

Terms & Conditions of Service

G-Cloud 14: Cloud Support

v0.1

Presented By

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Distribution List

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In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Agreement” means these General Terms and Conditions, the Statement of Work, and any Milestone Completion Document.

“EAL” means eAppSys Limited, whose registered office is at Unit 205, The Mille, 1000 Great West Road, Brentford, Middlesex, TW8 9DW.

“Client” means <> whose registered office is at <>.

“Statement of Work” means the document appended to these General Terms and Conditions which contains a description of the Services, Fees, and any specified Service Levels.

“Commencement Date” means <>.

“Fees” means the charge rates for the Services to be provided under this Agreement.

“Intellectual Property Rights” means all intellectual property rights, including without limitation, patents, registered designs, trademarks and services marks (whether registered or not), rights in the nature of unfair competition rights, copyright, database rights, design rights, and all similar property rights including those subsisting (in any part of the world) in inventions, designs, drawings, performances, computer programs, semi-conductor topographies, confidential information, business names, goodwill and the style and presentation of goods or services and applications and the right to apply for protection of any of the above rights.

“the Services” means the services to be provided by EAL pursuant to Clause 4 and as specified in the Statement of Work.

“the Service Levels” means any service levels set out in the Statement of Work.

1. Agreement

- 1.1. In consideration of the Client's payment of the Fees, EAL agrees to provide the Services upon the terms and conditions of this Agreement.
- 1.2. EAL shall ensure that all of the personnel who are engaged in the provision of the Services are properly supervised and are competent and suitable in every respect, whether as to qualifications, experience or otherwise, to provide the Services.
- 1.3. EAL will ensure that all of its staff comply at all times with:
 - 1.3.1. the Client's Access, Health and Safety and Security Policy Procedures, which are subject to change; and
 - 1.3.2. all reasonable instructions given by the Client with regard to the management or conduct of EAL's staff while on the Client's premises.
- 1.4. If at any time during the performance of the Services, the Client reasonably considers that the performance or conduct of EAL's personnel is unsatisfactory to the Client, the Client shall have the right to require the provision of, and EAL shall promptly provide, replacement personnel.

2. Payment

- 2.1. EAL shall submit itemized VAT invoices to the Client in respect of the Fees on the dates set out in the Fees section in the Statement of Work.
- 2.2. Subject to clause 2.8 below, the Fees shall be paid within one calendar month of receipt of EAL's valid and undisputed VAT invoice ("Due Date").
- 2.3. The Fees shall be paid without prior demand and no payment shall be considered made until it is received by EAL.
- 2.4. The level of Fees will be valid for the duration of this Agreement.
- 2.5. The Fees are inclusive of EAL's expenses (including reasonable travelling and subsistence expenses incurred by EAL's personnel) any additional expenses shall be paid by the Client to EAL provided that all claims by EAL for reimbursement of expenses shall comply with the provisions regarding expenses in the Statement of Work and be accompanied by the relevant invoices or receipts.
- 2.6. Any charges and expenses payable by the Client hereunder in addition to the Fees shall be paid in accordance with clause 2.2 above.
- 2.7. The Fees and any additional charges and expenses payable under this Agreement are exclusive of Value Added Tax which shall be paid by the Client at threat and in the manner for the time being prescribed by law provided that EAL submits a valid VAT invoice to the Client.
- 2.8. Should the Client have a bona fide dispute in respect of all or any part of any invoice(s) it shall notify EAL in writing within seven (7) days of receipt of the invoice giving the relevant details. Following any such notice, the Client shall be entitled to withhold payment of the amount in dispute without interest but shall nevertheless pay the undisputed part(s) in accordance with this Agreement. The parties shall cooperate in good faith to resolve any such dispute as amicably and promptly as possible and on settlement of the dispute the Client shall make the appropriate payment in accordance with this Agreement.
- 2.9. If any undisputed sum payable under this Agreement is not paid by the Due Date, then (without prejudice to EAL's other rights and remedies) EAL reserves the right to charge simple interest (i.e., not compound) on such sum on a day-to-day basis (before or after any judgement) from the Due Date to the date of actual payment (both dates inclusive) at the rate of 2 per cent per annum above the base rate of HSBC Bank from time to time in force. Such interest shall be paid on demand to EAL. EAL also reserves the right to terminate the provision of Services under such circumstances in accordance with clause 11.1.1.

