



**CLOUD SUPPORT
G-CLOUD 14
Terms and Conditions**



Terms and Conditions

BACKGROUND

- a) The Supplier is the entire legal and beneficial owner and licensor of the Services.
- b) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Services subject to the terms and conditions of this Agreement.
- c) The Supplier, in the course of providing the Services, will have access to certain Personal Data and non-Personal Data controlled by the Customer. The Parties' obligations under Data Protection Legislation in respect of the Processing of Personal Data are set out in Schedule B.
- d) The Parties have entered into this Agreement pursuant to a public tendering competition conducted under the Crown Commercial Services (CCS) G-Cloud 14 Call-Off Contract ("Competition Documentation") that resulted in the appointment of the Supplier. The parties acknowledge that this Agreement shall be read in conjunction with the competition documentation deriving from the Supplier's initial appointment under the CCS G-Cloud 14 Call-Off Contract.
- e) In the event of any conflict or discrepancy between this Agreement and the provisions of the CCS G-Cloud 14 Call-Off Contract, the provisions of the Competition Documentation shall prevail.

AGREED TERMS

INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement (including in the Recitals).

"Affiliate"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time
"Agreement"	this software as a service licence Agreement
"Authorised Users"	those employees, agents and independent contractors of the Customer who are authorised by the Customer (by the implementation by the Customer of Active Directory Federation Services (ADFS)) to use the Services and the Documentation, it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
"Business Day"	a day other than a Saturday, Sunday, or public holiday in the UK when banks are open for business.
"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly.
"Confidential Information"	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause: The Customer

	acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
CHARGES AND PAYMENT	The Customer shall pay the Subscription Fees to the Supplier for [] User Subscriptions in accordance with this terms during negotiation.
CONFIDENTIALITY	<p>is or becomes publicly known other than through any act or omission of the receiving Party was in the other Party's lawful possession before the disclosure</p> <p>is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;</p> <p>is independently developed by the receiving Party, which independent development can be shown by written evidence;</p> <p>is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.</p> <p>Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.</p> <p>Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. Sensitivity:</p> <p>Neither Party shall be responsible for any loss, destruction, alteration, or disclosure of Confidential Information caused by any third party.</p> <p>The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.</p> <p>The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.</p> <p>This Clause shall survive termination of this Agreement, however arising.</p> <p>No Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.</p>
NON-SOLICITATION	<p>The Customer hereby covenants to the Supplier that it shall not, and it shall procure that its Affiliates shall not, during the period of 3 years from the Effective Date, solicit the services of,</p> <p>a) or endeavour to entice away from the Supplier any director, employee or consultant of the Supplier who at the Effective Date or at any time during the period of 12 months prior to the Effective Date was a director,</p>

	<p>b) employee or consultant of the Supplier (whether or not such person would commit any breach of his contract of employment or engagement by reason of leaving the service of the Supplier).</p>
<p>TERM AND TERMINATION</p>	<p>This Agreement shall, unless otherwise terminated as provided in this Clause commence on the Effective Date, and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of one year (each a “Renewal Period”), unless:</p> <ul style="list-style-type: none"> a) either Party notifies the other Party of termination, in writing, at least [] days before the end of the Initial Subscription Term or any Renewal Period, b) in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or c) otherwise terminated in accordance with the provisions of this Agreement; d) and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the “Subscription Term”. (Subscription terms will be further discussed during consultation) e) Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if: f) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than [] days after being notified in writing to make such payment; g) the other Party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [] days after being notified in writing to do so; h) the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or i) ability to give effect to the terms of this Agreement; j) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; k) the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; l) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; m) an application is made to court, or an order is made, for the appointment of an examiner, or if a notice of intention to appoint an examiner is given or if an examiner is appointed, over the other Party; n) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed a receiver; a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;

	<p>o) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration, or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;</p>
CONFLICT	<p>CONFLICT If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.</p>
VARIATION	<p>No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).</p>
WAIVER	<p>No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.</p>
RIGHTS AND REMEDIES	<p>Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.</p>
SEVERANCE	<p>If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions shall remain in force.</p> <p>If any invalid, unenforceable or illegal provision would be valid, enforceable, or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.</p>
ENTIRE AGREEMENT	<p>Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.</p>
ASSIGNMENT	<p>The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under this Agreement</p>
NO PARTNERSHIP OR AGENCY	<p>Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).</p>
NOTICES	<p>Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other Party at its address set out in this Agreement, or such other address as may have been notified by that Party for such purposes, or sent by email to</p>

	<p>the other Party's email address as set out in this Agreement.</p> <p>A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery).</p> <p>A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.</p> <p>A notice sent by email shall be deemed to have been received at the time of transmission.</p> <p>The notice details for the Parties are as follows:</p> <p>The Supplier:</p> <p>Name: []</p> <p>Address: []</p> <p>Email: []</p> <p>The Customer:</p> <p>Name: []</p> <p>Address: []</p> <p>Email: []</p>
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GOVERNING LAW	This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
JURISDICTION	Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).