



protiviti®  
*Global Business Consulting*

**Identity & Access  
Management  
(Implementation)**  
G-Cloud 13 Terms &  
Conditions  
September 2022

# TERMS AND CONDITIONS

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## Terms and Conditions to Agreement between the Client and Protiviti

These Terms and Conditions are between Protiviti Limited and the G-Cloud Buyer ("Client") and are subject to the G-Cloud 13 Framework Agreement and the G-Cloud 13 Call-Off Contract which includes the Order Form. For the purposes of these Terms and Conditions, Services means any G-Cloud Services and / or Deliverables that are set out in the Order Form.

Unless stated otherwise, the terms and definitions set out in these Terms and Conditions shall be interpreted in accordance with the defined terms in the G-Cloud 13 Framework Agreement and the G-Cloud 13 Call-Off Contract. If there is a conflict between these Terms and Conditions, and the G-Cloud 13 Framework Agreement and the G-Cloud 13 Call-Off Contract, the G-Cloud 13 Framework Agreement and the G-Cloud 13 Call-Off Contract shall prevail.

- 1. Client Responsibility.** Client acknowledges that the achievement of any policy, process, model, system or risk management practice depends not only on the design and implementation, but also on the quality, experience and continuity of personnel involved, the diligent ongoing execution of any such policy, process, model, system or risk management practice, and appropriate modifications as changing conditions warrant. Client understands and accepts responsibility for all decisions related to, and implementation and ongoing modification of, policies, processes, models, systems and risk management practice assessments, methods and assumptions, if any, developed in the course of this project.

All Deliverables are based upon information made available by Client to Protiviti as of the date such Deliverables are provided to Client. Protiviti has no obligation to update any Deliverable.

In addition, the ultimate responsibility as to the accuracy and sufficiency of Protiviti's approach and the specific scope of Protiviti's work and the nature, extent and timing of Protiviti's procedures performed, in each case, rests with Client.

- 2. Responsibility for Internal Controls.** Client is solely responsible for establishing and maintaining its own effective internal control system, record keeping, management decision-making and other management functions. Client shall be fully and solely responsible for: (i) applying independent business judgment with respect to the Services and the Deliverables; (ii) making any implementation decision related thereto; and (iii) determining further courses of action with respect to any matters addressed in any Deliverable or Service.
- 3. Non-Accounting Status.** Client understands that Protiviti is not a public accounting firm and does not issue opinions on financial statements or offer any attestation services.
- 4. Authoritative Standards.** Client acknowledges that there is no authoritative standard against which risk management practices can be directly compared. In practice, methodologies and approaches to measuring, managing and controlling risk vary considerably. New and refined practices continue to evolve and the characterisation of policies, procedures or models as sound, "industry standard" or "best" practices is judgmental and subjective.
- 5. Confidential Information.** Each party (the "**Recipient**") agrees to protect the Confidential Information of the other party (the "**Disclosing Party**") in a manner consistent with the treatment that Recipient accords its own Confidential Information of a similar nature, and the Recipient agrees to use and reproduce Confidential Information only to perform its obligations under these Terms and Conditions or for its internal collection, analysis and training purposes. The Recipient may disclose Confidential Information to its employees, agents, and subcontractors, who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. The Recipient shall be liable for any use, disclosure or dissemination of Confidential Information by such parties. In addition, unless prohibited by applicable law, Protiviti may disclose Client's Confidential Information to its network of member firms, who may collect, use, transfer, store or otherwise process it in the various jurisdictions in

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which they operate to facilitate the provision of the Services, to comply with applicable law, to check for conflicts, and for any quality, risk management, or financial accounting purposes and other administrative support services. Protiviti shall be responsible to Client for maintaining the confidentiality of such Confidential Information regardless of where or by whom such information is processed on Protiviti's behalf. Confidential Information is any information which is identified by the Disclosing Party at the time of disclosure as being of a confidential nature (including, but not limited to, business plans, products, trade secret processes or methodologies, software, documentation, design specifications, other technical documents and other proprietary rights or information) or that is disclosed to the Recipient under circumstances that would lead a reasonable person to understand that such information is confidential or proprietary in nature. Confidential Information does not include information that: (i) is or becomes generally available to the public without breach by Recipient of its confidentiality obligations under these Terms and Conditions; (ii) is received by Recipient from a third party without restriction against disclosure; (iii) was known to Recipient without restriction prior to disclosure; or (iv) is independently developed by Recipient without subsequent use of Disclosing Party's Confidential Information. If Recipient becomes legally compelled (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, Recipient shall (to the extent legally permitted) provide Disclosing Party with prompt prior written notice of such requirement so that discloser may seek a protective order or other appropriate remedy.