3. Duration

- 3.1. This Agreement shall be deemed to have commenced on the Commencement Date and shall continue for the period as specified in the Statement of Work but shall be subject to earlier termination as provided elsewhere in this Agreement.

4. The Services

- 4.1. The Services shall be set out in the Statement of Work which when signed by both parties shall be incorporated into and shall form part of this Agreement. The Services shall be provided during normal business hours, 0900 through 1700, Monday to Friday excluding English Bank Holidays. Any deviation from these hours needs to be agreed by EAL before the work commences and either documented in the Statement of Work or provided as an addendum once this document has been finalised.
- 4.2. EAL warrants that it will provide the Services in accordance with the Service Levels.
- 4.3. The provision of the Services by any of EAL's personnel shall be charged on the basis of time spent providing the service and shall include all round-trip journey times totalling more than one and a half hours.
- 4.4. Any use of EAL in a project capacity must be accompanied by an agreed and signed Statement of Work from an authorised representative of the Client and EAL.
- 4.5. In performing the Services EAL shall comply with all of the Client's rules and procedures governing security and health and safety as well as all applicable laws, regulations and rules which relate to its obligations under this Agreement.
- 4.6. EAL may only employ sub-contractors for the execution of any portion of the Services or otherwise delegate to any third party the performance of EAL's obligations provided that EAL notifies the Client in writing in advance of the appointment of any sub- contractors.
- 4.7. EAL shall not be relieved from any of its obligations hereunder by entering into any sub-contract with a sub- contractor for the performance of any part of the Services and shall at all times remain primarily responsible and liable for the conduct of its sub- contractors and every act or omission of each sub- contractor shall for the purposes of this Agreement be deemed to be the act or omission of EAL.

5. Corrective Maintenance

- 5.1. Following sign-off of the Solution by the Client, the provision of any corrective maintenance for the Solution shall be defined in a separate Statement of Work and subject to additional charges except where the problem was caused by any negligent act or omission of EAL.

6. Client's obligations

- 6.1. During the continuance of this Agreement the Client shall:
 - 6.1.1. keep full security copies and back-ups of all relevant electronic information, including database instances and all related computer records in accordance with best computing practice;
- 6.2. provide EAL with such facilities and services at the Client's premises as are set out in the Statement of Work and as are reasonably required by EAL in order to perform the Services;
and
- 6.3. ensure in the interests of health and safety that EAL's personnel, while on the Client's premises for the purposes of this Agreement, are at all times reasonably protected from hazard.

7. Intellectual Property

- 7.1. Subject to Clause 9, EAL reserves the right to use in any way it thinks fit any programming tools, skills and techniques acquired or used by EAL in the performance of this Agreement.
- 7.2. The Client shall retain ownership of the Intellectual Property Rights in the contents of any materials provided by the Client to EAL for the purposes of this Agreement and in any materials maintained by EAL. EAL procures that the Client shall own the Intellectual Property Rights in any materials developed by EAL on behalf of the Client in relation to the Services and the selection and arrangement thereof, and EAL shall have no rights of ownership, nor shall it acquire any licence whether express or implied to use, copy or disclose the contents or arrangement of any Client specific information and materials provided to it by the Client other than to provide the Services pursuant to this Agreement. At the Client's request, EAL agrees to execute all documents to give effect to the rights granted to the Client under this clause.
- 7.3. EAL shall notify the Client in writing if any third-party materials will form part of the materials developed under this Agreement. In the event that third party materials are to be used, EAL will procure that a worldwide, non-exclusive, perpetual, irrevocable, royalty free licence to use such third-party materials is granted to the Client.
- 7.4. EAL shall indemnify the Client and keep the Client fully and effectively indemnified on demand against all losses, damages, expenses, and costs suffered by or awarded against the Client in the event of any claim that any materials provided by EAL infringe the Intellectual Property Rights of any third party. The foregoing indemnity shall not apply in respect of materials in which the Intellectual Property Rights are owned by a third party and an infringement has arisen due to the Client's failure to observe the terms of any applicable licence relating to such third party owned materials provided that the terms of such licence has been disclosed to the Client at or prior to the delivery to the Client of such materials.
- 7.5. The foregoing indemnity shall remain in effect notwithstanding the termination or expiration of this Agreement.
- 7.6. If any claim is made in relation to Intellectual Property Rights, or in either party's reasonable opinion is likely to be made, against the Client, EAL shall, with minimal disruption to the Client, at its option, promptly and at its own expense either:
 - 7.6.1. procure for the Client the right to continue using and possessing any materials; and/or
 - 7.6.2. modify or replace the infringing part of the materials (without prejudice to the representations and warranties made as to such materials and without diminishing or curtailing any of the requirements set out in the Statement of Work or elsewhere or otherwise affecting the functions, facilities, or the performance of the Services) so as to avoid the infringement or alleged infringement.

