



G-CLOUD 14 – TERMS & CONDITIONS

Services Agreement
G-Cloud 14
Framework Reference RM1557.14

THIS AGREEMENT is made the DD/MM/YYYY

BETWEEN:

**1. SERVENT LIMITED (reg no SC481960) ("Servent") whose registered office is
22 Montrose Street, Glasgow, G1 1RE**

and

2. [Customer Details]

WHEREAS the Customer wishes Servent to provide the Services specified in the attached Statements of Work, and Servent wishes to do so on the terms and conditions of this Agreement.

IT IS AGREED as follows:

Servent will supply and the Customer agrees to accept the Services in accordance with the terms and conditions of this Agreement. This Agreement comprises:

- (i) this page.
- (ii) the terms and conditions which follow; and
- (iii) the G-Cloud terms and conditions: G-Cloud 14-terms-and-conditions

STANDARD CONDITIONS FORMING PART OF THIS AGREEMENT:

- Following the completion of work and agreement with customer, a case study will be produced.

Signed for and on behalf of Servent by its duly authorised signatory:

Signature.....

Print name

Job title.....

Date.....

Signed for and on behalf of the Customer by its duly authorised signatory:

Signature.....

Print name

Job title.....

Date.....



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TERMS AND CONDITIONS

3. DEFINITIONS

3.1. The following expressions have the following meanings in this Agreement:

<i>Commencement Date</i>	means the date stated at the beginning of page 2 of this Agreement.
<i>Consultant</i>	means an employee of Servent, or a sub-contractor engaged by Servent to provide the Services.
<i>Documentation</i>	means documentation provided by Servent to help the Customer use the Services.
<i>Managed Services</i>	means the monitoring by Servent of business-critical systems and/or other support services specified in any Statements of Work which are classified as managed services.
<i>Professional Services</i>	means the consultancy and other services specified in any Statements of Work which are classified as professional services.
<i>Services</i>	means any or all of the Managed Services, and Professional Services, Support and Maintenance to be performed by Servent under this Agreement.
<i>Software</i>	means the software items specified in any Statements of Work which are classified as software licence.
<i>Statement of Work</i>	means a document signed by both parties (or referenced by a framework agreement which is signed by both parties) which details Services to be delivered under this Agreement.

3.2. In the event of any conflict or ambiguity between the components of this Agreement, the components shall have the following priority: first the Statements of Work, then second the framework agreement document (if any), then third these terms and conditions.

3.3. Unless the context requires otherwise, words implying the singular shall include the plural and vice versa.

3.4. Clause headings are inserted for ease of reference only and shall be ignored in interpreting this Agreement.

4. TIME & MATERIALS

4.1. Unless otherwise stated in a framework agreement document or relevant Statement of Work, Servent will charge the Customer for the Services on a time & materials basis. Under this basis, all prices quoted to the Customer are estimates only and are subject to change by Servent.

Servent shall notify the Customer as soon as reasonably practicable of any changes in its estimates relating to the Services.

4.2. Unless otherwise stated in a framework agreement document or relevant Statement of Work, Servent will charge the Customer for the Services on a time & materials basis. Under this basis, all prices quoted to the Customer are estimates only and are subject to change by Servent. Servent shall notify the Customer as soon as reasonably practicable of any changes in its estimates relating to the Services.

4.3. Charges for Services supplied on a time & materials basis, together with any related expenses, shall be invoiced by Servent monthly in arrears.

5. FIXED PRICE

5.1. Where the preference is to adopt a fixed price within any Statement or Work Servent will include 25% contingency to allow for any unplanned work required to meet the deliverable.

5.2. Charges for Services supplied on a fixed price, together with any related expenses, shall be invoiced by Servent at the end of that fixed price work.

6. FEES AND CHARGES

6.1. Prices for Services are detailed in the appropriate Statements of Work and are expressed in pounds sterling unless indicated otherwise. All prices are stated exclusive of VAT, which will be charged to the Customer at the then prevailing rate where appropriate.

6.2. The Customer shall reimburse Servent for all reasonable business expenses incurred in providing the Services, including but not limited to accommodation, travel, and subsistence. Expenses will be recharged at cost or standard rates approximately equal to cost.

6.3. A working day shall comprise any 7½ working hours including travel to and from any location designated by the Customer. Prices are based on the provision of Services during normal working hours, defined as 9.00 am to 5.30 pm Monday to Friday inclusive, excluding public holidays. Work outside of these hours will be undertaken at the discretion of Servent and, unless otherwise stated in a framework agreement document or relevant Statement of Work, will be subject to additional charges.