6. **Distribution of Deliverables.** Deliverables or other documents or materials that are provided by Protiviti that are Protiviti-branded or marked as being authored by Protiviti, or Deliverables or other documents or materials that, based on the circumstances, context or any related communications, would lead a reasonable reader to understand that Protiviti produced, authored or contributed to such Deliverables, documents or materials (collectively, "**Branded Deliverables**") are for the use and benefit of Client only and not for any other party, including, but not limited to, Client's affiliates, shareholders, business partners, contractors or advisors (each a "**Third Party**"). If Client desires to disclose Branded Deliverables, or make reference to Protiviti, to any Third Party (other than Client's legal counsel and external auditors who need access to such information and who have agreed to keep such information confidential), Client will obtain Protiviti's prior written approval and, if requested by Protiviti, obtain from such Third Party a non-disclosure agreement and release in a form satisfactory to Protiviti prior to any disclosure or distribution. Branded Deliverables are provided for the sole use of Client and are not intended to be relied upon by Third Parties. Protiviti accepts no liability or responsibility to any Third Party who uses the Services or gains access to any Branded Deliverables whether they are disclosed with the consent of Protiviti or otherwise. Notwithstanding the foregoing, Client may disclose and distribute Deliverables if, and solely to the extent that, disclosure is required by the applicable public records act and Client receives a request for such disclosure; provided, that Client provides Protiviti with prior written notice of such intended disclosure in sufficient time to allow Protiviti to seek confidential treatment of such information.
7. **Rights of Third Parties.** The Protiviti Parties specified in Section 6 above have the right to enforce only the provisions of Section 6 of these Terms and Conditions, subject to and in accordance with such section and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Except as stated in this Section 7, the parties to these Terms and Conditions do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it. The parties reserve the right to rescind or vary these Terms and Conditions or vary any term of it without the consent of the Protiviti Parties.
8. **Responsibility for Information.** Protiviti shall be entitled to rely on all information provided by, and the decisions and approvals of, Client in connection with Protiviti's work hereunder. Client hereby releases Protiviti and its personnel from any liability and costs relating to the Services to the extent that such liability and costs are attributable to any information provided, or decisions or approvals made, by Client personnel that were not complete, accurate or current.
9. **Services.** Changes to any Services must be agreed upon by Protiviti and Client and will not be considered effective unless and until both parties agree in writing to an amendment. Client shall reimburse Protiviti for any fees or expenses (including, but not limited to, legal expenses) reasonably

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incurred by it in connection with providing evidence in, or preparing to serve or serving as a witness with respect to, any lawsuits, investigations, claims or other proceedings in any way connected with, or related to, the Services.

- 10. Indemnification.** Protiviti and Client shall indemnify, defend and hold harmless the other party for any losses for bodily injury or damages to real property resulting directly from the indemnifying party's negligence or wilful misconduct.

**11. Limitation of Liability.**

- (a) Neither party shall be liable to the other party or any person asserting claims on behalf of or in the name of the other party for direct or indirect consequential, incidental, punitive or special damages for all claims, liability, losses, damages or expenses suffered by Client or Protiviti (including, but not limited to, lost profits whether direct or indirect or business opportunity costs), even if the parties have been advised of the possibility of such damages.
- (b) Nothing in these Terms and Conditions shall exclude or limit a party's liability to the other party for: (i) fraud, fraudulent misrepresentation or, the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; (ii) death or personal injury caused by its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in S1 Unfair Contract Terms Act 1977); (iii) breach of terms regarding title implied by s12 Sale of Goods Act 1979 and/or s2 Supply of Goods and Services Act 1982; or (iv) any liability to the extent the same may not be excluded or limited as a matter of law.

