

# G-Cloud Terms and Conditions

## Lot 3 Cloud Support Services

May 7, 2024

This Agreement (the “Agreement”) for Lot 3 Cloud Support Services (“the Product”) is entered into this May 7, 2024 (the “Effective Date”), by and between Customer (acting for itself and its Affiliates and collectively referred to herein as “Company”) of [Address]; and Xewli Limited, a company registered in England and Wales under number 11050425, whose registered office is at 27 Harrison Road, Halifax, England, HX1 2AF (“Xewli”). Company and Xewli shall be referred to herein as individually a “Party”, and collectively the “Parties”.

In consideration of the mutual promises set forth in this Agreement, the Parties agree as follows:

### 1 DEFINITIONS

The following definitions (and additional definitions in the text) will apply to this Agreement:

- 1.1 “Affiliate” means, with respect to any entity, any other entity directly or indirectly controlling, controlled by, or under direct or indirect common control with such entity. An entity shall be deemed to control another entity if such entity possesses, directly or indirectly, the power to
  - (i) Vote 50% or more of the securities having ordinary voting power for the election of directors of such other entity; or
  - (ii) Direct or cause the direction of the management or policies of such other entity, whether through the ownership of voting securities, by contract or otherwise.
- 1.2 “Deliverable” means the documentation and goods as supplied by Xewli as a result of delivering the Service.
- 1.3 “Goods” means the goods supplied by Xewli as detailed in the Proposal.
- 1.4 “Proposal” means Xewli’s proposal for the Service.
- 1.5 “Service” means the services supplied by Xewli as detailed in the Proposal.

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1.6 "Xewli Marks" mean the trade names, trademarks, service marks, logos, domain names and other distinctive brand features of Xewli, as owned by or licensed to Xewli and its Affiliates from time to time.

## 2 SERVICE

2.1 Xewli shall:

- (i) Exercise reasonable skill and care in carrying out the Services described in the Proposal; and
- (ii) Use suitably qualified and experienced personnel.

2.2 The Service shall not include support or maintenance of any Deliverables, unless such support or maintenance is expressly included. Company hereby agrees that Xewli may engage individuals or organisations on a sub-contract or consultancy basis, as Xewli sees fit to assist Xewli in the provision of Services and that such agreement as set out herein shall constitute Company's prior written approval pursuant to Section 2.

2.3 Notwithstanding any other term of the Agreement, the Parties agree that the performance of the Service is conditional upon Company's fulfilment of its obligations under the Agreement. Company acknowledges that any delay or failure by it to fulfil its obligations may result in Xewli being unable to meet any agreed timetable or budget. Xewli shall not be liable for any delays or consequences resulting from non-performance of the Service where the obligations of Company have not been satisfied in accordance herewith, and Company shall compensate Xewli for any such time or budget impact.

2.4 Company shall:

- (i) Provide to Xewli at no charge and in a timely manner, all such documents information, materials, facilities, support, services and co-operation relating to the Service including (without limitation) software, data, reports and specifications and other information as Xewli may reasonably require for the proper performance of the Service and within sufficient time to enable Xewli to perform the Service, and Company shall ensure that such are accurate and complete, and Xewli shall be entitled to rely upon such as being accurate and complete without seeking to verify or check it.
- (ii) Provide Xewli, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to any of Company's premises, office accommodation, equipment, systems, networks, software, data and other facilities as reasonably required by Xewli.

2.5 Where the Service is to be performed at a Customer site or a site under the control of Company, Company warrants that any hardware or software which Xewli is asked to use in the performance of the Service are the property of Company or are legally licensed to

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Company and that Xewli shall have full and proper authority to use same to the extent necessary to perform the Service.

