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Empowering people,
through knowledge,
to live better
for longer

ADL Smartcare Limited
G-Cloud 13 Framework
Terms & Conditions

May 2022
Version 1

Executive Summary

This document describes ADL Smartcare Limited's Terms and Conditions for the supply of Services purchased through the G-Cloud 13 Framework Agreement. These Terms are in addition to the G-Cloud 13 Framework Agreement and G-Cloud Services 13 Call-Off Agreement. The delivery of the Services is subject to these Terms and Conditions.

By signing an order for Services, the Buyer is deemed to have read and accepted these Terms and Conditions and agrees to be bound by them.

Please ensure the order is signed by an authorised signatory. We will be unable to commence work until we have received a signed copy of your order detailing the services you are purchasing.

No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of ADL Smartcare Limited and the Buyer.

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1. Definitions and Interpretations

1.1

Buyer	means [name of Buyer];
Contract	means the G-Cloud 13 Call-off Contract and supporting documents including, ADL Terms and Conditions, the Order, Service Definition, Pricing Document, and SFIA Rates;
Digital Marketplace	means the Crown Commercial Services G-Cloud 13 Digital Marketplace
GDPR	means the General Data Protection Regulation 2018, as amended from time to time;
Infrastructure Provider	means the cloud-based infrastructure provider contracted by the Supplier to provide secure hosting of the data collected by the Service;
Order	means an order sent to the Supplier by the Buyer detailing the G-Cloud 13 Services they want to purchase from the Call-off Contract;
Pricing Document	means the Supplier's G-Cloud 13 Pricing Document published on the Digital Marketplace;
Service(s)	means the Services purchased as described in the Service Definition document published on the Digital Marketplace;
Service Definition	means the Service Definition document which details the G-Cloud 13 Services offered by the Supplier published on the Digital Marketplace;
Supplier	means ADL Smartcare Limited;
User	means anyone permitted to access the Supplier's Service;

1.2 This document should be read in conjunction with the Supplier's published G-Cloud 13 Service Definition, Pricing Document, and SFIA Rate Card.

1.3 The headings to the terms shall not affect their interpretation. The singular includes the plural; one gender includes all others.

2. Supply of the Service(s)

2.1 On acceptance of an Order the Supplier agrees to supply the Services to the Buyer as detailed in the Digital Marketplace for the period and price specified in the Order.

2.2 No variation to these terms and conditions shall be binding unless agreed in writing between both parties.

2.3 Any typographical, clerical or other error or omission in any literature, quotation, invoice or other document or information issued by ADL Smartcare Limited shall be subject to correction without any liability to the Supplier.

2.4 The Service offered by the Supplier is 'Software-as-a-Service (SaaS) as defined by NIST'.

- 2.5 The Price of the Service includes all Service improvements delivered during the initial Call-Off contract term. Service improvements include incremental software upgrades and new releases of the software.
- 2.6 All contract extensions will be subject to a price review which will include the cost of RPI and Service improvements. When a Customer indicates they wish to extend their Contract, the Supplier will carry out a price review and provide a quotation for the extension. The price review will include the cost of RPI i.e. the latest published ONS data covering the previous 12 months + 5% to cover Service improvements. The Customer can accept the quotation by either completing another Order Form or providing written confirmation to the Supplier.
- 2.7 The Supplier reserves the right to move Customers onto the latest release of the Service.