- 12. Engagement Team Restrictions.** If for any reason any of the employees or subcontractors designated in the Arrangement Letter portion of these Terms and Conditions is not able to complete this engagement, Protiviti will provide employees or subcontractors with similar qualifications and experience to complete the assignment. For a period commencing as of the date of these Terms and Conditions and ending one (1) year from the date that a Protiviti employee or subcontractor personnel stops providing Services to Client under these Terms and Conditions, neither Client nor any of its affiliates shall hire or solicit such individual. If Client or an affiliate hires or solicits any such Protiviti employee within the proscribed time period above, Client shall pay Protiviti a fee equal to the annual salary of such individual as liquidated damages. If Client or an affiliate hires or solicits any Protiviti subcontractor personnel within the proscribed time period above, Client shall pay Protiviti a fee equal to thirty percent (30%) of such subcontractor personnel's proposed annual compensation with Client or its affiliate, including bonuses, as liquidated damages.

- 13. Workspace.** Client shall provide reasonable workspace for Protiviti personnel at its work sites, as well as occasional administrative support services related to the Services. Client shall provide Protiviti personnel with any necessary safety orientation and security access for work on Client's premises.

- 14. Warranties.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS AND CONDITIONS, PROTIVITI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE TO THE EXTENT PERMITTED BY LAW. FOR THE AVOIDANCE OF DOUBT, NOTHING IN THIS SECTION 14 SHALL EXCLUDE OR LIMIT PROTIVITI'S LIABILITY FOR: (I) FRAUD, FRAUDULENT MISREPRESENTATION OR, THE FRAUD OR FRAUDULENT MISREPRESENTATION BY A PERSON FOR WHOM IT IS VICARIOUSLY LIABLE; (II) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR THE NEGLIGENCE OF A PERSON FOR WHOM IT IS VICARIOUSLY LIABLE (NEGLIGENCE BEING AS DEFINED IN S1 UNFAIR CONTRACT TERMS ACT 1977); (III) BREACH OF TERMS REGARDING TITLE IMPLIED BY S12 SALE OF GOODS ACT 1979 AND/OR S2 SUPPLY OF GOODS AND SERVICES ACT 1982; OR (IV) ANY LIABILITY TO THE EXTENT THE SAME MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW.

