

G CLOUD 14 TERMS & CONDITIONS

Terms and Conditions to Agreement between the Client and Protiviti

These Terms and Conditions are between Protiviti Limited and the G-Cloud Buyer ("Client") and are subject to the G-Cloud 14 Framework Agreement and the G-Cloud 14 Call-Off Contract which includes the Order Form. For the purposes of these Terms and Conditions, Services means any G-Cloud Services and / or Deliverables that are set out in the Order Form.

Unless stated otherwise, the terms and definitions set out in these Terms and Conditions shall be interpreted in accordance with the defined terms in the G-Cloud 14 Framework Agreement and the G-Cloud 14 Call-Off Contract. If there is a conflict between these Terms and Conditions, and the G-Cloud 14 Framework Agreement and the G-Cloud 14 Call-Off Contract, the G-Cloud 14 Framework Agreement and the G-Cloud 14 Call-Off Contract shall prevail.

1. Client Responsibility. Client acknowledges that the achievement of any policy, process, model, system, or risk management practice depends not only on the design and implementation, but also on the quality, experience and continuity of personnel involved, the diligent ongoing execution of any such policy, process, model, system or risk management practice, and appropriate modifications as changing conditions warrant. Client understands and accepts responsibility for all decisions related to, and implementation and ongoing modification of, policies, processes, models, systems and risk management practice assessments, methods, and assumptions, if any, developed in the course of this project.

All Deliverables are based upon information made available by Client to Protiviti as of the date such Deliverables are provided to Client. Protiviti has no obligation to update any Deliverable.

In addition, the ultimate responsibility as to the accuracy and sufficiency of Protiviti's approach and the specific scope of Protiviti's work and the nature, extent, and timing of Protiviti's procedures performed, in each case, rests with Client.

2. Responsibility for Internal Controls. Client is solely responsible for establishing and maintaining its own effective internal control system, record keeping, management decision-making and other management functions. Client shall be fully and solely responsible for: (i) applying independent business judgment with respect to the Services and the Deliverables; (ii) making any implementation decision related thereto; and (iii) determining further courses of action with respect to any matters addressed in any Deliverable or Service.

3. Non-Accounting Status. Client understands that Protiviti is not a public accounting firm and does not issue opinions on financial statements or offer any attestation services.

4. Authoritative Standards. Client acknowledges that there is no authoritative standard against which risk management, business consulting, and technology consulting practices can be directly compared. In practice, methodologies, and approaches to measuring, managing, and controlling risk vary considerably. New and refined practices continue to evolve and the characterisation of policies, procedures, or models as sound, "industry standard" or "best" practices are judgmental and subjective.

5. Confidential Information. Each party (the "Recipient") agrees to protect the Confidential Information of the other party (the "Disclosing Party") in a manner consistent with the treatment that Recipient accords its own Confidential Information of a similar nature, and the Recipient agrees to use and reproduce Confidential Information only to perform its obligations under this Agreement or for its internal collection, analysis, and training purposes. The Recipient may disclose Confidential Information to its employees, agents, and subcontractors, who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. The Recipient shall be liable for any use, disclosure, or dissemination of Confidential Information by such parties. In addition, unless prohibited by applicable law, Protiviti may disclose Client's Confidential Information to its network of member firms, who may collect, use, transfer, store or otherwise process it in the various jurisdictions in which they operate to facilitate the provision of the Services, to comply with applicable law, to check for conflicts, and for any quality, risk management, or financial accounting purposes and other administrative support services. Protiviti shall be responsible to Client for maintaining the confidentiality of such Confidential Information regardless of where or by whom such information is processed on Protiviti's behalf. Confidential Information is any information which is identified by the Disclosing Party at the time of disclosure as being of a confidential nature (including, but not limited to, business plans, products, trade secret processes or methodologies, software, documentation, design specifications, other technical documents and other proprietary rights or information) or that is disclosed to the Recipient under circumstances that would lead a reasonable person to understand that such information is confidential or proprietary in nature. Confidential Information does not include information that: (i) is or becomes generally available to the public without breach by Recipient of its confidentiality obligations under this Agreement; (ii) is received by Recipient from a third party without restriction against disclosure; (iii) was known to Recipient without restriction prior to disclosure; or (iv) is independently developed by Recipient without subsequent use of Disclosing Party's Confidential Information. If Recipient becomes legally compelled (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar process) to disclose any of the Confidential Information, Recipient shall (to the extent legally permitted) provide Disclosing Party with prompt prior written notice of such requirement so that discloser may seek a protective order or other appropriate remedy.

