



Crown Commercial Service G Cloud 13

Lot 3 - Cloud Support Terms and Conditions

May 18, 2022

This document contains confidential and propriety information for the purpose of evaluation only.

The contents of this document may not be published, disclosed or used for any other purpose.

Foreword

This proposal has been prepared by HCL, for the sole use of Crown Commercial Service. The contents of this document shall remain the confidential property of HCL and should not be communicated to any other party without the prior written approval of HCL.

The furnishing of this document shall be subject to contract and shall not be construed as an offer or as constituting a binding agreement on the part of HCL to enter into any relationship.

HCL warrants that to the best of their knowledge those who prepared this response have taken all reasonable care in preparing it, have made all reasonable enquiries to establish the veracity of the statements contained in it and believe its contents to be true. (HCL cannot however warrant the truth of matters outside of its control and accordingly does not warrant the truth of all statements set out in this document to the extent that such statements derive from facts and matters supplied by other persons to HCL. The statements in this document are qualified accordingly.)

Validity

This proposal and all information contained within are valid for a period of 2 years from May 18, 2022.

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Table of Contents

Terms and Conditions	4
1 DEFINITIONS AND INTERPRETATIONS	4
2 PROVISION OF THE SERVICES	7
3 COMPLIANCE WITH LAWS AND REGULATIONS	8
4 EQUIPMENT	9
5 SITES	9
6 NETWORK	10
7 CHANGE MANAGEMENT	10
8 CHARGES AND PAYMENT	11
9 INTELLECTUAL PROPERTY RIGHTS	11
10 NOTICES	12
11 ASSIGNMENT	12
12 NO WAIVER	13
13 SEVERANCE	13
14 GOVERNING LAW	13
15 ENTIRE AGREEMENT	13
16 RELATIONSHIP OF THE PARTIES	14
17 VARIATION	14
18 THIRD PARTY RIGHTS	14
19 COUNTERPARTS	14

Terms and Conditions

Headline items from the HCL terms and conditions

The following are general terms and conditions for service provision. The G-Cloud 13 Framework Agreement and Call Off Contract take precedence. Any service provided by HCL through G-Cloud 13 will be procured under the G-Cloud 13 Framework Agreement and Call Off Contract.

PARTIES

1. **HCL Technologies UK Limited**, company number 8658132, incorporated in England and Wales, whose registered office is at Axon Centre, Church Road, Egham, Surrey, TW20 9QB ("**HCL**"); and
2. **<Insert full legal name of Customer>**, whose registered office is at <Insert registered office address>, registered in <Insert country>, with number <insert company number> (the "**Customer**").

BACKGROUND

- A. HCL is a supplier of ICT services.
- B. The Customer wishes to procure certain types of services from HCL for the benefit of itself.
- C. The Customer wishes to place orders for services on the terms agreed by the parties set forth below.

AGREEMENT

1 DEFINITIONS AND INTERPRETATIONS

- 1.1 In this Agreement (unless the context otherwise requires), the following words and phrases will have the following meanings:

"Affiliated Companies" means the Customer's ultimate holding company or any of its subsidiaries (as defined by Section 1159 of the Companies Act 2006).

"Agreement" means these General Terms and Conditions together with all Orders; and:

- a) the applicable HCL Service Schedule current at the date of the Order; and
- b) the applicable HCL Service-Specific Terms current at the date of the Order; and
- c) the HCL Tariff Schedule; and
- d) the Ancillary Charges Table; and
- e) the AUP (Acceptable Use Policy).

"Ancillary Charges Table" means the list of ancillary charges for the provision and support of the Services payable in connection with the Services, as may be provided by HCL to the Customer from time to time.

"Applicable Data Protection Law" means the EU Data Protection Directive (95/46/EC) and the Data Protection Act 1998 or other applicable law or regulation as they may be amended from time to time.

"AUP" means HCL's Acceptable Use Policy, as may be amended from time to time without notice.

"Charges" means together each charge owing under the Agreement.

"Confidential Information" means any information of the other which is disclosed or otherwise comes into its possession under or in relation to this Agreement and which is of a confidential nature, including the rates for HCL's services and any other terms of this Agreement.

“Due Date” means within 30 days of the invoice date or as otherwise stated in the Service Literature and / or the Order.

“Early Termination Charges” means the relevant termination charges specified in the Service Literature.

“Equipment” means any equipment which HCL provides to the Customer for the purposes of providing the Services which may be owned by HCL or by a third party.

