

# Terms and Conditions

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## Cloudzone.uk

By Answers and Solutions Ltd

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These terms and conditions apply to contracts between Answers and Solutions Ltd and a Buyer drawing services under the G-Cloud 13 framework. They are to be read in conjunction with our Service Descriptions and the Crown Commercial Services [CCS] G-Cloud call-off and framework documents listed below.

Certain services have service-specific additional items, provided the opening section. A service-specific item takes precedence over a similar item in the general terms. Otherwise, these articles apply across all services offered.

The Service Description and pricing documents apply as an overlay to the terms in this document.

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### Documents issued by CCS and referenced herein

- G-cloud-13-proposed-framework-agreement
- G-cloud-13-proposed-call-off contract

“The Supplier” means Answers and Solutions Ltd

“The Buyer” means the entity that purchased services from Answers and Solutions Ltd via G-Cloud

A Glossary of terms that are additional to the CCS Glossary is at the end of this document.

When Cross Refs to CCS paragraphs are given, they are marked CCS Para X.Y. These may come from any of the schedules in either of the above docs and need to be located via document search and usage context. As a generalisation, the layout of terms and conditions follows the layout of the CCS terms.

## Service Specific Terms and Conditions

Shopping cart: Website with full eCommerce capability

And/Or

Auctioneers Online Auction System with Multi-Vendor Shopping Cart and Classified Advert modules

- S1 The buyer will require a suitable credit card processing facility. The supply of this service is by a bank or other Financial institution. We can suggest a supplier, but the selection is out of our scope.
- S2 The prices were calculated using L5 rates from the SFIA rate card. The maximum liability for default is fixed at £3000. A higher level can be agreed, and the pricings can be re-calculated using the L7 values.
- S3 We shall give the buyer our informed opinion on products selected. Our product choice has a ten plus year history.

**Terms and Conditions applicable to ALL services continues on Page 3**

## Terms and Conditions applicable to ALL services

### 1.0 Invoicing and Payment disputes [ Paras 7.11 and 18.6 ]

- 1.1 A payments dispute is usually the first sign of a wider contractual disconnect. To ensure a mutually beneficial relationship, a monitoring protocol for services delivered shall be adopted.
- 1.2 Invoices for predictable recurring amounts may be raised on the 1<sup>st</sup> day of the period, where that period is one month or less. Invoices will be on 30-day terms. As per CCS para 7.11, the Buyer shall have ten working days to dispute them. After that date, all payments shall be deemed as undisputed. Once an invoice is overdue, the Supplier may invoke CCS para 18.6, which gives further time for the Buyer to address the situation.
- 1.3 Minimum order values. Where a service has a minimum order value stated, that amount shall be billed when the services consumed in that billing period drop below that minimum quoted figure.
- 1.4 An invoice will be raised monthly for service items that are new, due to cease within the next 30days, or not covered by a contractual rolling notice period. Invoices will be on 30-day terms

The Supplier can raise a weekly “services ordered and delivered” notification from the first Friday of a “go-live” date. The purpose of this notification is the certification that the services were delivered, rather than a demand for payment. The “services ordered and delivered” schedule notification may be delivered to a nominated manager(s) with or without financial authority. The Buyer shall have ten working days to notify the supplier of any discrepancies, after which, they shall be admitted as being due for payment.

- 1.5 The financial instrument shall be the invoice(s), accompanied by a payment requested statement. Invoices will be raised monthly based on the amounts listed on the credit account. The invoice will be delivered by email to a member of the Buyer team holding financial authority, as identified in the contract.

### 2.0 Changes to the Supplier’s Supply Chain.

CCS Para 32.2 is constrained to mean that only changes to the subcontractors whose contract underpins the specific service purchased by the Buyer need to be notified. Changes to subcontracts or services not uniquely part of that service are excluded from notification. Answers and Solutions Ltd use multiple suppliers and may use any of the suppliers that were on its supplier panel on the date of contract sign-up without this being deemed a change.

CCS Para 32.2 does not apply to 2<sup>nd</sup> tier suppliers, ie those organisations who in turn supply Answers and Solutions Ltd’s own suppliers.