6. Distribution of Deliverables. Deliverables or other documents or materials that are provided by Protiviti that are Protiviti-branded or marked as being authored by Protiviti, or Deliverables or other documents or materials that, based on the circumstances, context or any related communications, would lead a reasonable reader to understand that Protiviti produced, authored or contributed to such Deliverables, documents or materials (collectively, "Branded Deliverables") are for the use and benefit of Client only and not for any other party, including, but not limited to, Client's affiliates, shareholders, business partners, contractors or advisors (each a "Third Party"). If Client desires to disclose Branded Deliverables, or make reference to Protiviti, to any Third Party (other than Client's legal counsel and external auditors who need access to such information and who have agreed to keep such information confidential), Client will obtain Protiviti's prior written approval and, if requested by Protiviti, obtain from such Third Party a non-disclosure agreement and release in a form satisfactory to Protiviti prior to any disclosure or distribution. Branded Deliverables are provided for the sole use of Client and are not intended to be relied upon by Third Parties. Protiviti accepts no liability or responsibility to any Third Party who uses the Services, or gains access to any Branded Deliverables whether they are disclosed with the consent of Protiviti or otherwise. Notwithstanding the foregoing, Client may disclose and distribute Deliverables if, and solely to the extent that, disclosure is required by the applicable public records act and Client receives a request for such disclosure; provided, that Client provides Protiviti with prior written notice of such intended disclosure in sufficient time to allow Protiviti to seek confidential treatment of such information.

Nothing contained in this Agreement shall prohibit the legally required disclosure of Deliverables to Client's regulators, who may be granted access to such Deliverables to the extent legally required.

7. Rights of Third Parties. The Protiviti Parties specified in Section 6 above have the right to enforce only the provisions of Section 6 of this Agreement, subject to and in accordance with such section and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Except as stated in this Section 7, the parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it. The parties reserve the right to rescind or vary this Agreement or vary any term of it without the consent of the Protiviti Parties.

8. Responsibility for Information. Protiviti shall be entitled to rely on all information provided directly or indirectly by, and the decisions and approvals of, Client or its personnel or representatives in connection with Protiviti's work hereunder. Client hereby releases Protiviti and its personnel from any liability and costs relating to the Services to the extent that such liability and costs are attributable to any information provided directly or indirectly, or decisions or approvals made, by Client or its personnel or representatives that were not complete, accurate, or current.

9. Services. Changes to any Services must be agreed upon by Protiviti and Client and will not be considered effective unless and until both parties agree in writing to an amendment. Client shall reimburse Protiviti for any fees or expenses (including, but not limited to, legal expenses) reasonably incurred by it in connection with providing evidence in, or preparing to serve or serving as a witness with respect to, any lawsuits, investigations, claims or other proceedings in any way connected with, or related to, the Services.

10. Indemnification. Protiviti and Client shall indemnify, defend, and hold harmless the other party for any losses for bodily injury or damages to real property resulting directly from the indemnifying party's negligence or wilful misconduct.

11. Limitation of Liability.

(a) Client and Protiviti agree that Protiviti's entire liability to Client (or any person asserting claims on behalf of or in the name of Client), for all claims, liability, losses, damages or expenses arising out of or in connection with this Agreement whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence will not exceed in the aggregate the greater of £300,000 or 1.5 times the total amount of fees paid to Protiviti under this Agreement. The limitation in this subsection 11 (a) shall not apply to limit Protiviti's indemnification obligations under section 10 of this Agreement.