6.4. Servent reserves the right to amend its prices for subsequent Services. Servent will give the Customer written notice, usually in the form of a new Statement of Work, for any change to prices or charge-out rates before starting work.

- 6.5.** If no payment terms are stated in a framework agreement document or relevant Statement of Work, payment for Services and related expenses is due and will be made by the Customer within 30 days of date of invoice for the same.
- 6.6.** This Agreement is divisible. Each delivery of Services shall be invoiced separately and is payable in full and without set-off or deduction and in accordance with the payment terms in clause 3.5 (i) notwithstanding that the Services form only part of a Statement of Work or project which has not been completed, and (ii) without reference to and notwithstanding any defect or default in any other Services.
- 6.7.** Failure to meet due payment dates will entitle Servent to stop work and withhold or remove Services, until such time as payment is received. The Customer shall not have any right to withhold, or any right of set-off, with respect to payments due to Servent under this Agreement.
- 6.8.** Servent shall be entitled to charge interest on a daily basis at the rate of 8% per annum above the base rate of National Westminster Bank plc in respect of any undisputed amount which is due and not yet paid.

7. SERVICES

- 7.1.** Statements of Work will be prepared by Servent and submitted to the Customer for approval and no Services shall be commenced until such approval has been obtained.
- 7.2.** Any change to the Services shall be mutually agreed and an appropriate addendum to the Statement of Work signed by both parties. The Customer acknowledges that any change may affect delivery times and pricing. The original Statement of Work shall remain in effect unless and until an addendum has been signed.
- 7.3.** Reasonable changes to the Services shall not be unreasonably refused or delayed by either party.

8. PERSONNEL

- 8.1.** Servent shall have the right to replace a Consultant during provision of the Services with another appropriate Consultant.
- 8.2.** Servent reserves the right to sub-contract any of the Services to be provided under this Agreement but shall remain at all times responsible for the delivery of the Services.
- 8.3.** During the term of this Agreement and for a period of 2 years after final payment has been received by Servent for any of the Software or Services to be provided hereunder, the Customer shall not, whether directly or indirectly, actively solicit nor offer employment to nor contract the services of any of the personnel who have been engaged in work performed under this Agreement without the prior written consent of Servent.

8.4. In the event of the Customer employing or using the services of any such personnel, whether directly or indirectly, without Servent's prior written approval, the Customer shall pay Servent a sum equivalent to the current annual gross earnings of that person. Such sum shall be by way of liquidated damages and shall be due and payable immediately upon the termination of such individual's employment or service with Servent.

8.5. Each party will take all reasonable precautions to ensure the health and safety of the other's personnel while the same are at its premises. In the UK, the parties agree to observe the provisions of the Health and Safety at Work Act 1974 and any amendments thereto and, while on each other's premises, they will conform with each other's safety rules and procedures from time to time in force.

9. TIME AND DELIVERY

9.1. Servent shall use reasonable endeavours to provide the Services in accordance with any timescales which may be detailed in a framework agreement document or Statement of Work. However, for the avoidance of doubt, time shall not be of the essence in the delivery of Services.

9.2. If the Customer refuses or fails to take delivery of the Services tendered in accordance with this Agreement, Servent shall be entitled to payment in full for the Services so tendered.

9.3. The response times stated in any framework agreement document or Statement of Work are subject to remote access to the Customer's equipment via Servent's chosen remote access software.

9.4. Servent and the Customer will hold a review meeting every 90 days to discuss all open Statements of Work and agree solutions to any problems arising.

10. INTELLECTUAL PROPERTY

10.1. Copyrights, patent rights and all other intellectual property rights in:

- I.** all Professional Services, Managed Services, Support and Maintenance and related Statements of Work and Documentation (but not, for the avoidance of doubt, in any Software Development); and
- II.** all ideas, knowledge and techniques provided, utilised, or developed by Servent in connection with this Agreement shall be and remain the property of Servent, its suppliers and its licensors.

10.2. The Customer is hereby granted a non-exclusive, perpetual, royalty-free licence to use the Professional Services, Managed Services, Support and Maintenance and related Statements of Work and Documentation for its own internal business. For the avoidance of doubt, the Customer

shall not transfer any such intellectual property licenced or otherwise made available by Servent to any third party for commercial gain.

10.3. For the purposes of clause 8.2, references to the Customer shall include a third-party IT services provider whose agreement with the Customer binds it to the provisions of this clause 8.