In context, Para 32.3 is incorrect. It shall be taken to mean “under this Call-Off Contract with the Variation”, it currently reads “without”.

### 3.0 Software licencing and IPR.

These clarifications do not alter the CCS framework agreement [ Para's 11 and 15 ], they identify which scenarios from the CCS framework will apply. This adds clarity surrounding IPR rights and Open Source software. If the Buyer wishes to specify one of the other scenario's they may use Schedule 4 "Alternative Clauses" permitted by the framework. CCS have stipulated that the framework is the provision of a service rather than capital purchases. The obligations, liabilities and related ownership costs fall on the Supplier after the Buyer ceases the service. CCS expects all IPR to be respected, and that the Supplier will obtain all software licences required.

#### IPR within Software CREATED for the Buyer

CCS Para 15.1 was clarified in CCS G-Cloud 12 Q&A #307, #306 and #394 when it was qualified to mean "where the supplier creates the software for the Buyer". The intent is to avoid the situation whereby on exit the Buyer cannot obtain licences from a 3<sup>rd</sup> Party to continue service. CCS Para 11.4 extinguishes P-11.2 and P-11.3 insofar as that it provides that the Supplier can notify the Buyer if Para 11.2 or P 11.3 don't apply. The Buyer is notified that the software items used were published works available from the open market. The Buyer could instruct a future supplier to acquire the same products from the marketplace on exit, subject to the usual software lifecycle and upgrade policies for those products.

- 3.1 The default option offered to buyers is CCS's Para 11.1. This makes it acceptable to the Buyer that the Supplier may use commercially licenced software. The licence(s) we purchase are applied across multiple buyers and thus non-re-assignable. CCS Para 11.4 applies to all services offered by Answers and Solutions Ltd. Products used by Answers and Solutions Ltd were obtained from the marketplace and available for purchase by a subsequent service provider.
- 3.2 We only use licenced software available on the Open Market. CCS Para 11.6 provides for an IPR claim following an audit made by the licensor of software we use when creating our service. It does not permit audit from agencies not appointed by a software licensor.
- 3.3 CCS Para 11.7.2 and 11.7.3 includes executable programs as well as the data manipulated by those programs. Where the Buyer has contracted a 3<sup>rd</sup> Party to supply software which is uploaded onto one of our systems, that party shall be deemed to be an agent of the Buyer.

### 4.0 Exit – Ending the Call-off contract

- 4.1 A Buyer may request a non-material change to the contract at any time prior to the start of the contract's termination phase. The Buyer may give notice of termination by raising a formal service change request.

Professional services in aid of exit can only be provided if the payment account was fully in order the day before the notice was given. During the termination phase of the contract, no configuration or other changes will be permissible. All services being drawn down the day prior to entering exit, must be drawn down throughout the notice period and all services will all cease on the final day.

Once the Buyer has given notice of termination, it cannot be withdrawn. Should the Buyer need to prolong service past the cessation date, an extension contract can be setup provided that is requested within 15 days of cessation. After that date, system resources will be reallocated.

- 4.2 Substantial downsizing requests, i.e. 20% or more by value, requires 30 days' notice. A service offering is provided "as a whole". If the Buyer makes substantial changes to the value of monthly services consumed, the Supplier reserves the right to reject the request. CCS Para 32.3 address this.

This clause is not intended to prohibit minor change to scope, so CCS's clause 32.1 still stands. This clause will only be triggered if the Supplier determined the changes to be major downsizing request, changing contract scope.

- 4.3 Our default data destruction method is to place it beyond reach. Data can be destroyed via full hardware destruction if necessary. We ordinarily use shared infrastructure, so any anticipated requirement for hardware destruction must be notified before contract commencement.

- 4.4 CCS clauses 19.5.1 and 19.5.2 addresses a scenario whereby the Buyer installs their own software onto our service. We assume that if the Buyer installs software or other code onto our system, then the Buyer retained copies of the software alongside licencing and other IPR details. Our obligation upon exit is limited to the deletion of the installed software licenced to the Buyer and its associated data. If an explicit deletion date is not otherwise agreed, this will be one month after cessation.