3. Payment

- 3.1 On receipt of an Order, the Supplier shall issue an electronic invoice which provides details of the Services purchased. The Supplier shall add VAT at the prevailing rate.
- 3.2 Subscriptions for any modules purchased will commence 30 days after the Order has been placed when a non-localised service will be made available to the Buyer. Customisation and service integration will then commence; however, completion of this work is dependent on the Buyer providing the necessary information to populate their site.
- 3.3 The Buyer shall make payment by BACS, within 30 calendar days of receipt of a valid invoice
- 3.4 The Supplier shall issue invoices in accordance with the payment profile agreed in the Order.
- 3.5 Payment for the subscription service will normally be paid annually in advance but may be varied on the Order form. Both parties reserve the right to vary the payment process in the future subject to written agreement between the Buyer and Supplier.
- 3.6 The payment for any professional services will be charged at the appropriate SFIA rate and invoiced following delivery of the services on a monthly basis or as otherwise agreed in writing.
- 3.7 Payment for any additional expenses not included on the Pricing Document, incurred by the Supplier and deemed necessary to deliver any Service ordered will be agreed with the Buyer in advance, and added to the relevant invoice.

4. General Data Protection Regulation

- 4.1 In the course of providing the Service, both parties shall take appropriate technical and organisational measures against unlawful or unauthorised processing of personal data and accidental loss or destruction of personal data (as defined by the General Data Protection Regulation 2018).
- 4.2 For the purposes of this Contract the Supplier is the Data Controller, Infrastructure Provider is the Data Processor and the User is the Data Subject under the terms of the General Data Protection Regulations 2018. The Supplier reserves the right to change the Infrastructure Provider during the term of the contract however this will be subject to written approval from the Buyer.

- 4.3 The Supplier will arrange with the Infrastructure Provider for all disks containing data to be wiped to the U.S. Department of Defence's standard, for them to be physically destroy them and obtain a certificate of destruction at the end of the hardware's lifetime.
- 4.4 The Supplier shall maintain a minimum data retention policy of six years of identifiable data so Users can return for reassessment of their needs and for ADL Smartcare Limited to meet its legal requirements.
- 4.5 The Supplier shall only retain personally identifiable data for statutory compliance purposes or as otherwise required by the Contract and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

5. Intellectual Property Rights (IPR)

- 5.1 The Supplier in supplying the Services shall not infringe the intellectual property rights of any third party.
- 5.2 IPR protects the Services supplied by Supplier. The sites and all of their contents, features and functionality (including but not limited to all information , software, texts, displays, images, video and audio and the design, selection and arrangement thereof) are owned by ADL Smartcare Limited and are protected by international copyright, trademark, patent, trade secret and any other intellectual property or proprietary rights laws. The Supplier shall retain all intellectual property rights to all ADL Smartcare Limited systems, software, databases and knowledge content provided as part of the Service. The software supplied as part of the Service is a subscription service. This Agreement only gives the Buyer limited rights to use the software. The Supplier reserves all other rights.
- 5.3 Supplier hereby grants to Buyer, including to all Buyer authorised users and a limited, non-exclusive, non-transferable, non-sublicensable right during the Term of each Order to access and use the Services purchased solely for the Buyers internal business operations. Buyer right to use the Services is subject to this Agreement and the 'Service Term of Use' and 'Privacy Policy'.
- 5.4 The Buyer shall not nor permit or authorise third parties to:
- distribute, license, sublicense, loan, sell, lease or the Services or other content that is contained or displayed in it;
 - modify, alter, adapt, hack, attempt to gain unauthorised access to the Services or create any derivative works of the Service or cause or facilitate others to do so;
 - reverse engineer, decompile, decode, decrypt, disassemble, or derive any source code of the Service;
 - remove, alter, or obscure any copyright, trademark, or other proprietary rights notice on or in the Software;
 - use the Services to provide services to third parties;
 - circumvent or disable any security or other technological features or measures of the Services;
 - use the Services in any manner that interferes with or disrupts the integrity or performance of the Services or the components of the Services; reproduce or distribute any information, software, or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.
- 5.5 Localisation of the Buyer's website used to access the Supplier software is subject to the Buyer providing the Supplier with their logo and branding guidelines. The IPR of these remain the property of the Buyer

and the Buyer gives the Supplier the necessary permissions to use these to provide the Service. On termination the Buyer's site will be securely archived as part of the decommissioning process.