(b) Neither party shall be liable to the other party or any person asserting claims on behalf of or in the name of the other party for direct or indirect consequential, incidental, punitive or special damages for all claims, liability, losses, damages or expenses suffered by Client or Protiviti (including, but not limited to, lost profits whether direct or indirect or business opportunity costs), even if the parties have been advised of the possibility of such damages.

(c) Nothing in the Agreement shall exclude or limit a party's liability to the other party for: (i) fraud, fraudulent misrepresentation or, the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; (ii) death or personal injury caused by its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in S1 Unfair Contract Terms Act 1977); (iii) breach of terms regarding title implied by s12 Sale of Goods Act 1979 and/or s2 Supply of Goods and Services Act 1982; or (iv) any liability to the extent the same may not be excluded or limited as a matter of law..

12. Engagement Team Restrictions. If for any reason any of the employees or subcontractors designated in the Arrangement Letter portion of this Agreement is not able to complete this engagement, Protiviti will provide employees or subcontractors with similar qualifications and experience to complete the assignment. For a period commencing as of the date of this Agreement and ending one (1) year from the date that a Protiviti employee or subcontractor personnel stops providing Services to Client under this Agreement, neither Client nor any of its affiliates shall hire or solicit such individual. If Client or an affiliate hires or solicits any such Protiviti employee within the proscribed time period above, Client shall pay Protiviti a fee equal to the annual salary of such individual as liquidated damages. If Client or an affiliate hires or solicits any Protiviti subcontractor personnel within the proscribed time period above, Client shall pay Protiviti a fee equal to thirty percent (30%) of such subcontractor personnel's proposed annual compensation with Client or its affiliate, including bonuses, as liquidated damages.

13. Workspace. Client shall provide reasonable workspace for Protiviti personnel at its work sites, as well as occasional administrative support services related to the Services. Client shall provide Protiviti personnel with any necessary safety orientation and security access for work on Client's premises.

14. Warranties. Notwithstanding anything to the contrary contained in this Agreement, Protiviti makes no warranties, express or implied, whether arising by operation of law, course of performance or dealing, custom, usage in the trade or profession or otherwise, including, but not limited to, the implied warranties of merchantability, noninfringement and fitness for a particular purpose to the extent permitted by law.

15. Publicity. Neither party shall use the name of the other party, in part or whole, or any of their trademarks or trade names without the other party's prior written approval. Notwithstanding the foregoing, Client consents to Protiviti's use of Client's name and a general description of the Services to be performed by Protiviti under this Agreement in resumes and proposals.

16. Proprietary Rights in Deliverables and Data. Subject to the terms of this Agreement, including Section 6 (Distribution of Deliverables) and Client's fulfilment of all payment obligations hereunder, Protiviti agrees that Client shall own the copyright in the Deliverables (if and to the extent the Arrangement Letter specifies the Deliverables as being owned by the Client), excluding any Protiviti Proprietary Materials (as defined below) and any third-party software that is incorporated into the Deliverables ("Client Owned Deliverables"). To the extent the Deliverables are not specified in the Arrangement Letter as Client Owned Deliverables, the parties acknowledge and agree that the Deliverables are Protiviti Proprietary Materials (as defined below). Client acknowledges that as part of performing Services, Protiviti may utilise proprietary copyrights, patents, trade secrets, software, ideas, concepts, know-how, tools, models, processes, methodologies, and techniques (including any derivatives, enhancements, or modifications thereto) which have been originated or developed by Protiviti, or which have been purchased by, or licensed to, Protiviti (collectively, "Protiviti Proprietary Materials"). Client agrees that Protiviti retains all right, title, and interest in the Protiviti Proprietary Materials. Subject to the terms of this Agreement, including Section 6 (Distribution of Deliverables) and Client's fulfilment of all payment obligations hereunder, Protiviti grants, and Client accepts, a non-exclusive, non-transferable, license to use the Protiviti Proprietary Materials within the Client and solely to the extent necessary to make use of the Deliverables as contemplated by this Agreement.