If the Buyer installs their own software, we shall assume that the Buyer has procured support for that product from a 3<sup>rd</sup> Party, unless an explicit support contract is in place for us to maintain the specified product. On exit, we shall assume the Buyer will decommission any Buyer supplied software and associated data using 3<sup>rd</sup> party support.

- 4.5 CCS Para 19.1. does not negate CCS Para 18.2.2. The Buyer is permitted to suspend the Call-off contract at any time. The difference between suspension and termination is that the Buyer can reactivate the contract. Service fees continue to accrue until an end date is reached.

- 4.6 Re CCS Para 13.6.6 and CCS Q&A Q 407 and 274. Re Ethical standards and the use of Artificial intelligence (AI). This clause does not apply unless specified in full on the order form.

### **GDPR – GDPR aspects of contract exit. - Buyer Data**

- 4.7 The destruction of data after the contract exit: The Buyer is expected to take their data with them when they leave. As per the submitted CCS Service Questionnaires, our standard data retention shall be one month from exit. This is because, under GDPR regulations, we have ongoing liabilities until such time as the data is destroyed. Once taken offline, the data will become inaccessible to standard users. A DR recovery process will be utilised if access is required and will be required if access or formal audit events are initiated. The fees to do this work will be as per the SFIA time charges schedule. An "on ice" service may be available whereby the DR data can be retained after exit for longer periods. That would need to be contracted separately. If a legal basis for the retention of Buyer data by the Supplier beyond one month exists, and the Buyer is expecting the Supplier to service that, the Buyer shall notify the Supplier before contract commencement.

## The Employment Regulations (TUPE)

- 5.1 Re: CCS Para 29. Answers and Solutions do not have any overhanging TUPE liabilities through the acquisition of other businesses. Answers and Solutions shall not be required to take on the employment of any staff from within the Buyer organisation.
- 5.2 CCS Para 29 does not, therefore, apply to any contract entered into.

## Additional G-Cloud services and Collaboration

- 6.1 Re: CCS Para 30 and 31. Answers and Solutions do not envisage the need for the establishment of a formal collaboration vehicle. If we are approached to collaborate with another g-Cloud software supplier who requires a hosting platform, we will look at that favourably providing that GDPR responsibilities are clearly demarked and each party is deemed standalone with respect to the data processor role. We will not entertain joint and several data processor liabilities.

If the Buyer wishes the Supplier to monitor services obtained by the Buyer from a 3<sup>rd</sup> party, the Buyer may avail themselves of our PenTesting and ongoing monitoring services as detailed in the relevant service schedule. That 3<sup>rd</sup> Party would at all times remain a sub-contractor of the Buyer unless the Buyer explicitly instructed the Supplier to assume responsibility.

## GDPR - Data Protection

Ref: Schedule 4 from the CCS Framework agreement.

- 7.1 The CCS framework stipulates that the Buyer shall be the sole data controller and that the Supplier is the Processor. By default, Annex 2 of Schedule 7 shall not apply, unless the Buyer adds the joint GDPR responsibilities line item to the order.
- 7.2 The Buyer shall indemnify Answers and Solutions against negligent or fraudulent acts by their employees or appointed sub-contractors of systems admin staff that lead to data loss or misuse. This includes, but is not limited by, actions such as the unauthorised downloading of data, unauthorised local storage, fraudulent alteration and/or access to email and other messaging platforms used by the Buyer.
- 7.3 Where a system has been accessed using the login credentials of a Buyer's 1<sup>st</sup> Party, it shall be assumed that the activities were undertaken by the Buyer's representative. In essence, this requires that the Buyer's staff do not disclose user identities or passwords to others.
- 7.4 Should an additional 3<sup>rd</sup> party data processor be appointed by the Buyer; they shall be the Buyer's subcontractor and deemed to be the data processor for data under their direct control. The CCS response to this [ Q1068 ] accepts that neither CCS nor the Buyer can allocate liability. This applies to 3<sup>rd</sup> Parties listed in G-cloud 12 as well as other non-G-Cloud listed suppliers chosen by the Buyer.
- 3<sup>rd</sup> Party organisations shall not be deemed as sub-processors of Answers and Solutions Ltd unless the Buyer requests that Answers and Solutions appoint them as a subcontractor, and suitable commercial subcontractor arrangements put in place.