8. Confidentiality

- 8.1. Each party shall treat as confidential all information obtained from the other pursuant to this Agreement and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this Clause shall not extend to information which was rightfully in the possession of such party prior to the Commencement Date , which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause) or which is required to be disclosed bylaw. Each party shall ensure that its employees are aware of and comply with the provisions of this Clause. If EAL shall appoint any sub- contractor then EAL may disclose confidential information to such sub-contractor subject to such sub- contractor giving the Client an undertaking in the same terms to the provisions of this Clause. The foregoing obligations as to confidentiality shall survive any termination of this Agreement.
- 8.2. EAL shall not make any public announcement regarding the relationship between EAL and the Client without the prior approval of the Client.

9. Data Protection

9.1. Each party warrants to the other that

9.1.1. it is and will continue to be appropriately notified under the terms of the Data Protection Act 1998 and/or any other relevant data protection laws, legislation, and regulation and

9.1.2. it shall comply with all such laws, legislation, and regulations. EAL will adopt and maintain appropriate security measures for processing the Client's data, both in terms of the technology used and how it is managed. Where EAL processes personal data on behalf of the Client, then EAL shall process such data solely in accordance with Client's instructions from time to time.

10. Solicitation of staff

- 10.1. Each party shall not without the prior written consent of the other at any time during the period from the Commencement Date to the expiry of 12 months after the date of termination of this Agreement: employ or attempt to employ, actively solicit or endeavour to entice away from or discourage from being employed by the other party any person who is, or shall at any time between the Commencement Date or the date of such termination be, one of the other party's employees engaged in providing or receiving the Services provided or with whom contact is made on such other party's premises

11. Termination

11.1. Notwithstanding anything else contained herein, this Agreement may be terminated:-

11.1.1. by EAL forthwith on giving notice in writing to the Client if the Client shall fail to pay any undisputed sum due under the terms of this Agreement (otherwise than as a consequence of any default on the part of EAL) and such sums remains unpaid for seven (7) days after written notice from EAL that such sum shall has not been paid (such notice to contain a warning of EAL's intention to terminate); or

11.1.2. by either party forthwith on giving notice in writing to the other if the other commits any material breach of any term of this Agreement (other than any failure by the Client to make any payment hereunder in which event the provisions of sub-clause 11.1.1 above shall apply) and (in the case of a breach capable of being remedied) shall have failed, within fourteen (14) days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or

11.1.3. by either party forthwith on giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business; or

11.1.4. by either party forthwith on giving one (1) month notice in writing to the other of intent to terminate for whatever reason.

11.2. Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

11.3. On termination of this Agreement EAL shall provide to the Client:

11.3.1. such general assistance as the Client may require to ensure that the termination or expiry of any Statement of Work causes minimal disruption to the Client and the Client's business; and

11.3.2. the specific assistance provided for by Statement of Work (which shall as reasonably necessary be provided before as well as after termination or expiry) and otherwise agreed between the parties in writing.

12. Assignment

- 12.1. Save as expressly provided in this Agreement, neither party shall assign or otherwise transfer this Agreement or any of its rights hereunder whether in whole or in part without the prior written consent of the other, provided however EAL agrees that the Client may assign this Agreement to its subsidiaries, parent, or affiliated companies.

13. Force majeure

- 13.1. Neither party shall be liable for any delay in performing any of its duties and obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delaying and such party shall be entitled to a reasonable extension of time for the performance of such obligations PROVIDED THAT it has provided written notice to the other party specifying the nature and expected duration of the force majeure event.
- 13.2. If either party is prevented or delayed in performing its obligations for a period in excess of 15 days, the other party may terminate this Agreement immediately by serving written notice on the party affected.