- 2.6 Where a Deliverable materially meets its agreed acceptance criteria Company shall accept such Deliverable. The Deliverables shall be deemed accepted where no reasonable objection (which shall be in writing and accompanied by supporting reasons setting out the nature of the non-compliance) is made in respect of such Deliverables within 10 days of delivery (or such other period as may be agreed in writing by the Parties). Should the Deliverables be rejected by Company, Xewli may use reasonable endeavours to remedy the material defects in the Deliverables, and resubmit the Deliverables in their final form to Company when they shall be deemed to have been accepted by Company. Risk in a Deliverable shall pass to Company on acceptance and thereafter Xewli shall have no further liability in relation thereto. Notwithstanding any other provision of the Agreement, acceptance of the Deliverables shall be deemed upon any use of those Deliverables in a live or operational environment or manner otherwise consistent with acceptance of such Deliverables.
- 2.7 Xewli agrees, for a period of 30 days effective from Deliverable acceptance, to resolve, free of charge, at Xewli's premises (or at such other place as the Parties may agree), and within a reasonable period, any material non-conformance by any Deliverable as the case may be (a "Defect") found in the Deliverable provided that:
- (i) The Deliverable (or part thereof) has not been subject to any modification, repair, adjustment or enhancement by Company, or any third party, or combination with any other software or equipment, other than with Xewli's written consent (not to be unreasonably withheld or delayed);
  - (ii) The Deliverable is being used in accordance with any documentation (including user guides) by trained personnel and for the purposes for which it was designed or specified;
  - (iii) The Defect is not attributable to any failure by Company to implement recommendations in respect of, or solutions to Defects previously advised by Xewli;
  - (iv) Unless otherwise specified in the Agreement, this warranty shall not apply to any third party proprietary equipment procured by Xewli on behalf of Company pursuant to the Agreement.
- 2.8 Company's exclusive remedy and Xewli's entire liability for breach of any warranty shall be to remedy as set out herein or to re-perform the services, or if a remedy in accordance with the provisions herein, or if reperformance is impossible then to refund Company all amounts paid for the Services. Any refund will exclude monies owed to Xewli for any aspect of the Service delivered deemed functional. Any claim for breach of any warranty above must be made in writing and notified to Xewli within 60 days of performance of the Service in issue.
- 2.9 Notwithstanding any other provision of the Agreement, Xewli shall not be prevented or restricted from:

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- (i) Using any skills and experience similar to those provided hereunder elsewhere in the course of its business operations; or
- (ii) Using any know-how gained in performing the Service, provided that Xewli's use of such know-how does not breach Xewli's obligations of confidence to Company hereunder or any intellectual property rights of Company.

### 3 COMPLIANCE WITH LAWS

3.1 Compliance with Laws. Company shall comply at all times, at its own expense, with the provisions of all applicable federal, state, county and local laws, ordinances, regulations and codes, including procurement of any required permits or certificates. Where export laws and regulations apply, the Company shall not and shall not offer to, distribute or sell the Product to any person or entity restricted by such laws and regulations without first obtaining all required licenses or other governmental approvals and complying with all applicable export control laws.

### 4 REPRESENTATIONS

4.1 Representations. Each Party represents and warrants to the other Party that:

- (i) Such Party has the full organizational right, power and authority to enter into this Agreement;
- (ii) The performance by such Party of its obligations and duties hereunder, do not and will not violate any agreement to which such Party is a party;
- (iii) When executed and delivered by such Party, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with the terms and conditions of this Agreement;
- (iv) It is not subject to any pending or threatened litigation or governmental action that could interfere with its performance of this Agreement; and
- (v) In the performance of this Agreement, it will comply with and be bound by all applicable laws, rules and regulations. Neither Party has been induced to enter into this Agreement by any representations or promises not specifically stated herein.