An example might be another G-Cloud provider offering a software solution with whom the Buyer contracts but wishes Answers and Solutions to host. A second example would be a website transferring the website visitor to another organisation's website, e.g. a bank's website for credit card processing to collect funds for the Buyer's business. Again, a further example would be software installed by the Buyer or the Buyer's agent onto a system operated by Answers and Solutions. These are only examples, the determinant being that the data controller caused data manipulation to be undertaken by a 3<sup>rd</sup> party, thereby making them the Processor for that action. There is no such thing as joint and several liability for the actions of other Processors unless appointed by Answers and Solutions Ltd as sub-processors.

- 7.5 When the Buyer appoints a 3<sup>rd</sup> party as the provider of an application to be hosted on a platform managed by Answers and Solutions Ltd, Answers and Solutions Ltd's GDPR liabilities are limited to the ability to restore data under a disaster recovery plan, as demonstrated and accepted by the Buyer during system setup. If the restored data was damaged by the 3<sup>rd</sup> Party's system, eg via an encryption service, de-encryption shall be the duty of the 3<sup>rd</sup> party supplier.

Answers and Solutions Ltd shall not be liable for the GDPR consequences if the Buyer installs, or allows to be installed, software that gives a 4<sup>th</sup> party access; whether with or without a legal connection to the Buyer, or the Buyer's agents. The same applies if the 3<sup>rd</sup> party solution allows illegal access to data processed by the 3<sup>rd</sup> Party's software solution.

- 7.6 Tracking cookies: Buyers are encouraged not to use tracking cookies or similar in their applications. It should be noted that some site operators, e.g. Facebook, can track an end user's usage of other websites. The Supplier has no control over how end users access data the Buyer gives them access to.

### Protection of Information - Protectively Marked data

- 7.9 HMG guidance is that information categorised as **OFFICIAL** may be managed with good commercial solutions. Data classified **SECRET** or above cannot be stored on a shared platform and needs dedicated hardware with bespoke network configurations. The Buyer must inform the Supplier before entering into a contract if they plan to store secret data on our equipment.

### Data backup and recovery

- 8.0 Different backup arrangements can be specified in service-specific terms and conditions. If so, it will be recorded the opening service-specific paragraph(s). Otherwise, the default backup service will apply, as detailed here.

The location of frequently updated Buyer data for backup purposes shall be agreed during system setup. Such data will be backed up daily. Data backup retention: A grandfather, father, son backup rotation will be used. Daily backups will be retained for 14 days. Weekly backups retained for four weeks. Monthly backups shall be retained for 3months. Ransomware attacks are hard to protect against since even the backups can become encrypted. Such attacks are rare, and we strive to protect data, but we cannot be liable beyond the liability cap set in the order form.

More intensive or complex rotations are possible. They would need to be agreed and some consultancy services would usually be involved when setting up. Usually, system and program data are only backed up weekly.

- 8.1 The standard system recovery shall be a system-wide restoration. The restoration of a specific user's data from system-wide backups, although possible, is rarely appropriate. Good quality applications should give individual end-users the ability to backup their own data at the application level and on a "per account" basis.

Damage to data at a user account level is usually caused by user error rather than systems failure. Recovery of such data from system-level backups will require the setting up of dedicated recovery hardware and the manual extraction of the relevant files. SFIA rates will apply. The Supplier will only be responsible for the restoration of user-specific data when it can be shown to be the result of a system-wide fault.

## Audit

Ref: [Annex 1 and 2: from the CCS Framework agreement](#)

- 9.1 Audit Re: Call Of contract CCS Para 4

CCS Para 4.1(a) The Data centres operated by our suppliers are not open to the public. Physical inspection is not possible. We use datacentres in the UK and mainland Europe. If the buyer wishes to visit those premises where access is possible, the Buyer shall reimburse the Supplier's travel costs and our time charges. These will be L6 from the SFIA rate card.