- 5.6 The Service does not include any Project Specific IPRs, it is a subscription service providing access to the Supplier's software over the internet.
- 5.7 These clauses shall apply both during the Contract and after its termination.

6. Insurance and Liability

- 6.1 The Supplier shall effect and maintain, with a reputable insurance company, Public Liability Insurance cover of at least £5,000,000 during the period of the Contract.
- 6.2 The Supplier shall effect and maintain, with a reputable insurance company, Professional Indemnity Insurance cover of at least £1,000,000 during the period of the Contract.
- 6.3 The Buyer can recover from ADL Smartcare Limited only reasonably foreseeable direct damages up to 100% of the charges paid by the Buyer for Services provided in the last twelve months prior to the date of the event. Losses are foreseeable where they could be contemplated by the Buyer and the Supplier at the time of entering into the agreement. The Buyer cannot recover any other damages, including consequential, lost profits, special, indirect, incidental, or punitive damages. To the maximum extent permitted by law, the limitations and exclusions apply to anything related to this contract, for example:
- the Service;
 - loss of data;
 - viruses or other disabling features that affect your access to or use of our service;
 - incompatibility between the Service and Buyer software, and hardware;
 - delays or failures you may have in starting or completing transmissions or transactions in connection with the Service in an accurate or timely manner;
 - claims for breach of contract;
 - breach of warranty, guarantee or condition;
 - strict liability;
 - tort (including negligence or breach of statutory duty); or
 - misrepresentation.
- 6.4 The annual aggregate liability under this contract of either party for all defaults shall in no event exceed 100% of the annual charges payable by the Buyer to the Supplier during the Term of the Contract.

7. Standards

- 7.1 The Services as detailed in the Service Definition and SFIA documents shall conform with and fulfil all respects of:
- the Contract;
 - any variation of the Contract agreed in writing by the parties;
 - the requirements of any relevant UK or EC statute, order, regulation, directives, standard, code of practice or byelaw from time to time in force which is relevant to the Service;
 - professional standards which might reasonably be expected of the Supplier.

8. Use of Service

- 8.1 The Buyer will take all reasonable steps to ensure each member of staff accessing the system conform to the terms of use of the site, in particular the requirement for each user to be registered in their own right, and not to share usernames and/or passwords. This conforms to the requirements of ISO/IEC 27000 and best practice and ensures that proper audit trails can be maintained.
- 8.2 The Buyer agrees to take necessary steps to address any breaches in unauthorised user access when any are brought to their attention, in accordance with their own policies and notify the Supplier.

9. Incident Response Times

- 9.1 The Supplier will endeavour to meet the incident response times and will keep the Buyer regularly informed of progress and when an incident has been resolved. There are no service credits for failure of the Supplier to keep within the incident response times or achieve the availability stated.

	STATUS	DESCRIPTION	RESPONSE TIME	TARGET RESOLUTION TIME*
A	Critical	When you can access the internet but are unable to access the hosted infrastructure and software e.g. you receive a browser error that the site is not accessible.	1 working hour	1 working day
B	Major	When you are able to access the hosted server, but the software is not available e.g. you receive an error from the hosted service that the site is down.	8 working hours	1 working day
C	Urgent	When there are problems with the software which prevent you making/completing an assessment or the self-assessment, e.g. you can log into the service but you cannot start an assessment.	8 working hours	2 working days
D	Important	Where there are problems with the software which fall between urgent and minor e.g. you can complete an assessment but the user journey is not ideal	16 working hours	10 working days
E	Minor	A minor fault is one which is superficial and does not prevent you from using the software e.g. a webpage formatting issue.	16 working hours	Next software update

- * Target resolution time is our aim. We will respond sooner if possible, however it could take longer depending on the nature of the problem.
- ** A working day is Mon-Fri 0900 - 1700 excluding Public/ Bank Holidays.
- *** The Target Resolution time commences when a response to an event is sent to the Buyer.