10.4. The Customer shall notify Servent immediately in writing of any action and related claims brought against the Customer alleging that the Customer's use of the Services infringes a patent or copyright.

10.5. In the event that a final injunction shall be obtained against the Customer's use of the Software or Services by reason of such infringement, Servent will at its own option and expense either procure for the Customer the right to continue using such Software or Services (or parts thereof), replace or modify the same so that it becomes non-infringing without detracting overall from its performance, or repay to the Customer the fees and charges paid by the Customer in respect of any Software or Services which are rendered unusable. This Agreement will then be discharged and cease to have effect in respect of the relevant Software or Services.

10.6. Servent shall not be liable if the alleged infringement is based upon:

10.7. the use of Services in combination with products not supplied or approved by Servent; or

10.8. compliance with designs or specifications furnished by or on behalf of the Customer.

10.9. The foregoing states the entire liability of Servent for infringements by Servent for any Services supplied.

10.10. Servent and its licensors may in their sole discretion develop, use, or market and licence to third parties any Professional Services, Managed Services or Software Support and Maintenance that Servent has supplied to the Customer under this Agreement.

11. CUSTOMER OBLIGATIONS

11.1. The Customer shall provide at no charge to Servent the opportunity to install Servent's own software to facilitate the provision of Services under this Agreement, and the opportunity to remove it upon termination of this Agreement. Such software shall remain the property of Servent at all times.

11.2. The Customer will provide Servent with all necessary co-operation, information, equipment, data, and support that may reasonably be required by Servent for the performance of its obligations hereunder, including access to premises, facilities, systems, and personnel at such reasonable times as Servent requests.

- 11.3.** The Customer shall execute all works and duties that may be detailed in the Statement of Work as being the Customer's responsibility and assume full responsibility for all matters not explicitly assigned to Servent.
- 11.4.** The Customer shall nominate an appropriate contact person for Servent who shall supply reasonably requested information and take, or obtain from others, decisions relating to the Services without undue delay.
- 11.5.** Servent shall be entitled to charge the Customer at its standard daily rates for any additional work required or time wasted as a result of the Customer cancelling an agreed assignment at short notice or otherwise failing to discharge its responsibilities.
- 11.6.** Servent shall not be held in breach of this Agreement if it is delayed or otherwise prevented from performing the Services as a result of a failure or breach of this Agreement by the Customer.
- 11.7.** Both parties undertake that any disclosure of personal data shall be in compliance with the provisions of the Data Protection Act 1988 and all other applicable data protection legislation.
- 11.8.** The Customer shall obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, in all cases before provision of the Services commences.
- 11.9.** The Customer will indemnify Servent against all costs, claims and liabilities of whatever nature arising out of or in connection with any claim that the use or modification by Servent, its Consultants or agents of any information or software made available by the Customer infringes the intellectual property rights of any third party.

12. WARRANTY

- 12.1.** Servent will provide the Services with reasonable skill and care and ensure that its Consultants are reasonably competent and capable of providing the Services.
- 12.2.** Servent shall be liable for the reasonable correction, at its own cost, of material defects in the provision of the Services that are notified to Servent in writing by the Customer within 90 days from the date of delivery.
- 12.3.** If within 90 days from the date of delivery the Customer notifies Servent of a material and demonstrable respect in which the Services do not provide the facilities and functions specified in and substantially comply with the specification in the relevant Statement of Work, then Servent will in its sole discretion either remedy the defect or supply alternative software for the same application, provided that:
- 12.4.** the Customer has used the Services in accordance with Servent's operating instructions; and

- 12.5.** the Customer has not authorised any third party to use, modify, interfere with, or perform maintenance on the same, unless such action was approved by Servent.
- 12.6.** If the Customer fails to notify Servent within the said 90 day period, the Customer will be deemed to have fully tested the same and to be wholly satisfied with the results thereof.
- 12.7.** In the event that Servent is unable within a reasonable time to effect the correction, remedy, or replacement pursuant to clauses 10.2 or 10.3, then Servent will repay to the Customer the fees and charges paid by the Customer in respect of the relevant Services and those elements of this Agreement which relate to such Software or Services will be discharged and cease to have effect.
- 12.8.** For the avoidance of doubt, Servent does not hold itself out as being expert in the business of the Customer and Servent does not represent or warrant that the Services will meet the Customer's requirements or that the operation of such will be uninterrupted or error free. The Customer acknowledges that it is the Customer's responsibility to ensure that the descriptions contained in the Statements of Work will meet the Customer's requirements.
- 12.9.** The Customer acknowledges that Servent's fees and charges for Software and Services are determined on the basis that clauses 10.2 to 10.6 and 11.3 to 11.6 shall apply and the Customer accepts the application of these provisions.
- 12.10.** Except for the expressed warranties above, Servent disclaims all other warranties relating to any Services, whether expressed or implied by law or otherwise (including the implied warranties of merchantability and fitness for a particular purpose) and the foregoing warranty is in lieu of all obligations or liabilities on the part of Servent for damages arising out of or in connection with the provision of Services.

