



# G-Cloud 13

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Terms and Conditions

Version 2 | May 2022

# 1. Definitions

- 1.1. **"Agreement"** The agreement between CIL and the Customer for the provision of Services formed by these conditions, and any associated Order Form, Call Off Contract and Service Schedule.
- 1.2. **"Call Off Contract"** The agreement contained within the G-Cloud Framework agreement and specific to individual call off requirements.
- 1.3. **"Collaboration Agreement"** Means the agreement contained within the G-Cloud Framework agreement, covering agreements and actions made by consenting parties to share resources to accomplish a mutual goal. Collaboration Agreements will be enacted when there are at least two parties who agree to share resources.
- 1.4. **"Customer"** The party purchasing this Service from the G-Cloud Framework.
- 1.5. **"CIL"** Centerprise International Limited (Company Number 1738519), a company carrying on business at Hampshire International Business Park, Lime Tree Way, Chineham, Basingstoke, Hampshire RG24 8GQ and associated subcontractors required to provide the Service.
- 1.6. **"Order Form"** The order form signed by the Customer detailing the Services to be supplied by CIL
- 1.7. **"Services"** Cloud-based services including but not limited to computer hardware and Software to be provided by CIL to the Customer in accordance with the terms of this Agreement.
- 1.8. **"Service Levels"** Any service levels applicable to the Services as set out in the Service Schedule
- 1.9. **"Service Schedule"** Any service schedule applicable to the particular Services, as identified in the Order Form
- 1.10. **"Software"** Means all software (whether or not supplied by CIL) licenced to the Customer as part of the Services delivered by CIL.

# 2. Order Acceptance

- 2.1. All orders placed with CIL by the Customer for Services shall constitute an offer to CIL, under these terms and conditions, subject to alignment with G-Cloud 11 Framework Agreement, Call-Off Contract, Order Form and Collaboration Agreement (if used).
- 2.2. No amendment to these terms and conditions will be valid unless expressly confirmed in writing by CIL's authorised representative.

## 3. Price

- 3.1. Any advertising literature or material as produced by CIL in connection to these Services but not in relation to the Digital Marketplace are intended as an indication of price and range of Services and no prices, descriptions or other particulars contained therein shall be binding on CIL.
- 3.2. All prices are exclusive of Value Added Tax and any similar taxes. All such taxes are payable by the Customer and will be applied in accordance with UK legislation in force at the tax point date.

## 4. Payment and Title

- 4.1. Invoices will be dated by CIL on the first day of the month in relations to the Services provided during the course of the previous month. Invoices are payable by the Customer within 30 days from the date of the invoice. Payment not received when payable will be considered overdue and will be subject to interest from the date payable at the rate of 4% per annum above the base rate for the time being of HSBC Plc. Such interest shall accrue on a daily basis and be payable on demand after as well as before Judgement.
- 4.2. All payment is in UK sterling.
- 4.3. All payments to be made by the Customer will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.

## 5. Delivery and Risk

- 5.1. The Services shall be treated as delivered to the Customer when CIL makes them available to the **Customer at the Customer's premises or such other delivery point agreed in writing by CIL**. CIL will not be obliged to provide any Services not referred to on the Order Form.
- 5.2. Time for performance or delivery is not of the essence, and the commencement date of the Services will be defined in the Implementation Plan. Delivery may be postponed because of **conditions beyond CIL's reasonable control. In no event shall CIL be liable for any damages or any penalty for delay in the delivery of Services for reasons beyond its reasonable control.**
- 5.3. Any request by the Customer to re-schedule the commencement date of the Services will be jointly agreed and confirmed in a revised Implementation Plan. Any change to the Service delivery commencement will only be considered by CIL if made at least 10 working days before the **Services were due to commence. Acceptance by CIL will be at CIL's sole discretion, and may be** subject to a reasonable administration charge. The Customer hereby agrees to indemnify CIL against all loss, costs (including the costs of labour and materials used and overheads incurred), damages, charges and expenses arising out of the re-scheduling of the order.