4.2 Each of the Parties shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010.

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### 5 FEES

- 5.1 Fees. Company shall pay Xewli for the Product in the amount or at the rates set out in the Proposal together with all reasonable travel and subsistence expenses and any other direct, non-labour charges as may be applicable. Xewli will invoice Company monthly in arrears. All sums payable by Company to Xewli shall be paid, without discount, set-off, counterclaim or other deduction within 30 days from the date of Xewli's invoice.
- 5.2 Taxes. All sums stated under this Agreement do not include taxes. All applicable taxes shall be payable by Company in accordance with relevant legislation in force at the relevant tax point.
- 5.3 Payment. Company shall pay all Fees due to Xewli under the terms of this Agreement within thirty (30) days of receipt of Xewli's invoice therefore ("Due Date"). Xewli shall send any invoice for payment to the address set out in Agreement and Company shall provide Xewli with at least ten (10) working days notice of any change to such address.
- 5.4 Late Payment. If any sums under this Agreement is not paid by the Due Date, then (without prejudice to Xewli's other rights and remedies in addition to the invoice amount) Xewli reserves the right to charge interest on such sum on a day to day basis (as well after as before any judgment) from the Due Date to the date of payment at the UK statutory interest rate of 8% plus the Bank of England base rate.
- 5.5 Currency. All payments and costs payable hereunder to Xewli shall be paid in pounds sterling, unless otherwise agreed by the Parties. The Company shall not be entitled to make any deduction or set-off against any other sum owed, or claimed to be owed by Xewli to the Company.

### 6 LIMITATION OF LIABILITY

- 6.1 Limitation of Liabilities. In no event shall one party (or its licensor or affiliates) be liable to the other party, customers or any third party for any punitive, special, indirect, consequential, incidental, exemplary, lost profit or similar damages arising out of, or in connection with, this agreement, even if it has been advised of the possibility of such damages. In no event shall each party's total aggregate liability for direct damages under or in connection with this agreement, regardless of the form of the action or the theory or recovery, exceed the total amount of fees paid by company to Xewli hereunder. The limitations of liability in this Section shall not apply to liability arising out of or in connection with
- (i) Breach of confidentiality obligations;
  - (ii) Infringement or misappropriation by one party of the other party's intellectual property rights;
  - (iii) Gross negligence or wilful misconduct.

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For clarity, Xewli shall not be liable to Company for any lost profits or any incidental, indirect, punitive, exemplary or consequential damages, including (without limitation) lost profits and damages in connection with or relating to

- (i) This Agreement;
- (ii) The Licenses and the Product;
- (iii) Unauthorised use, distribution or production of the Licenses and the Product;
- (iv) Unauthorised use, distribution or reproduction of the Confidential Information or Xewli Marks;
- (v) Breach of this Agreement by Company;
- (vi) Violation of any law, rule, regulation, statute or ordinance by Company or its officers, directors, employees and agents; and
- (vii) Any tortious or unlawful act by Company or its officers, directors, employees and agents, regardless of the form or action, whether in contract or in tort, including negligence, regardless of whether Xewli has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable.

6.2 Non-Exclusion: Nothing in this Section or this agreement shall be taken as excluding or limiting, or seeking to exclude or limit liability for death or personal injury caused by negligence, for fraud or fraudulent misrepresentation, or any liability which may not be excluded or limited by applicable law.

## 7 CONFIDENTIALITY

7.1 “Confidential Information”. Xewli and the Company shall keep in strict confidence and not disclose the terms and conditions of this Agreement as well as all commercial and technical information acquired in connection with the purpose hereof (hereinafter jointly referred to as “Confidential Information”) to third parties and not to use the Confidential Information for any other purpose other than the purpose of this Agreement. The Parties undertake that their employees and any other persons authorized by them shall observe the same degree of confidentiality as they would themselves and shall implement necessary internal rules in order to ensure confidentiality. Upon termination or expiration of this Agreement, the restriction of use and the obligation for the recipient to keep the Confidential Information confidential shall survive such termination or expiration and continue to be in full force and effect for a period of three (3) years. Confidential Information does not include information which:

- (i) At the time of disclosure is published or becomes otherwise available to the general public as part of the public domain through no act, failure or negligence of the recipient and without any breach of this Agreement;
- (ii) Is rightfully received from a third party without any obligation of confidentiality; and/or

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(iii) Is required to be disclosed under any law, governmental rule or regulation, or court order.

7.2 Notwithstanding Section 7.1, Xewli has the right to disclose Confidential Information to any of its Affiliates, subject to appropriate confidentiality measures being in place safeguarding Company's Confidential Information against disclosure to third parties.