13. SERVENT OBLIGATIONS

- 13.1.** Servent will indemnify the Customer for direct physical injury or death caused by the negligence of Servent or its Consultants acting in the course of its business. Servent's liability for such death or physical injury shall be unlimited.
- 13.2.** Servent will indemnify the Customer for direct physical damage to tangible property, excluding loss of or damage to data, documents, or other software, caused by the negligence of its Consultants while acting in the course of its business, provided that Servent's total liability to the Customer under this Agreement shall be limited to £1,000,000 for any one event or connected events arising out of a single cause.
- 13.3.** Servent shall in no event be liable for the loss of or damage to any document or data supplied by the Customer. It is specifically declared to be the Customer's responsibility to ensure that it has and maintains adequate back-up copies of any documents or data. If the Customer fails to

maintain adequate back-up copies, Servent shall charge the Customer for any time spent in attempting to recover files, whether successful or not.

13.4. Under no circumstances shall Servent be liable for i) loss of profits, revenue, contracts, goodwill or anticipated savings or for any incidental, consequential, special or indirect losses or damages arising under, out of or in connection with this Agreement or any breach of it, or arising from the supply or use of or any defect in Services or Documentation; or ii) any loss or damage which could have been avoided by the Customer following Servent's reasonable instructions and advice.

13.5. Other than as stated within this Agreement, all terms, conditions, warranties, representations or guarantees whether expressed or implied (by statute, common law or otherwise) relating to the performance, quality, description, or fitness for purpose of the Services and/or any other items supplied under this Agreement or otherwise relating to the performance by Servent of its obligations are excluded.

13.6. In any event the maximum aggregate liability of Servent however arising under or in connection with this Agreement, or arising from the use of the Services or any other item supplied pursuant to this Agreement, whether for breach of contract, negligence, misrepresentation (other than fraudulent misrepresentation), in tort or otherwise, other than the liability referred to in clauses 5.1 and 5.2 above shall not in any circumstances exceed the payments made by the Customer to Servent for the Software and Services.

13.7. The Customer shall indemnify and defend Servent and its Consultants in respect of any claims by third parties which arise from Servent following the instructions of the Customer or its employees.

13.8. This Clause 5 shall survive any termination of the Agreement.

14. CONFIDENTIALITY

14.1. The parties shall keep confidential each other's trade and business secrets, and all other information obtained in connection with this Agreement that is designated as confidential. The parties agree not to make such confidential information available in any form to any third party except as may be required by law or by a body of competent jurisdiction.

14.2. Neither party shall have such obligation with respect to information which is already in its possession, is independently developed, becomes publicly known through no wrongful act of such party, or is lawfully obtained from a third party with no restriction on disclosure.

- 14.3.** The parties shall require their employees, sub-contractors and any authorised third parties having access to such confidential information to adhere to the confidentiality obligations set out herein.
- 14.4.** Servent may refer appropriately to the Customer by name or trading name in any announcement, presentation, or marketing material.
- 14.5.** Subject to the Customer's advance approval of the content (such approval not to be unreasonably withheld or delayed), Servent may publicise a case study describing any Services supplied under this Agreement.
- 14.6.** This clause 12 shall survive any termination of this Agreement.