- 5.4. CIL shall use its reasonable endeavours to provide the Services in accordance with the Service Levels. However, the Customer acknowledges that, given the nature of the Services, CIL cannot guarantee that the Services will be uninterrupted or error free.
- 5.5. The Customer's internal network configuration and any equipment that it uses with the Services that is not provided by CIL remains the responsibility of the Customer. Any interruptions to the Services that occur as a result of an internal configuration or equipment issue may not be deemed as an interruption or suspension of the formal provision of the Services and CIL shall have no liability in this respect.
- 5.6. Maintenance Activities
- 5.6.1. Where CIL plans to perform essential works and the works are service affecting, CIL will use reasonable endeavours to perform such works between the hours of 00:00 and 04:00 and will use reasonable endeavours to give the Customer at least five (5) days prior notice for network related work and at least ten (10) days prior notice for infrastructure related work.
- 5.6.2. Whenever possible scheduled maintenance activities will be performed outside of core service hours to avoid disruption to end user services. Where reasonable, all scheduled maintenance activities will be notified at least 7 days in advance of the maintenance commencing.
- 5.6.3. Any emergency maintenance activity will be notified 24 hours in advance and whenever possible will be performed outside of core service hours. In exceptional circumstances, and when the maintenance activity is critical to ensure the ongoing provision of services, CIL reserves the right to perform an unplanned service outage without prior notification to end users. In all circumstances, the duration of a service outage will be limited to the minimum time necessary to perform the maintenance activities.
- 5.7. A fair usage policy applies to the Services relating to Unified Communications. CIL applies a 1:4 line to user ratio so the number of concurrent calls supported is 25% of the total user population.
- 5.8. Without prejudice to any other right or remedy that it may have in such circumstances, CIL reserves the right to suspend provision of any part of the Services where:
- 5.8.1. **the Customer's use of any of the Services is found to be monopolising the resources available** (this policy is only implemented in extreme circumstances and is intended to prevent misuse of the Services);
- 5.8.2. the Customer is in breach of Clause 5.7, Clause 6.1 or otherwise in material breach of the Agreement and fails to rectify such breach within 14 days of a written request from CIL requiring the same to be rectified;
- 5.8.3. the Customer fails to pay any Fees in accordance with the provisions of the Agreement and fails to rectify such failure within 14 days of a written request from CIL requiring the same to be rectified.

- 5.9. Where provision of any part of the Services is suspended by CIL pursuant to paragraph 5.6, 5.7, or 5.8, CIL shall be entitled to charge the Customer a reconnection fee from time to time, which the Customer shall pay to CIL prior to CIL recommencing provision of such part of the Services.

## 6. Proprietary Rights

- 6.1. The Customer shall not use the Services:

6.1.1. To provide, store, host, link to or connect to illegal content, content designed to offend or cause needless anxiety to others, any material which is abusive, indecent, defamatory, obscene, threatening, menacing or likely to cause harassment or which is in breach of any copyright, confidence, privacy, data processing or data handling, or any other rights or scanning software;

6.1.2. To distribute illegal, copyright infringing, indecent or offensive material;

6.1.3. To send or procure the sending of any unsolicited e-mail; or

6.1.4. In an unlawful manner or for any illegal purpose.

- 6.2. No title or ownership of software licenced to the Customer as part of the Services is transferred to the Customer under any circumstances.

- 6.3. Subject to the terms of and except as otherwise provided in this Agreement, CIL grants to the Customer a non-exclusive licence (without the right to assign, transfer or sub-licence, other than in a transaction in which all, or substantially all, of the assets of the Customer are acquired, or control of Customer is transferred to a third party) to use all software used within the provision of the Services for which the Customer has paid the agreed Service charges.

- 6.4. The Customer shall have no right, and the Customer specifically agrees not to: (i) sub-licence its licence rights to any other person; (ii) make error corrections or otherwise modify or adapt the software or create derivative works based upon the software, or permit third parties to do so; or (iii) decompile, decrypt, reverse engineer, disassemble or otherwise reduce the software to human-readable form to gain access to trade secrets or confidential information in the software.

- 6.5. No title or ownership in the software used in the provision of the Services is conveyed to the Customer.

- 6.6. The terms and conditions of this Agreement shall apply to any software updates and upgrades provided to Customer by CIL. There shall be no additional fee for such updates and upgrades. However, there might be additional optional modules or optional services in the future, not required for the Services, which might incur additional fees to be agreed upon in other agreements. The features that are available to the Customer at the time of signing this Agreement

shall remain available to the Customer free of charge in the future versions or updates of the software used in the provisioning of the Services.