“Fees and Taxes” means any applicable taxes, fees, levies and / or surcharges (including, but not limited to, any applicable Value Added Tax or other tax of a similar nature in any jurisdiction) that apply to the Charges and / or a Service.

“Freeze Period” means the period commencing on or around 1 December and expiring on or around 15 January each year.

“General Terms and Conditions” means the terms and conditions set out in this document.

“Infringement Claim” means a Third Party Claim incurred by the Customer or its Affiliated Companies resulting from any claim that the Customer’s use of a Service is infringing upon or misappropriating any copyright, trademark, US or UK patent or similar proprietary right of a third party.

“Initial Period” means the period set out in the Order or Service Literature for that Service (which may be specified as an “Initial Period”, “Initial Term” or “Minimum Service Period”) or, if there is no such period set out in the Order or Service Literature, a period of one year.

“Insolvent” means, in respect of a party to this Agreement, when that party is unable to pay its debts when due, or any of the following happens to it under its national laws for the protection of debtors (or like circumstances arise or like actions are taken):

(a) the party is determined to be bankrupt or insolvent or the process to make this determination has started;

(b) the party has a receiver, administrator or liquidator appointed for it;

(c) the party makes an arrangement or composition with, or an assignment for the benefit of, its creditors; or

(d) the party goes into either voluntary (other than for reconstruction or amalgamation) or compulsory liquidation.

“Local Provider Order” means an order placed on a local provider by HCL as an agent for the Customer if a Service requires the use of non-HCL services and / or facilities in a location where local regulations do not permit HCL to order these services and / or facilities directly from the local provider.

“Marks” means names, logos, trademarks, trade names or other proprietary marks.

“Order” means orders in the form of the HCL order or authorisation form (or such other form as HCL may agree can be used for ordering) for services under this Agreement completed by the Customer and accepted by HCL.

“Personal Data” means information defined as such in the EU Data Protection Directive (95/46/EC) or information treated as personal data under any other law or regulation applicable to the information.

“Protected Party” means the party to this Agreement entitled to be indemnified, defended and / or held harmless from a Third Party Claim and / or Infringement Claim.

“Protecting Party” means the party to this Agreement who is not the Protected Party.

“Renewal Period” means successive 12 month period (unless otherwise specified in the Service Literature) following expiry of the Initial Period then in effect.

“Services” means the communications and related services ordered in the Orders and further described in the Service Literature.

“Service Commencement Date” means the date on which HCL first makes the Service available to the Customer.

“Service Levels” means the service levels for each Service as specified in the applicable Service Literature.

“Service Literature” means the documents collectively listed in parts a) to e) of the definition of Agreement.

“Service Misuse” means any circumstance where the Service is used in a manner that violates the AUP or any applicable law or regulation, or otherwise exposes HCL to legal liability, whether this use is by the Customer or any other entity or person using the Service and whether or not this use is authorised or consented to by the Customer.

“Service Schedule” means the applicable HCL document current at the date of Order which contains a description of the Service and any applicable Service Levels.

“Service Specific Terms” means the HCL document current at the date of Order which contains any terms specifically relating to a Service ordered by the Customer.

“Site” means a location at which the Services are to be provided.

“Third Party Claim” means any liabilities, actions, losses, judgements, payments made in settlement, costs, suits, proceedings, demands or claims from third parties, including HCL’s other customers.

“HCL Affiliate” means HCL Limited’s ultimate holding company from time to time or any direct or indirect subsidiaries of such ultimate holding company (as defined by Section 1159 of the Companies Act 2006).

“HCL Party” means each of HCL Limited and / or HCL Affiliates.

“WEEE Regulations” means the Waste Electrical and Electronic Equipment Regulations 2006.

“Working Days” means Monday to Friday inclusive, but excluding public holidays.

“Working Hours” means 9.00 am to 5.00pm on Working Days.

- 1.2 The order of precedence to resolve any inconsistency between different parts of the Agreement shall be (i) the Order; (ii) the Tariff Schedule; (iii) the Service Schedule; (iv) the Service-Specific Terms; (v) the AUP; (vi) the Ancillary Charges table; (vii) these General Terms and Conditions.
- 1.3 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 Where the words 'include(s)', 'including' or 'in particular' are used in this agreement, they are deemed to have the words 'without limitation' following them. Where the context permits, the words 'other' and 'otherwise' are illustrative and shall not limit the sense of the words preceding them.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