15. TERMINATION

- 15.1.** This Agreement shall commence on the Effective Date and shall remain in force until terminated by either party giving not less than 3 months' notice to the other, such notice not to expire before:
- 15.2.** the date on which Servent completes delivery of the Software and Services specified all Statements of Work;
- 15.3.** 12 months after signature of this Agreement.
- 15.4.** Subject to clauses 7.2 to 7.5 below, this Agreement cannot be terminated by either party before the later of the above dates.
- 15.5.** In the event that either party is allegedly in material default under any of the terms of this Agreement, then that party shall have a reasonable time and opportunity to cure any such defect or failure of performance. If such corrective action as is reasonably required has not been taken within a period of 30 days, having regard to all the circumstances, the other party may terminate this Agreement with respect to the Statement(s) of Work subject to the material default, without prejudice to any other rights it may have under this Agreement. For the avoidance of doubt, in the event of such termination, this Agreement will continue to remain in force in respect of those Statement(s) of Work not subject to the material default. Until the effective date of any such termination all outstanding fees and expenses must be paid in full or services delivered in accordance with the terms hereof.
- 15.6.** Servent shall not be in breach of this Agreement if the relevant software or related system environment have been substantially changed by the Customer or any other person without Servent's specific consent in writing. Where such unauthorised changes substantially impede or

make more costly the provision of Services hereunder, Servent shall take corrective action only if the Customer agrees to bear any additional costs arising at Servent's then prevailing rates.

15.7. Servent may terminate this Agreement in the event of the Customer attempting to assign the Agreement or transfer its obligations, rights, or duties without the prior written agreement of Servent.

15.8. This Agreement may be terminated upon service of written notice by either party where the other (i) passes a resolution or an order is made for its winding up, other than for the purpose of a solvent amalgamation or reconstruction; or (ii) becomes subject to an administration order; or (iii) has a receiver or administrative receiver appointed over any of its assets or undertakings. Under such circumstances the party serving notice may also (without prejudice to any of its other rights) suspend deliveries of Software and Services.

15.9. In the event of termination of this Agreement for any reason, all property in the possession of either party belonging to the other shall forthwith be returned and all monies due and owing to Servent shall be paid by the Customer.

15.10. Termination of this Agreement howsoever arising shall not discharge either party from any existing obligation accrued or prior to the date of termination or affect the continuing application of clauses which are intended either expressly or by implication to survive such termination.

16. ASSIGNMENT

16.1. Subject to clause 8.2, neither party may assign or transfer this Agreement or any of the rights arising under it without the prior written consent of the other party which shall not be unreasonably withheld.

16.2. Servent may assign any amount due from the Customer under this Agreement.

17. FORCE MAJEURE

17.1. Neither party shall be responsible or liable for any failure or delay in the performance of any of its obligations under this Agreement (other than payment or refund of money) for the duration of, and to the extent that this results from any cause beyond its reasonable control or responsibility.

18. AGENCY

18.1. This Agreement does not constitute an agency agreement or partnership between the parties.

19. THIRD PARTY RIGHTS

19.1. Other than the Customer and Servent, no person shall be deemed to be a party to this Agreement under the Contracts (Rights of Third Parties) Act 1999 and no such person shall have any right thereunder to enforce any of the terms of this Agreement.

20. NOTICE

20.1. All notices required to be given under this Agreement shall be in writing and may be sent by email or by conventional mail. Notice sent by conventional mail shall be deemed to have been given 48 hours after posting to the address set out on the front page of this Agreement, or to such other address as either party may have formally notified. Notice sent by email shall be deemed served when the sending party receives an electronic acknowledgement of delivery.

21. SEVERABILITY

21.1. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

22. WAIVER

22.1. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

23. DISPUTES

23.1. The parties will attempt in good faith to resolve any disputes or claim arising out of or relating to this Agreement promptly by negotiations between senior executives of the parties who have authority to settle the dispute.

23.2. If the matter is not resolved through negotiation, the parties will attempt in good faith to resolve the dispute through an Alternative Dispute Resolution ("ADR") procedure.

24. PURCHASE ORDERS

24.1. Where it is the Customer's normal business practice so to do, the Customer shall provide Servent with a purchase order for the Services and Servent shall have the right to suspend provision of the Services where no valid purchase order is in effect.

24.2. It is expressly agreed that any terms and conditions of the Customer's purchase order shall be superseded by the terms and conditions of this Agreement.

25. ENTIRE AGREEMENT

25.1. This Agreement shall constitute the entire Agreement between the parties in relation to its subject matter, and supersede all prior communications, oral or written. Any terms, conditions, warranties, representations or guarantees contained or referred to in any other documentation are disclaimed and excluded and the Customer warrants that it has not relied on the same in entering into this Agreement.

25.2. No deviation from this Agreement shall be binding unless mutually agreed in writing by the authorised representatives of both parties.

26. MISCELLANEOUS

26.1. This Agreement shall be governed in all respects by the laws of Scotland shall be subject to the non-exclusive jurisdiction of the Scottish Courts.