17. Termination of Agreement. Either party may at any time and without cause terminate this Agreement by providing 30 days' prior written notice of termination to the other party. The rights and obligations set forth in Sections 5, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17 and any other section expressed or capable of having effect after termination, shall survive termination of this Agreement. In the event of such termination, Client will pay Protiviti for all services rendered and expenses incurred by Protiviti through the date of termination. After conclusion of the work contemplated herein or the termination or expiration of this Agreement, for so long as Client and Protiviti are actively negotiating a new agreement for Protiviti's provision of additional Services to Client that are substantially similar to those provided under this Agreement, the provisions of this Agreement, including any payment terms, shall apply to such Services provided by Protiviti prior to the finalisation of such new agreement.

18. Governing Law. This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law and the parties hereby submit to the exclusive jurisdiction of the English Courts to resolve any dispute between them.

19. Notice. All notices or other communications required or desired to be sent to either party shall be in writing and sent by either: (a) first class mail; (b) postage prepaid; (c) by next-day courier; or (d) by email, to the attention of the person identified, at the address or to the email shown below. Either party may change such person, address, or email by written notice to the other party. Notice shall be effective on the fifth (5th) business day after mailing, on the first (1st) day after the date of sending via next-day courier, or on the date of transmission if sent by email (provided that notice shall be effective on the first (1st) business day following the date of transmission if effected on a non-business day).

Protiviti: Protiviti Limited
Ewen Ferguson
Managing Director
The Shard
32 London Bridge Street
London, SE1 9SG
ewen.ferguson@protiviti.co.uk

cc: Protiviti Limited
Legal Department
Second Floor, Air, 35 Homer Road, Solihull, B91 3QJ
Email: UKLegalDepartment@roberthalf.net

Client: [Company]
[First Name] [Last Name]
[Address]
[Address]
Email: [Insert email]

20. Assignment. Neither Protiviti nor Client may assign this Agreement, by operation of law or otherwise, without the prior written consent of the other party. Any assignment in violation of this provision shall be deemed to be null and void.

21. Business Practices. Both parties agree to: (a) comply with all applicable employment laws and regulations; (b) maintain in force appropriate and adequate insurance policies; (c) comply with the Bribery Act 2010; (d) not tolerate or condone holding another person in slavery, imposing an obligation on a person to provide services by coercion, forced or compulsory labour or arranging or facilitating human trafficking.

22. Force Majeure. Neither party shall be liable for any default or delay in the performance of its obligations (except for payment obligations) under this Agreement if such default or delay is caused by an act of God or other circumstance outside the reasonable control of the party, including, but not limited to, fire, flood, earthquake, natural disasters or other acts of God, terrorist acts, riots, civil disorders, freight embargoes, government action, or the like.

23. Severability. If any term of the Agreement is found to be illegal, invalid, or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from the Agreement and shall in no way affect the legality, validity, or enforceability of the remaining terms.

24. Waiver. No waiver shall be deemed to have been made by either party unless it is expressed in writing and signed by the waiving party. The failure of either party to insist in any one or more instances upon strict performance of any of the terms of provisions of this Agreement, or to exercise any option or election herein contained, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, and no waiver by either party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies hereunder or at law.

25. Headings and Interpretation. The section headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement. All parties hereto have participated substantially in the negotiation and drafting of this Agreement and each party hereby disclaims any defence or assertion that any ambiguity herein should be construed against the drafter of the Agreement.