2 PROVISION OF THE SERVICES

- 2.1 This Agreement shall take effect on the date the later of the two parties signs these General Terms and Conditions. HCL and the Customer hereby agree that the terms of this Agreement will, unless otherwise, stated apply to orders for HCL services placed by the Customer and accepted by HCL on or after such date.
- 2.2 HCL shall advise the Customer in writing (which may be via email) of its acceptance of an Order.
- 2.3 HCL shall provide or - where necessary for regulatory reasons - will procure that a HCL Party holding the relevant license or authorised pursuant to Section 106 of the Communications Act 2003 will provide, the Services. The Service Levels for each Service are as specified in the Service Literature.
- 2.4 HCL shall, as soon as reasonably possible following its acceptance of an Order, notify the Customer of the date by which it plans to commence the Services under the Order. Unless otherwise agreed by the parties in writing, the Customer shall not delay the agreed delivery date for a Service.
- 2.5 HCL shall, where applicable, carry out acceptance tests prior to commencement of a Service.
- 2.6 Provision of each Service shall start on the Service Commencement Date.
- 2.7 From the Service Commencement Date, each Service shall, subject to clause 9:
 - 2.7.1 continue for the Initial Period; and
 - 2.7.2 automatically continue thereafter for the Renewal Period.

3 COMPLIANCE WITH LAWS AND REGULATIONS

- 3.1 HCL shall comply with all applicable laws and regulations regarding the provision of the Services, and the Customer shall comply with the AUP and all applicable laws and regulations regarding the use of the Services. The Customer shall also obtain or assist the HCL Party to obtain (at the Customer's cost) all relevant consents and approvals (including those required in respect of any superior interest in the Site(s) or the property of which it forms part) as are required to permit HCL or HCL Affiliate to access the Site (including via the said property of which it forms part) in order to permit the HCL Party to provide the Services and execute the works necessary for the installation, use, retention, inspection, maintenance and removal of Equipment associated with the Services at the Site.
- 3.2 HCL will provide the Services on the condition that HCL is able to keep in place the necessary licences, consents, approvals, authorisations, permissions, ministerial determinations, directions and declarations and other governmental approvals. HCL will use all reasonable endeavours to keep these in place and the Customer shall use all reasonable endeavours in this respect where the relevant consent, approval, authorisations or permission relates to the Site(s).

4 EQUIPMENT

- 4.1 HCL will specify the Equipment required to support the Solution.
- 4.2 The Customer will make available Equipment configured to the HCL specifications
 - 4.2.1 The Customer is responsible for all Equipment used within the delivery of the solution. This includes network equipment, servers, end user equipment, including, but not limited to, PCs, tablets, smartphones.
- 4.3 Equipment provided by the Customer (or contracted supplier to the Customer) shall be kept at the relevant Site and used in accordance with HCL's instructions.
- 4.4 The Customer will inform HCL immediately of any changes to the Equipment which may affect service provision
 - 4.4.1 In the event of an Equipment failure HCL shall not be liable for any penalties for non-delivery of the Service as a direct or indirect result of said Equipment failure.
 - 4.4.2 In the event that the Customer (or authorised sub-contractor of the Customer) make changes to the Equipment that affect service provision, HCL shall not be liable for any penalties for non-delivery of the Service as a direct or indirect result of said change to the Equipment.
- 4.5 The Customer shall permit HCL to inspect or test the Equipment remotely and / or shall provide access to the Site(s) for such purposes in accordance with clause 4.2.

5 SITES

- 5.1 The Customer shall prepare the Site(s) and co-operate with HCL in accordance with HCL's instructions and timescales so that any Equipment used for the provision of the Services can be installed and maintained. HCL shall be entitled to charge the Customer for any costs incurred by HCL as a result of any failure by the Customer to satisfy such requirements. The Customer shall meet the costs of preparing any Site(s) and shall provide to HCL free of charge adequate electricity supply, suitable earth connection and an adequate environment and space for the operation of any Equipment required for the provision of Services.
- 5.2 The Customer hereby permits HCL (in respect of its title rights and / or interest in relation to the Site and in order to provide the Services) to execute any works necessary for the installation of Equipment within the Site including any further works as may be required thereafter, in order to use, retain, inspect, repair, alter, maintain, adjust, make additions to, remove or replace the same and to have access to the Site for such purposes at such times as may be agreed between HCL and the Customer, such agreement not to be unreasonably withheld or delayed.
- 5.3 HCL will usually carry out installation and maintenance work during Working Hours pursuant to clause 4.5. If HCL agrees at the Customer's request to carry out such work outside Working Hours or if it is necessary for HCL to carry out such work outside Working Hours for reasons beyond its control, HCL shall be entitled to charge the Customer for any overtime costs that it incurs as a result of carrying out such work.
- 5.4 HCL shall, when it undertakes installation and maintenance work at a Site, comply with any reasonable site procedures notified in writing to HCL in advance by the Customer.