- 6.7. CIL acknowledges that it acquires no ownership right, title, or interest to any and all of the Customers or other **user's data ("User Data")**. Any CIL employee or subcontractor that accesses User Data pursuant to this Clause 6.7 shall be bound by a confidentiality agreement. Without a **user's consent (which it may withhold in its sole discretion)**, **User Data may not be (a) used by CIL** other than as permitted hereunder, or (b) sold, assigned, or leased by CIL (on an individualised, non-anonymised basis). CIL will have the right to monitor and analyse use of the Services and to use the results of such monitoring to improve the Services during and after the term of this Agreement.
- 6.8. The Customer acknowledges that CIL, in providing Services, may use servers or other equipment located in countries where legal agencies may compel CIL to provide access to User Data in connection with their investigations, and that CIL will comply with any legal demand or legislation that requires disclosure of or providing access to User Data.
- 6.9. The Customer hereby grants CIL a non-exclusive, transferable licence to use User Data as necessary to provide you with the Services. The Customer agrees to ensure that any Reseller or End User in the Customers network will grant CIL a non-exclusive, transferable licence **to use such party's data** as necessary to provide such party with the Services as a condition of **such party's use thereof**. The Customer hereby represent and warrant that such licence has been granted to CIL before such **party's data is used with the Services**. The Customer represents and warrants that: (i) they have obtained, and will obtain, all consents and approvals necessary to provide User Data to CIL, and for CIL to use such data with the Services as provided herein; and (ii) the Customer has all rights necessary to grant the foregoing licence.
- 6.10. It is not anticipated that, in the course of providing the Services, CIL will perform any activity which amounts to data processing. However if the Customer requires CIL to undertake data processing **activities the Customer shall be the 'data controller' and the CIL shall be the 'data processor'** and the parties shall enter into a data processing agreement in accordance with the requirements of article 28 of the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 or any replacement legislation applicable in England and Wales from time to time.

## 7. Confidentiality

- 7.1. Except to the extent set out in this Clause 7 or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly;
  - (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

7.2. Clause 7.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law applicable to the Party making the disclosure
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement;
- (e) it is independently developed without access to the other party's Confidential Information.

7.3. Nothing in this Agreement shall prevent CIL from disclosing the Customers Confidential Information:

- 7.3.1 on a confidential basis to a professional adviser, consultant, supplier or other person engaged in delivery of the Services
- 7.3.2 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement, and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those under Clause 7.

7.4. Nothing in this Clause 7 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

## 8. Warranties

8.1. CIL warrants that it has good title or licence to supply all Services to the Customer.

8.2. CIL warrants that the software, when provided as part of the Services, is free from Viruses and Self-Help Code. As used herein, the term “Viruses” means codes, programs or commands designed to:

- (a) alter, damaged or erase computer data or programs; or
- (b) permit unauthorized access to Customer's systems, any of which is intended to destroy or cause Customer's system to malfunction.

8.2.1 The term “Self-Help Code” means codes designed by CIL (or its Third Party suppliers) to destroy, disable or inhibit the Customer's ability to use the software upon the occurrence of certain events. CIL does not warrant that the operation of Third Party software used within the Services will be uninterrupted or error free. In such cases, CIL shall use all reasonable endeavours to resolve the issue within agreed SLAs.

- 8.3. If any part of the Services should prove defective under normal operation, CIL will accept full responsibility for returning the Services to their designed state providing the defect is not caused by any cause other than ordinary use including without limitation, accident, hazard or misuse of the Service. The Customer shall be responsible for the cost of labour or other expenses associated with restoring the Services in such circumstances.
- 8.4. Except as specifically set out in this Clause, 8 CIL disclaims and excludes all other warranties whether express or implied by statute or otherwise including but not limited to the warranties of description, design, merchantability and fitness for a particular purpose or arising from any previous course of dealing usage or trade practice.

