the Supplier to, at its option (acting reasonably), (i) use reasonable efforts to correct such failure, and/or (ii) terminate the Call Off Contract and refund that portion of any fees received that correspond to such failure to perform.
- 4. CUSTOMER OBLIGATIONS AND WARRANTIES**
- 4.1 The Customer shall:
- 4.1.1 provide, in sufficient time to enable the Supplier to perform and/or provision the Service(s), such information, co-operation and support as the Supplier may reasonably require pursuant to the Call Off Contract and in order to carry out the Project and the Service(s) and the Customer shall ensure that all information the Customer provides is accurate in all material respects; and
- 4.1.2 provide the Supplier with reasonable office and information technology facilities as are reasonably required by the Supplier to perform its obligations under the Call Off Contract; and

- 4.1.3 appoint a project manager, who shall have the authority to commit the Customer on all matters relating to the Project; and
- 4.1.4 within five (5) Working Days of termination of the Call Off Contract, return to the Supplier by same day courier any Prior Technology in the Customer's possession.
- 4.2 The Customer shall not (and shall procure that all users of the Service(s) shall not):
  - 4.2.1 allow any unauthorised user or third party access to, or use of, the Prior Technology and shall take all reasonable security measures to prevent the same; and/or
  - 4.2.2 add to, modify or interfere in any way with the Prior Technology.
- 4.3 The Customer's compliance with this Clause 4 shall be entirely at the Customer's cost.

## **5. INTELLECTUAL PROPERTY**

- 5.1 All Intellectual Property Rights in any Prior Technology issued or created by the Supplier pursuant to it, shall at all times remain the property of the Supplier.
- 5.2 Nothing in the Call Off Contract shall act to transfer any Intellectual Property Rights in respect of the Service(s) or the Supplier Materials to the Customer but the Supplier shall, upon payment in full by the Customer and to the extent that the Supplier Materials are contained in the Deliverables, licence the right for the Customer to use the Supplier Materials on a non-exclusive, non-transferable without rights to sub-licence, royalty-free, worldwide basis for the term of the Call Off Contract to such an extent it is necessary to do so to enable the Customer to make reasonable use of the Deliverables. The Customer may also make, for internal use only, a reasonable number of copies of the original Deliverables and the Supplier Materials in amounts reasonably necessary for Customer's internal use. Customer shall not sublicense or otherwise transfer to any third party the Supplier's Materials or the Deliverables and must not modify, alter, decompile, dis-assemble, reverse-engineer, or create derivative works from the Deliverables.
- 5.3 The Customer acknowledges that where the Supplier does not own the Supplier Materials, the Customer's use of the Supplier Materials is conditional upon the Supplier obtaining a written licence (or sub-licence) from the relevant licensors on such terms as will entitle the Supplier to licence such rights to the Customer. The Customer is obliged to comply with any End User Licence Agreements from time to time in force and where necessary inform the Supplier of the number of users using the Software if the Supplier's licensors require such information as a condition of supplying such licences.
- 5.4 The Customer warrants that any Intellectual Property Rights in any Customer Materials provided by the Customer in connection with the Service(s) belong to the Customer or is appropriately licensed by the Customer from any third party.
- 5.5 The Customer hereby grants to the Supplier a non-exclusive, worldwide, irrevocable (save upon termination of the Call Off Contract), royalty-free, non-transferable license under Customer's Intellectual Property Rights in the Customer Materials necessary for the Supplier to use, make, copy, modify and create derivative works of the Customer Materials for the purpose of developing and testing the Deliverables.
- 5.6 All the Supplier Materials supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at the Customer's risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

## **6. TERM AND TERMINATION**

- 6.1 Save in the event that the Project is for a fixed Term (in which case the Call Off Contract shall automatically expire after completion of that Term unless otherwise extended by agreement of the Parties), the Supplier shall continue to provide the Service(s) until completion of the Project.
- 6.2 In the event of termination of an individual Service by the Customer and/or the termination of the Call Off Contract by the Customer without cause, the Customer shall be liable to pay the following charges for such early termination:
  - a. where cancelled less than 3 days prior to the scheduled commencement of the Service(s)

- 100% of the Charges due to be paid for the Service(s) or remaining Service(s) if the Service(s)
- b. where cancelled between 4 and 7 days (inclusive) prior to the scheduled commencement date of the Service(s)
  - 75% of the Charges due to be paid for the Service(s)
- c. where cancelled between 8 and 15 days (inclusive) prior to the scheduled commencement date of the Service(s)
  - 50% of the Charges due to be paid for the Service(s)
- d. where cancelled after 16 days prior to the scheduled commencement date of the Service(s)
  - 20% of the Charges due to be paid for the Service(s)

For the avoidance of doubt in sub-clauses (a) to (d) above these charges for early termination shall also apply where a Customer has already received partial Service(s) and is terminating the remainder of the Service(s) (such as where a Customer seeks to terminate between Project Milestones and earlier Project Milestones have already been completed).

6.3 Clauses 2 (Fees and Payment), 4 (Customer Obligations and Warranties), 5 (Intellectual Property) and 6 (Term and Termination) of these Additional Terms shall survive termination and continue in full force and effect.