14. Liability

- 14.1. Neither party shall be liable for failure to perform its contractual obligations, other than an obligation to make payment, if such failure results from Act of God, governmental act, fire explosion, accident, industrial dispute, or any other cause beyond the party's control.
- 14.2. The Supplier indemnifies the Client in respect of:
- 14.3. Direct physical damage to the Client's property, which is established to be the result of negligence by the Supplier or its servants or agents while on the Client's premises for the purpose of this Agreement. In respect of the Equipment, liability is limited to the prompt making good by repair or replacement of any Equipment or part thereof damaged or destroyed as a result of such negligence. The Supplier's liability for direct damage to property other than the Equipment is limited to £1,000,000 in respect of any event or series of related events;
- 14.4. 4.4. Direct physical injury or death of any person resulting from the negligence of the Supplier or its servants or agents.
- 14.5. The Client indemnifies the Supplier in respect of:
- 14.6. Direct physical damage to the Supplier's property, which can be established to be the result of negligence by the Client or its servants and agents. The Client's liability for direct physical damage is limited to £1,000,000 in respect of any one event or series of related events;
- 14.7. Direct physical injury to, or death of any person resulting from the negligence of the Client or its servants or agents.
- 14.8. In view of the disproportion between the acts or omissions likely to constitute breach or negligence on its part and the consequences for the Client, the Supplier excludes all liabilities not expressly included in this Agreement, and in particular the Supplier shall have no liability for:
- 14.9. Destruction of or damage to the Client's data. (The Client must keep a copy of all data from which it shall exclude the Supplier notwithstanding any requests made by its employees or agents);
- 14.10. Any loss of profits, goodwill, revenue, production, anticipated savings, use or contracts or any form of special, indirect, or consequential losses whatsoever.
- 14.11. In any event other than 14.2 above the maximum liability of the Supplier shall be the fees paid or payable by the Client under this Agreement (excluding VAT).

15. Variation

- 15.1. This Agreement shall not be amended, modified, varied, or supplemented except in writing signed by duly authorised representatives of both parties.

16. Waiver of remedies

- 16.1. No forbearance, delay or indulgences by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

17. Entire agreement

- 17.1. This Agreement supersedes all prior agreements, arrangements, understandings, and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement.
- 17.2. Each party hereby warrants to the other that they have not been induced to enter into this Agreement by any prior representations or warranties, whether oral or in writing, except as specifically contained in this Agreement and both parties hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in this Agreement or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently) and/or to rescind this Agreement.

18. No Partnership

- 18.1. Nothing in this Agreement shall be construed as constituting a contract of employment, partnership, or joint venture between the parties hereof.

19. Notices

- 19.1. All notices which are required to be given under this Agreement or any communication between the parties with respect to any of the provisions of this Agreement shall be in writing and shall be deemed duly given if signed by or on its behalf by a duly authorised officer of the party giving the notice and if left at or sent by pre-paid post (first class recorded delivery post if within the United Kingdom and airmail if overseas) or by facsimile transmission to the address or facsimile number as appropriate of the party receiving such notice as set out at the head of the Agreement or as notified between the parties for the purpose of this clause. Electronic mail (e-mail) cannot for legal reasons be considered as a form of notice by either party. Any such notice or other communication shall be deemed to be given to and received by the addressee:
- 19.1.1. the next working day following the same being handed to a representative of the party to be served at such address.
 - 19.1.2. by recorded delivery post two working days next following the date of posting
 - 19.1.3. by airmail seven working days next following the date of posting
 - 19.1.4. in the case of a facsimile transmission the working day following the date of despatch
- 19.2. In proving the giving of such a notice, it will be sufficient to prove that the envelope containing the notice was properly addressed and posted as aforesaid or that the facsimile transmission was properly despatched to the correct facsimile number and despatch of the transmission was confirmed by the sender's facsimile machine by reference to the appropriate confirmation printout.
- 19.3. Notices and any communications addressed to EAL shall be marked for the attention of the Managing Director, and notices and any communications addressed to the Client shall be marked for the attention of the IT Director.

20. Governing Law

- 20.1. This Agreement and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by and construed in accordance with the laws of England and Wales and each of the parties hereto irrevocably submits to the non-exclusive jurisdiction of the English Courts.