## 9. Indemnities and Limits of Liability

- 9.1. CIL will indemnify the Customer for direct physical injury or death caused solely by defects in any **of the Services or caused solely by the negligence of CIL's assigned employees acting within the** course of their employment and the scope of their authority.
- 9.2. CIL will indemnify the Customer for direct damage to property caused solely by defect in any of **the Services or caused solely by the negligence of CIL's assigned employees acting within the** course of their employment and the scope of their authority. The total liability of CIL under this sub-clause shall be limited to £100,000 or twice the Agreement price (whichever is the lower) for any one event or series of connected events.
- 9.3. All terms of any nature, express or implied, statutory or otherwise, as to correspondence with any particular description or sample, fitness for purpose or merchantability, are hereby excluded.
- 9.4. The Customer shall indemnify and defend CIL and its employees in respect of any claims by third parties which are occasioned by or arise from any CIL performance pursuant to the instructions of the Customer or its authorised representative.
- 9.5. Except as stated in Clause 9.1 and 9.2 above, neither party be liable to the other party for any special, incidental, indirect, or consequential damages (including lost profits or lost data), whether based on breach of contract, in tort (including negligence), product liability, or otherwise, and whether or not such party has been advised of the possibility of such damage, except it would be illegal for CIL to exclude or to attempt to exclude its liability or for fraud. The total cumulative liability of CIL in connection with this Agreement and the Services, whether in contract, in tort (including negligence) or otherwise, will not exceed the amount of fees paid by the Customer under this Agreement in the twelve (12) months preceding the event which gave rise to the claim. The existence of multiple claims will not expand this limit. The parties acknowledge that the fees reflect the allocation of risk set forth in this Agreement and that CIL would not enter into this Agreement without these limitations on its liability. The foregoing does not apply to breaches of Confidentiality (Clause 7) and/or Indemnities and Limits of Liability (Clause 9). The parties have agreed that the limitations specified in this section will survive termination of this Agreement for



any reason and apply even if any limited remedy specified herein is found to have failed its essential purpose.

## 10. Relationship of the Parties

- 10.1. The relationship between CIL and the Customer is that of independent contractor. Neither party is the agent of the other and neither party has any authority to make any contact or make any obligation expressly or impliedly in the name of the other party.
- 10.2. By contracting for, and by using or enabling another to use the Services, the Customer represents and warrants that they have the legal capacity and authority to enter into this legally binding Agreement and to adhere to the Terms and Conditions herein, and that the Customer will use the Services only in accordance with the licence granted herein and with all applicable laws. If an individual is registering or using the Services on behalf of an entity or organisation, that individual warrants, represents, and covenants to CIL that such individual is duly authorised to legally bind and agree to the Terms and Conditions of this Agreement on behalf of such entity or organisation. The Services are intended, and offered, only for lawful use by individuals or organisations with the legal capacity and authority under applicable law to enter into a contract for such products and services. CIL does not offer the Services where prohibited by law.

## 11. Termination

- 11.1. Where a customer is terminating a CIL Service, formal notice of such cancellation will be raised which is to be agreed and signed by both parties. The notice period will not commence until this is completed.
- 11.2. CIL may, by written notice served on the Customer, terminate the Agreement immediately if the Customer is in material breach of any of the terms of the Agreement and such breach is incapable of remedy or, where the breach is capable of remedy, fails to remedy such breach within 14 days after service of a written notice from CIL specifying the breach and requiring it to be remedied.
- 11.3. The termination of the Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination. The clauses in the Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 11.4. Without prejudice to any other of its rights and Remedies, in the event of any termination by CIL pursuant to Clause 11, or by the Customer pursuant to any provision of these conditions, the Customer shall be liable to pay or reimburse CIL for any cancellation charges that may be due to any third-party services provider or otherwise due as a consequence of such termination.

## 12. Contract Objects

- 12.1. The headings in this Agreement are for ease of reference only and shall not affect the interpretation or construction.
- 12.2. No forbearance delay or indulgence by CIL in enforcing its respective rights shall prejudice or restrict its rights and no waiver of any such rights or of any such breach of any contractual terms shall be deemed to be a waiver of any other or any later breach.
- 12.3. The Customer agrees not to assign any of his rights herein without the prior written consent of CIL.
- 12.4. In the event of any of these terms and conditions or any part of any of them being judged illegal or unenforceable for any reason the continuation in full force and effect of the remainder of them shall not be prejudiced.
- 12.5. Neither party is under any liability to the other party in respect of anything which, apart from this provision, may constitute a breach of the Agreement arising by reason of force majeure which means, in relation to either party, circumstances beyond the reasonable control of that party including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, network failure, systems fault, unauthorised use or access to the IT systems of CIL or the Customer, explosion, flood, epidemic, lock outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, to the extent outside of its reasonable control.
- 12.6. Any documents or notices given hereunder by either party to the other must be in writing and may be delivered personally or by recorded delivery, registered post or facsimile transmission and in the case of first-class post will be deemed to have been given two working days after the date of posting and if by facsimile transmission when dispatched. Documents or notices shall be delivered or sent to the addresses of the parties on the first page of this Agreement or to any other address notified in the normal course of trading in writing by either party to the other for the purposes of receiving documents or notices after the date of this Agreement.
- 12.7. This Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.