Para 4.1(b) is restricted to the record maintained under Article 30 GDPR, and full records in compliance with this article are maintained. Access Shall mean the ability to inspect relevant records using "over the wire" from premises provided by the Supplier to the Buyer's auditor from where they may view these records. We use datacentres in the UK and mainland Europe whose security is assured because customers do not have physical access. If the Buyer foresees a need to physically inspect equipment during the contract lifetime, they may nominate server room(s) that they own and operate. We would co-locate our equipment at those premises. Since such solutions are "out of scope" for this framework, the contract would have to be drawn up under a different framework. To maintain data security, the premises (datacentre) where the data is actually stored will remain inaccessible.

## IP Addresses and PKI / SSL Certificates

- 10.1 IP address(s) and SSL certificates are tied the infrastructure of our suppliers; consequently, they are not transferable. They shall remain our property, and our sub-contractors will reuse these / revoke these resources once the contract ends. This is standard practice and does not form a constraint to the operation of your system.

## Miscellaneous Clauses

- 11.1 Maintenance periods are necessary. Over the next five years, systems will need to be maintained and updated. Maintenance Outages are unlikely, will be permissible, during the window from 10pm Friday to 10pm Sunday. Although unlikely, the Buyer's administrative officer may require access to the Buyer's domain's DNS control panel, or be willing to delegate such access to the Supplier in order to make any necessary changes.
- 11.2 We expect Buyer's to make fair and reasonable use of our resources. In particular, activities that breach GDPR or threaten our platform's reputation through the transmission of high volumes of email or other traffic
- 11.3 Even if a default occurs, charges for past works completed, invoiced and paid for by the Buyer still stand; once an invoice has been paid, it is assumed that the Buyer accepted it was correct and in order.
- 11.3 The system must not be used for financial trading platforms (eg stocks and shares, commodity trading or anything similar). If this clause is breached, our liability is limited to one month's worth of the monthly fee.
- 11.4 Any typographical, clerical, spelling or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documents, or information issued by Answers and Solutions Ltd shall be understood by its context and subject to correction. No liability shall be apportioned to the Supplier due to typographical errors.
- 11.5 Separation between CCS's losses and the Buyer's losses. This intent of this clause is to prevent the amalgamation of liability caps in the call-of contract with the framework agreement. Were that to be permitted, the liability cap stipulated in both documents could in effect be combined, potentially nullifying the effect of a lower liability cap in the contract when the Buyer wanted a low-cost service agreed to by the Supplier based on a low-value liability cap.

Para 4.5 and 4.5.4 in particular of the framework agreement only covers the supply of MI data, or related data to CCS or losses that arise outside of a Supplier / Buyer dispute default or similar. The liabilities at 4.5.4 do not include Buyer data liabilities, which are solely governed by the liability cap set in the "limit on Parties liabilities" section of the contract order form. This is confirmed by the CCS answers to this in Q&A answers to question by various framework applicants.

Para 8.39 allows CCS to act as the Buyer's agent. When acting in this capacity, the losses and liabilities are capped as per the provisions of the call-off contract. If a Supplier default occurs, it remains a Buyer loss even if the CCS is acting as the Buyer's agent. The impact or costs cannot be transcribed from a Buyer's loss to a CCS loss. The maximum liability applicable is that described within the Buyer's contract.

If CCS are claiming losses in their own right, then they must show that the loss to CCS was not attributable as a supplier failing towards a specific Buyer, a loss which is then transferred to CCS in order to increase the available headroom in a Buyer claim.

- 11.6 Where a liability cap is expressed as a % of the charges payable by the Buyer to the Supplier, that shall be calculated on the charged invoices up until the date of the default. Un-invoiced future charges are excluded from the calculation.
- 11.7 These T's and C's were originally prepared with reference to G-Cloud 12. Most of the terms in the CCS documentation have been carried forward from G-Cloud 12 to G-Cloud 13. If a Cross-Reference to a CCS paragraph is out-of-context in a G-Cloud 13 document but has the correct context

in the G-Cloud 12 version, then, provided that paragraph was carried through, paragraph numbering shall be adjusted to correct the change in CCS's paragraph numbering.