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- 15. Publicity.** Neither party shall use the name of the other party, in part or whole, or any of their trademarks or trade names without the other party's prior written approval. Notwithstanding the foregoing, Client consents to Protiviti's use of Client's name and a general description of the Services to be performed by Protiviti under these Terms and Conditions in resumes and proposals.
- 16. Proprietary Rights in Deliverables and Data.** Subject to the terms of these Terms and Conditions, including Section 6 (Distribution of Deliverables) and Client's fulfilment of all payment obligations hereunder, Protiviti agrees that Client shall own the copyright in the Deliverables (if and to the extent the Arrangement Letter specifies the Deliverables as being owned by the Client), excluding any Protiviti Proprietary Materials (as defined below) and any third-party software that is incorporated into the Deliverables ("**Client Owned Deliverables**"). To the extent the Deliverables are not specified in the Arrangement Letter as Client Owned Deliverables, the parties acknowledge and agree that the Deliverables are Protiviti Proprietary Materials (as defined below). Client acknowledges that as part of performing Services, Protiviti may utilise proprietary copyrights, patents, trade secrets, software, ideas, concepts, know-how, tools, models, processes, methodologies and techniques (including any derivatives, enhancements or modifications thereto) which have been originated or developed by Protiviti, or which have been purchased by, or licensed to, Protiviti (collectively, "**Protiviti Proprietary Materials**"). Client agrees that Protiviti retains all right, title, and interest in the Protiviti Proprietary Materials. Subject to the terms of these Terms and Conditions, including Section 6 (Distribution of Deliverables) and Client's fulfilment of all payment obligations hereunder, Protiviti grants and Client accepts a non-exclusive, non-transferable, license to use the Protiviti Proprietary Materials within the Client and solely to the extent necessary to make use of the Deliverables as contemplated by these Terms and Conditions.
- 17. Termination of Agreement.** Either party may at any time and without cause terminate these Terms and Conditions by providing 30 days' prior written notice of termination to the other party. The rights and obligations set forth in Sections 5, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17 and any other section expressed or capable of having effect after termination, shall survive termination of these Terms and Conditions. In the event of such termination, Client will pay Protiviti for all services rendered and expenses incurred by Protiviti through the date of termination. After conclusion of the work contemplated herein or the termination or expiration of these Terms and Conditions, for so long as Client and Protiviti are actively negotiating a new agreement for Protiviti's provision of additional Services to Client that are substantially similar to those provided under these Terms and Conditions, the provisions of these Terms and Conditions, including any payment terms, shall apply to such Services provided by Protiviti prior to the finalisation of such new agreement.
- 18. Governing Law.** These Terms and Conditions and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law and the parties hereby submit to the exclusive jurisdiction of the English Courts to resolve any dispute between them.
- 19. Notice.** All notices or other communications required or desired to be sent to either party shall be in writing and sent by first class mail, postage prepaid, by next-day courier or by facsimile, to the attention of the person identified below, at the address shown below or to the facsimile number shown below. Either party may change such person, address or facsimile number by written notice to the other party. Notice shall be effective on the fifth (5<sup>th</sup>) business day after mailing, on the first (1<sup>st</sup>) day after the date of sending via next-day courier, or on the date of transmission if sent by facsimile (provided that notice shall be effective on the first (1<sup>st</sup>) business day following the date of transmission if transmission is effected on a non-business day).

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Protiviti: Protiviti Limited  
Attn: [Name]  
Managing Director  
The Shard  
32 London Bridge Street  
London, SE1 9SG ENGLAND  
Facsimile: 0207 930 8807

cc: Protiviti Limited  
Attn: Legal Department  
Washington House, International Square,  
Starley Way, Birmingham, B37 7GN

- 20. Assignment.** Neither Protiviti nor Client may assign these Terms and Conditions, by operation of law or otherwise, without the prior written consent of the other party. Any assignment in violation of this provision shall be deemed to be null and void.
- 21. Business Practices.** Both parties agree to comply with all applicable employment laws and regulations. Client authorises Protiviti and its affiliated entities (and their successors and assigns and contractors) to store and use Client's business contact information wherever they do business, in connection with Protiviti's and its affiliated entities' services and in furtherance of Protiviti's and its affiliated entities' business relationship with Client. Client is responsible for obtaining any consent necessary for such authorisation.
- 22. Force Majeure.** Neither party shall be liable for any default or delay in the performance of its obligations (except for payment obligations) under these Terms and Conditions if such default or delay is caused by an act of God or other circumstance outside the reasonable control of the party, including, but not limited to, fire, flood, earthquake, natural disasters or other acts of God, terrorist acts, riots, civil disorders, freight embargoes, government action, or the like.
- 23. Severability.** If any term of these Terms and Conditions is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from these Terms and Conditions and shall in no way affect the legality, validity or enforceability of the remaining terms.
- 24. Waiver.** No waiver shall be deemed to have been made by either party unless it is expressed in writing and signed by the waiving party. The failure of either party to insist in any one or more instances upon strict performance of any of the terms of provisions of these Terms and Conditions, or to exercise any option or election herein contained, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, and no waiver by either party of any one or more of its rights or remedies under these Terms and Conditions shall be deemed to be a waiver of any prior or subsequent rights or remedies hereunder or at law.
- 25. Headings and Interpretation.** The section headings in these Terms and Conditions are inserted for convenience only and shall not affect in any way the meaning or interpretation of these Terms and Conditions. All parties hereto have participated substantially in the negotiation and drafting of these Terms and Conditions and each party hereby disclaims any defence or assertion that any ambiguity herein should be construed against the drafter of these Terms and Conditions.
- 26. Regulatory Compliance.** Client acknowledges and agrees that it is responsible for its own legal representation and guidance related to the Services or Deliverables, and that it will consult its own legal resources before acting upon any Services or Deliverables. Client further acknowledges and agrees that Protiviti is not a law firm and is not providing legal advice or analysis and that Protiviti has not engaged legal counsel with respect to the Services or Deliverables.
- 27. Export Control Laws.** Client hereby acknowledges and agrees that the Services and/or Deliverables may be subject to applicable export control and trade sanction laws, regulations, rules and licenses