21. Dispute Resolution

- 21.1. Either party may call a meeting of the parties by service of not less than fourteen (14) days' written notice and each party agrees to procure that an authorised representative shall attend all meetings called in accordance with this Clause 21.
- 21.2. Those attending the relevant meeting shall use all reasonable endeavours to resolve disputes arising out of this Agreement. If the meeting fails to resolve the dispute within fourteen (14) days of its being referred to it, either party by notice in writing may refer the dispute to the Chief Executives of the parties, who shall co-operate in good faith to resolve the dispute as amicably as possible within 21 days of the dispute being referred to them.
- 21.3. If the Chief Executives fail to resolve the dispute in the allotted time, the parties may within that period on the written request of both parties ("ADR Request") agree in writing to enter into an alternative dispute resolution procedure ("ADR Procedure") with the assistance of a mediator agreed by the parties or, in default of such agreement within fourteen (14) days of receipt of the ADR Request, appointed by the Centre for Dispute Resolution, Harbour Exchange Square, London.
- 21.4. The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution for the exchange of relevant information and for setting the date for negotiations to begin.
- 21.5. If the parties agree to have recourse to the ADR Procedure the same shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly, all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts until 40 days after the appointment of a mediator.
- 21.6. If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by a duly authorised representative of each of the parties, shall be and remain binding on the parties.
- 21.7. The parties shall bear their own legal costs of the ADR Procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 21.8. While the ADR Procedure referred to in this Clause 21 is in progress and any party has an obligation to make a payment in respect of the matter in dispute to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest-bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this Agreement Following resolution of the dispute, whether

by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

22. Third Party Rights

- 22.1. No provision of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it. The terms of this Agreement are provided for the benefit of the Client and its associated companies who shall be regarded as third parties for the purposes of the Act. Any loss suffered by any associated company under this Agreement shall be deemed to be a loss of the Client. The parties may vary or terminate this Agreement without the consent of any of the Client's associated companies.

23. Severability

- 23.1. If any of the terms of this Agreement are or become invalid, illegal, or unenforceable, the remaining provisions shall continue to have full force and effect. The parties will negotiate in good faith to substitute a valid and enforceable provision that achieves the same effect as intended by the invalid, illegal or unenforceable provision.

24. Bribery and Corruption

- 24.1. EAL shall, and shall procure that its agents, directors, employees, officers, and other persons associated with it who are performing services or providing goods in connection with this Agreement (including but not limited to sub-contractors) ("EAL Personnel") shall
- (i) *comply with all applicable laws, regulations, codes, and sanctions relating taint-bribery and anti- corruption ("Anti-Bribery Laws") and (ii) not engage in any activity, practice, or conduct which would constitute an offence under Anti Bribery Laws.*
- 24.2. EAL undertakes that it shall maintain in place throughout the term of this Agreement adequate policies and procedures to ensure compliance with the Anti-Bribery Laws.
- 24.3. EAL shall indemnify and hold harmless the Client on a continuing basis against any costs, damages, liabilities, losses, or expenses incurred by any member of the Client's group or its directors, officers, employees, contractors, sub-contractors, and agents arising out of or in connection with a breach by EAL or EAL Personnel of Clause 24.1.
- 24.4. The Client may terminate this Agreement with immediate effect if it makes a good faith determination that EAL or any EAL Personnel has breached any of the provisions under Clause and/or otherwise has committed a violation of the Anti- Bribery Laws.

25. General

- 25.1. Unless the context otherwise requires the singular shall include the plural and vice versa references to any gender shall include all other genders and references to persons shall include bodies corporate unincorporated associations and partnerships in each case whether or not having legal personality.
- 25.2. References in this Agreement to clauses recitals or schedules are to clauses of and recitals or schedules to this Agreement unless otherwise specified.
- 25.3. References in this Agreement to any statute or statutory provision shall be construed as referring to that statute or statutory provision as it may from time to time be amended extended re-enacted or replaced (whether before or after the date of this Agreement) and including all subordinate legislation from time to time made under it.
- 25.4. Headings contained in this Agreement are for reference only and shall not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses and sub- clauses to which they relate.
- 25.5. If there is any conflict within or between clauses 1 to 25 of these General Terms and Conditions and the provisions of the Statement of Work, the provisions of the Statement of Work shall prevail.