## Glossary

This glossary adds further terms or further "in context" meanings to terms to those published by CCS. The table shows the additional terms introduced by Answers and Solutions Ltd, the Supplier.

<b>Expression</b>	<b>Is this an additional meaning to an existing CCS term</b>	<b>Meaning</b>
<b>Agent of the Buyer</b>		Where the Buyer contracts directly with a 3 <sup>rd</sup> Party, that 3 <sup>rd</sup> Party shall be deemed to be an agent of the Buyer. Even if informal communications take place directly between the Supplier and the 3 <sup>rd</sup> Party, contractual communications must be routed via the buyer will be treated "as if it was" the Buyer when received. The actions of a 3 <sup>rd</sup> party will be treated "as if they were performed by" the Buyer.
<b>Application</b>	✓	The CCS usages reads "The response submitted by the Supplier to the Invitation to Tender"  An additional meaning is the software item (or application) presented to the Buyer's end user users. The application is dependent on the Supplier's system to function. To be taken as "in-context" usage.
<b>Data Loss Event</b>		An event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Framework Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
<b>Supplier</b>	✓	The primary meaning of Supplier used this means Answers and Solutions Ltd as the Supplier to a CCS recognised Buyer through G-Cloud.  A secondary meaning, derived from an "in context" reading shall be an entity that makes a supply of services to Answers and Solutions, where that supply is not ring-fenced / allocated against a specific Buyer's account held by Answers and Solutions.

<b>Subcontractor</b>		Means any 3 <sup>rd</sup> party engaged by the Supplier under a subcontract when the scope of that subcontract specifies that the work is for a nominated Buyer. When the services or goods purchased are not uniquely provisioned for a specified Buyer, they are deemed suppliers to Answers and Solutions. Examples include the services of a utility company, the provision of datacentre co-location space, services, related systems and parts thereof. These are supplies whose scope stretches across the whole range of business activities, without being linked to a specific CCS delivery, even if they were contributing factors. They are deemed to be suppliers to Answers and Solutions and not subcontractors.
<b>System</b>		The underlying software systems primarily managed by the Supplier, as an enabler of Cloud Application software which benefits the Buyer / Buyer's end users. Management access rights are restricted and may only be held by the Buyer's IT team.
<b>Open Market</b>		The placement of software or services onto the market in a non-exclusive way whereby anyone may contract to purchase them.
<b>Party</b>		The Buyer or the Supplier and 'Parties' will be interpreted accordingly.
<b>1<sup>st</sup> Party</b>		An employee of the Buyer, or someone or another entity with a contractual relationship (other than Answers and Solutions Ltd)
<b>3<sup>rd</sup> Party</b>		An entity other than the Buyer or Answers and Solutions.
<b>4<sup>th</sup> Party</b>		An entity other than the Buyer, Answers and Solutions or someone connected. An example of a 4th party would be a malicious actor gaining access via virus software or other technique.
<b>Subprocessor</b>	✓	The CCS term read. "Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract."  This shall be construed to mean a third party <i>appointed by the Supplier</i> to process data on behalf of the Supplier.  Should a Buyer wish to appoint another supplier and ask us to host or provide other services, then that supplier must become our sub-contractor if the Buyer wishes them to be our sub-processor.
Logging in to systems:  <ul style="list-style-type: none"> <li>• Management Access</li> <li>• Admin Access</li> <li>• End-user Access</li> </ul>		To be read "in context" within service descriptions and elsewhere in our CCS submission. Unless otherwise qualified within that particular usage. <ul style="list-style-type: none"> <li>• Management Access means reserved access to areas for the exclusive use of the Supplier's staff.</li> <li>• Admin access means access to areas by the Supplier OR a named technical IT administrator employed by the Buyer.</li> <li>• End-user access means anyone that the Buyer allows to use the system – from an employee thru to the General public.</li> </ul>