7.3 Mandatory Disclosure: If a receiving party ("Recipient") becomes legally compelled to disclose any of the Confidential Information of the disclosing party ("Discloser"), Recipient shall promptly notify Discloser of such requirement before any disclosure is made so that Discloser may seek a protective order or other appropriate remedy limited disclosure or use of such information.

7.4 Notice of Violations. Each Party agrees to promptly notify the other Party of any actual or suspected infringement of any rights licensed hereunder or any unauthorized use or copying of the Product.

7.5 Return of Confidential Information. Upon the written request of Discloser, all of the Discloser's Confidential Information in tangible form shall be, at Discloser's sole discretion, either promptly returned to Discloser or promptly destroyed by Recipient, and in either case not retained by Recipient or its Affiliates in any form. Notwithstanding anything to the contrary contained herein, Recipient's may retain an archival copy of all or any portion of Discloser's Confidential Information to the extent required by applicable law or regulation or for the purpose of defendant or prosecuting claims relating to this Agreement. The rights and obligations of the Parties regarding the non-disclosure and use of Confidential Information exchanged under this Agreement will survive any return, retention or destruction of any Confidential Information.

## 8 END USER DATA

8.1 Each Party shall follow good industry practice for safeguarding, maintaining confidentiality of End Users' data and shall comply with all applicable data protection and privacy laws with respect to any End Users' data. Although Xewli and Company may have access to End Users' data using the Product, the Parties shall do so only to the extent necessary to carry out their respective responsibilities under this Agreement and for no other purpose. Nothing in this Agreement permits the Company or Xewli to, and the Company and Xewli shall not, otherwise disclose or distribute any data of End Users obtained through activities under this Agreement.

## 9 INTELLECTUAL PROPERTY RIGHTS

9.1 Each Party shall retain all intellectual property rights in its pre-existing and proprietary materials including, but not limited to software, documentation, tool-sets, and data, of whatever nature and in whatever media owned, developed or controlled by it together with

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any amendments to such intellectual property rights including those which may arise as a result of the performance of the Service (“Background IPR”). Any intellectual property which is created in the performance of the Service is not considered Background IPR. Xewli shall inform Company if any of the deliverables contain any Background IPR.

- 9.2 Subject to Clause 9.1 and payment of the Fees, Xewli hereby assigns to Company all intellectual property rights arising as a result of the performance of Xewli’s obligations under the Agreement, limited to the extent contained in the Deliverables but which shall not include Xewli’s Background IPR. All intellectual property rights to the deliverables are transferred upon payment.
- 9.3 Xewli grants to Company a non-exclusive, non-transferable and irrevocable licence to use Xewli’s Background IPR to the extent required by the Deliverables for its internal use only. Xewli shall retain exclusive ownership of its Background IPR embodied in the Deliverables, unless otherwise agreed by both Parties.
- 9.4 Xewli shall indemnify Company against any third-party IPR claims in the event that the deliverables created in the performance of the Service are in violation of the third-party’s IPR.

## 10 TERM

- 10.1 The duration of this Agreement which shall be in accordance with the Proposal.

## 11 TERMINATION

- 11.1 Termination for Convenience. Either Party may terminate this Agreement for convenience upon ninety (90) days prior written notice to the other Party.
- 11.2 Termination for Bankruptcy or Breach. This Agreement may be terminated immediately by written notice under any of the following conditions:
- 11.2.1 By either Party, if a petition is filed in any court to declare the other Party bankrupt or for a reorganization under applicable law or any similar statute and such petition is not dismissed within sixty (60) days, or if a trustee in bankruptcy or a receiver or similar entity is appointed for the other Party;
- 11.2.2 By either Party, if the other Party otherwise materially breaches the terms of this Agreement, and such breach is not cured within thirty (30) days after written notice of such breach is given by the non-breaching Party.
- 11.3 Effect of Termination. In the event of any termination or expiration of this Agreement, Xewli may, in its sole discretion, elect to perform any outstanding Purchase Order submitted by Company prior to the effective date of such expiration or termination, and Company shall accept the delivery of Commercial Licenses in accordance with any such Purchase Order.