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("Export Control Laws"). Client shall comply with the Export Control Laws and agrees that it alone is responsible for ensuring its compliance with Export Control Laws.

## 28. Data Protection.

- (a) **Data Protection Law Compliance.** The terms Personal Data, Personal Data Breach, Process, Data Subject, Data Controller, Data Processor, Sub-processor used in this clause shall have the meaning ascribed to them in the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data and the free movement of that data ("GDPR"). Protiviti and Client will each comply with the GDPR and the Data Protection Act 2018 (the "Act") (GDPR and the Act collectively referred to herein as "**Data Protection Law**") as applicable to such party.
- (b) **Data Processing:** In the provision of Services, Protiviti (the "**Processor**") may be Processing Personal Data on behalf of the other party (the "**Controller**"). In these circumstances, Protiviti will:
- (i) Process Personal Data only to the extent, and in such a manner as is necessary, for the performance or receipt of the Services under these Terms and Conditions and only on reasonable written instructions from the Controller, including with regard to transfers of Personal Data to a third country or an international organisation, unless required to do so by European Union or English law. In such case, the Processor will inform Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest,
  - (ii) ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality,
  - (iii) take all measures required by Data Protection Law relating to data security,
  - (iv) not engage another party to Process Personal Data without the Controller's prior written authorisation, and if such authorisation is granted, take those measures required pursuant to the Data Protection Law,
  - (v) taking into account the nature of the Processing, assist Controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to requests for exercising the Data Subject's rights laid down in the Data Protection Law,
  - (vi) assist Controller in ensuring its compliance with data security, Personal Data Breach, data protection impact assessments, and engaging in other consultations, pursuant to Data Protection Law (taking into account the nature of processing and the information available to the Data Processor),
  - (vii) not keep the Personal Data it receives under these Terms and Conditions for longer than required for the execution of these Terms and Conditions, unless European Union or English law requires storage of the Personal Data, and will promptly comply with any commercially reasonable request from Controller requiring Processor to amend, transfer, or delete the Personal Data, to the extent that the Controller does not have the ability to do so itself,
  - (viii) subject to the confidentiality restrictions herein, make available to Controller all information necessary to demonstrate compliance with Data Protection Law and allow for and contribute to audits, including inspections, conducted by Controller, and
  - (ix) immediately inform Controller if, in its opinion, an instruction from Controller infringes Data Protection Law that is applicable to Processor.

The subject matter and duration of the Processing, the nature and purpose of the Processing, and the type of Personal Data and categories of Data Subjects will be described in the Arrangement

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Letter, or other written agreement signed by the parties. Each party represents that it has obtained the proper consent from all Data Subjects to the disclosure and transfer of Personal Data under these Terms and Conditions. In addition, Client acknowledges that Protiviti may use this information as part of its client account opening and general administration process (e.g., in order to carry out anti-money laundering, conflict and financial checks, invoicing, or debt recovery). For these purposes, the information may be transferred to or accessible from Protiviti's offices around the world.

- 29. Release; Use of Certain Automated Tools.** Client understands and agrees that Protiviti's testing procedures and the tools that Protiviti uses, including security assessment tools and/ or security software solutions and other automated tools, are designed to detect possible weaknesses in network security controls. Client understands and acknowledges, however, that Protiviti cannot provide assurance that these tools or any other procedures that Protiviti might apply will identify all possible vulnerabilities. There is a possibility that the tools referenced above may, because of certain attributes of Client's software, inadvertently impact Client's network performance or Client's software configuration or data. Client agrees not to hold Protiviti responsible or liable for any adverse effects relating to the use of such tools.