- 5.5 HCL will usually carry out installation and maintenance work at the Site during Working Hours where such work does not involve any suspension of the Services but may, on reasonable notice (which shall not be less than 12 hours except in an emergency), require the Customer to provide access at other times and / or on shorter notice. Where necessary, HCL shall be entitled to suspend the Services in order to carry out such work. Except where suspension of the Services is involved, HCL may, in response to the Customer's request, or where HCL deems it necessary, carry out such work outside Working Hours and may charge the Customer the out-of-hours premium fee.

6 NETWORK

- 6.1 The Customer is responsible for all network access to the solution
- 6.2 The Customer will ensure that access is provided across a mobile data network at data transfer speeds provided by GPRS or better.
- 6.3 In the event of mobile network failure, or access speeds below the standard set-in clause 6.2, HCL shall not be liable for any penalties for non-delivery of the Service as a direct or indirect result of said mobile network failure.

7 CHANGE MANAGEMENT

- 7.1 Any change to the terms of this Agreement including but not limited to the requirement to order additional Services or to amend an existing Service shall be subject to the Service Change Request Procedure set out in this clause 7.
- 7.2 If either party wishes to propose a change, it shall notify the other party of that fact by sending a written request to the other party's Account Manager, specifying in as much detail as is reasonably practicable the nature of the requested change.
- 7.3 Subject to clause 7.4, as soon as reasonably practicable after sending or receiving a written request for a change, HCL shall provide the Customer with a brief written proposal in relation to the relevant change (a **"Change Control Proposal"**) including, where applicable, the following information:
- 7.3.1 details of the proposed change and its impact on the Services including, without limitation, any changes to the Services, Service Levels and any other variations to this Agreement;
- 7.3.2 a statement of the cost and expense of implementation and on-going operation of the relevant change, including any alteration of the Charges or additional Charges relating to the proposed change;
- 7.3.3 a timetable for the implementation of the change; and
- 7.3.4 details of the impact, if any, of the proposed change on any existing Services.
- 7.4 The Customer shall review HCL's Change Control Proposal as soon as reasonably practicable and will either accept or reject the proposed Change Control Proposal. If the parties agree the proposed Change Control Proposal, they shall issue an amendment to the Agreement authorising the change.
- 7.5 If it is necessary to use additional resources or to incur any other additional costs in making a change they shall be calculated as a change to the Charges.
- 7.6 HCL shall have no obligation to commence work in connection with any change until a relevant change control note authorising a change is executed by the parties in writing.

8 CHARGES AND PAYMENT

- 8.1 The Customer shall be responsible for all Charges incurred in connection with any use of the Services, whether or not it has authorised such use. The Customer shall pay each Charge in the currency shown on the Order, in the manner described in the Service Literature or as HCL may reasonably specify. Subject to clause 8.3, the Customer shall pay the full amount due (both Charges and Fees and Taxes) by the Due Date without any set-off, deductions or withholding.
- 8.2 Except for installation, maintenance or service Charges which are payable on acceptance of an Order by HCL as set out in the relevant Service Literature, Charges for each Service shall start to accrue on the Service Commencement Date and HCL shall be entitled to invoice the Customer for those Charges in the month following the Service Commencement Date irrespective of whether any traffic has been routed through the Service.
- 8.3
- i) In addition to any other remedy available to HCL, HCL may charge a late fee of 3% per annum above Barclays Bank plc.'s base lending rate then in effect on all past due amounts. HCL will not charge interest on a disputed amount if the Customer complies with sub-clause ii) in its entirety.
 - ii) The Customer shall only dispute amounts with reasonable cause and in good faith and shall do all of the following:
 - (a) pay all undisputed amounts on the invoice when they are otherwise due;
 - (b) notify HCL in writing of the disputed amount by the time the payment would otherwise be due;
 - (c) co-operate with HCL to promptly resolve the dispute; and
 - (d) pay the agreed-upon portion of the disputed amount by its new due date, that is, within 10 days of resolution of the dispute.
- 8.4 The Charges are exclusive of (and the Customer will pay) any Fees and Taxes except to the extent that the Customer gives HCL proper proof of exemption.
- 8.5 Upon HCL's request, the Customer will promptly give HCL information describing the Customer's current financial condition.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 All legal and beneficial intellectual property rights, whether registered or unregistered, including all copyrights, database rights, trade marks, patents, service marks, trade secrets and know-how, in whatever form in the Services, Equipment shall remain at all times HCL's property or the property of its licensor.
- 9.2 To the extent that it is so entitled, HCL grants the Customer a non-exclusive non-transferable licence to use such intellectual property rights for the sole purpose of using the Services or Equipment. The Customer shall not reproduce any software provided by HCL, save that the Customer shall be entitled to make a single back-up copy for security purposes only. The Customer shall not modify, adapt, translate, reverse engineer or disassemble the software.