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In the event of any termination or expiration of this Agreement, Company shall promptly pay for all amounts owed under this Agreement, and Xewli may directly communicate and directly or indirectly contract with Customers and End Users regarding existing or additional Products and renewals therefore.

### 12 SURVIVAL

12.1 Survival. Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement, including without limitation, Sections 6, 7, 9, 10, 11 and 14 will survive any termination or expiration of this Agreement and continue for such time as they may remain applicable. Accrued payment obligations shall also survive termination of this Agreement.

### 13 MISCELLANEOUS

13.1 Prohibited Conduct. Company shall not enter into any contracts or make any commitments on behalf of Xewli or its Affiliates.

13.2 Publicity. Neither Party shall issue a press release or otherwise publicize matters relating to this Agreement without the prior written consent of the other Party.

13.3 Counterparts. This Agreement may be executed in counterparts, in the form of Portable Document Format (PDF) file (ISO 32000), with original signatures following by courier or mail, each of which will constitute an original and all of which taken together will constitute one and the same instrument. This Agreement may be delivered by electronic mail communications in PDF, and PDF copies of executed signature pages shall be binding as originals.

### 14 GENERAL

14.1 Headings. The headings and captions used in this Agreement are for convenience only and are not intended to be used as an aid to interpretation.

14.2 Severability. The provisions of this Agreement are severable, and if any part of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected.

14.3 Rules of Construction. As used in this Agreement, all terms used in the singular shall be deemed to include the plural, and vice versa as the context requires. Descriptive headings are inserted for convenience only and shall not be utilized in interpreting this Agreement.

14.4 Assignment. This Agreement will be binding upon and inure to the benefit of the Parties, their respective successors and assigns. No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.

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- 14.5 No Waiver. Failure by either Party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy. No waiver in any particular circumstance should be construed as a bar to a Party's refusal to waive other or subsequent defaults.
- 14.6 Force Majeure. Except for payment obligations, neither party will be deemed in default of this Agreement to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of materials or supplies, or any other cause beyond the control of such party ("Force Majeure").
- 14.7 Dispute Resolution. The Parties agree that any conflict, dispute, controversy, or claim arising out of or relating to this Agreement or the relationship created by this Agreement (the "Dispute") shall first be resolved by escalating the Dispute to their respective business managers. Within fourteen (14) days of written notice of a Dispute, the business managers shall meet in person or by phone and work in good faith to resolve the Dispute including by way of appointment of a mutually agreeable mediator to resolve the Dispute.
- 14.8 Applicable Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of England and Wales, without regard to conflict-of-laws principles. All disputes, controversies or claims between the Parties arising out of or in connection with this Agreement (including its existence, validity or termination) not resolved pursuant to Section 14.7 shall be finally resolved by arbitration to be held in London under the Rules of the LCIA. The arbitral award shall be final and binding on the Parties, and judgment upon the award may be entered in any court having jurisdiction thereof. Except to the extent enforcement of the award may require disclosure, all matters relating to the arbitration, including the award, shall be held in confidence.
- 14.9 Notice. Unless otherwise agreed to by the Parties, any notice required or permitted to be given or delivered under this Agreement will be given in writing and delivered to the addresses set forth in this Agreement. Notice will be deemed to have been received by any Party, and will be effective:
- (i) At the time that the message enters the recipient's email server, if sent by electronic mail; or
  - (ii) On the third day after which such notice is deposited, if mailed by certified, first class, postage prepaid, return receipt requested mail.
- 14.10 Independent Contractors. The Parties are acting hereunder as independent contractors, and under no circumstances will any of the employees of one Party be deemed the employees of the other for any purpose. This Agreement will not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other except to the extent and for the purposes provided for herein.

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- 14.11 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the Parties. This Agreement and any Purchase Order may not be modified except by written agreement signed by a duly authorized representative of each of the Parties.
- 14.12 Where Xewli has provided you with a translation of the English language version of the Agreement, then you agree that the translation is provided for your convenience only and that the English language versions of the Agreement will govern your relationship with Xewli. If there is any contradiction between what the English language version of the Agreement says and what a translation says, then the English language version shall take precedence.