- 9.3 Copyright, database rights and any other relevant intellectual property rights in all documents, material, drawings and information in whatever form, including if applicable any access or source codes supplied to the Customer in connection with this Agreement, shall remain vested in HCL or the owner of the rights. Such documents, material, drawings and information are confidential and shall not be copied, disclosed or used (except for the purpose for which they were supplied) without HCL's prior written consent.
- 9.4 Neither party may use the other party's Marks in any advertising or publicity without first obtaining the other party's written approval to do so. Unless the approval indicates otherwise, permission to use a party's Marks will last only for the duration of the Agreement.
- 9.5 Upon termination for whatever reason of the Services in respect of which any intellectual property licence or right of use is granted under this clause 14, that licence or right of use shall terminate immediately and the Customer shall, as specified by HCL, immediately return to HCL or destroy all copies of any documents, material, drawings and information in the Customer's possession or control which describe or contain the relevant intellectual property and are not in the public domain which have been received directly or indirectly from HCL.

10 NOTICES

- 10.1 A notice under this Agreement shall be written in English, and be hand delivered or sent by first class prepaid post to the recipient's registered address recorded above or as varied by notice in writing from time to time.
- 10.2 All notices to HCL should be addressed to 'Legal Director'.
- 10.3 A notice given in accordance with this clause 15 shall be taken to have been received, in the absence of evidence of earlier receipt, if hand delivered, on delivery; if sent by first class prepaid post, 3 days after the date of posting; or, if sent by email on the next Working Day following transmission.

11 ASSIGNMENT

- 11.1 The Customer shall not assign or try to assign or otherwise deal with any of its rights or obligations under the Agreement without first receiving written consent from HCL (which consent may not be unreasonably withheld).
- 11.2 HCL may (by giving written notice to Customer) assign any rights under the Agreement, to a HCL Affiliate or any other third party.

12 NO WAIVER

- 12.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.
- 12.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of any such right or remedy.
- 12.3 A waiver (which may be given subject to conditions) of any right or remedy provided under this agreement or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

13 SEVERANCE

- 13.1 If clause or part of a clause of this Agreement is or becomes illegal, invalid or unenforceable in any respect, that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement.
- 13.2 If any illegal, invalid or unenforceable provision would be legal, valid or enforceable if some part of it were deleted, such provision shall apply with the minimum modification(s) necessary to make it legal, valid or enforceable.

14 GOVERNING LAW

- 14.1 This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by and subject to the laws of England and the parties submit to the exclusive jurisdiction of the courts of England.

15 ENTIRE AGREEMENT

- 15.1 This Agreement constitutes the entire agreement and understanding between the parties in respect of matters dealt with in it and supersedes any previous agreement between the parties relating to such matters.
- 15.2 Each of the parties represents and agrees that in entering this Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than expressly set out in this Agreement. The Customer gives up any rights against HCL regarding any warranty or representation except in respect of any warranty or representation expressly made in this Agreement.

16 RELATIONSHIP OF THE PARTIES

- 16.1 The parties are independent contracting parties, and nothing in this Agreement shall create, or be construed as creating, any joint venture, partnership or similar arrangement between the parties.

17 VARIATION

- 17.1 The parties may modify the Agreement only if the parties agree to do so in writing. Purchase orders or similar documents which the Customer may issue to HCL will not change or add to any of the terms of the Agreement. No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties to this Agreement.

18 THIRD PARTY RIGHTS

- 18.1 Subject to clause 11.9 and save in respect of HCL Affiliates, who shall each have the right to enforce the benefit of this Agreement as if they were a party to it, a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement provided that this shall not affect any right or remedy which exists or is available apart from that Act. The parties shall have the right to amend this Agreement without the consent of the HCL Affiliates.

19 COUNTERPARTS

- 19.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF the duly authorised representatives of the parties hereto have entered this Agreement on the date the later of the two parties signs below.

Signed for and on behalf of <xxxxxx> by:

Name :

Title:

Signature

Date :

Signed for and on behalf of <HCL Technologies UK Limited> by:

Name :

Title:

Signature:

Date :