26. Regulatory Compliance. Client acknowledges and agrees that it is responsible for its own legal representation and guidance related to the Services or Deliverables, and that it will consult its own legal resources before acting upon any Services or Deliverables. Client further acknowledges and agrees that Protiviti is not a law firm and is not providing legal advice or analysis and that Protiviti has not engaged legal counsel with respect to the Services or Deliverables.

27. Export Control Laws. Client hereby acknowledges and agrees that the Services and/or Deliverables may be subject to applicable export control and trade sanction laws, regulations, rules, and licenses ("Export Control Laws"). Client shall comply with the Export Control Laws and agrees that it alone is responsible for ensuring its compliance with Export Control Laws.

28. Data Protection.

- (a) Data Protection Law. The terms Personal Data, Personal Data Breach, Process, Data Subject, Data Controller, Data Processor, Sub-processor, and Third Country used in this Agreement shall have the meaning ascribed to them in all applicable data protection and privacy legislation in force from time to time in the United Kingdom ("UK") including the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018) and Data Protection Act 2018 and regulations made thereunder, and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and, (if applicable) the General Data Protection Regulation (EU) 2016/679 ("EU GDPR") and any other legislation and regulatory requirements in force from time to time in the UK relating to Personal Data (collectively the "Data Protection Law"). Protiviti and Client will each comply with the Data Protection Law as applicable to such party.
- (b) The parties shall comply with their respective controller obligations under applicable Data Protection Legislation when processing business contact information relating to employees and/or personnel involved in the management or administration of the Agreement, including names, business email addresses, business phone numbers and business addresses (collectively "Business Contact Data") and each party shall process Business Contact Data solely for the purposes of performing their respective obligations under the Agreement, including the provision of the Services, and only for as long as is necessary for such purposes.
- (c) The parties agree that in relation to the Client's Personal Data Processed by Protiviti in accordance with this Agreement, Client is the Data Controller and Protiviti is the Data Processor. The subject matter and duration of Protiviti's Processing, the nature and purpose of the Processing, and the type of Client Personal Data and categories of Data Subjects will be described in the Agreement, or other written agreement signed by the parties.
- (d) Data Processing: Client will not disclose any Client Personal Data to Protiviti without prior written notice and Protiviti's prior written agreement to receive it. Client will take all necessary and appropriate steps to ensure Client will only disclose the minimum Personal Data that is necessary for the purposes of the Services. Unless Protiviti agrees otherwise in the Arrangement Letter, if Protiviti accesses Client's Personal Data, Protiviti will do so only on Client's premises and systems and, in the event Client transfers Client's Personal Data to Protiviti's systems for the purposes of performing the Services, Client will anonymise the Personal Data so that no individuals can be identified from it prior to the transfer of the Personal Data. Client warrants and represents that Client has obtained all necessary, appropriate, and valid consents to enable Protiviti to lawfully Process the Client's Personal Data for the duration and purposes of this Agreement. Protiviti shall, in relation to any Personal Data Processed in connection with the performance of this Agreement:
- (i) Process Client's Personal Data only on the Client's instructions unless Protiviti is required by applicable law to otherwise Process that Personal Data and Protiviti shall promptly notify Client of this before performing the Processing, unless applicable law prohibits Protiviti from notifying Client,
- (ii) ensure that all Protiviti personnel who have access to and/or Process the Client's Personal Data are obliged to keep it confidential,
- (iii) ensure that Protiviti has in place appropriate technical and organisational measures, reviewed and approved by Client to protect against unauthorised or unlawful Processing of Client's Personal Data and against accidental loss or destruction of, or damage to, such Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of Protiviti's systems and services, ensuring that availability of and access to Client's Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by Protiviti),
- (iv) subject to subsection 28(e) below, not transfer any Client Personal Data outside of the European Economic Area ("EEA"), Switzerland, or UK, with the exception of transfer to any country that has been granted adequacy status by the European Commission or UK Information Commissioner (as applicable), without Client's prior written consent and the following conditions are fulfilled: (a) Protiviti has provided appropriate safeguards in relation to the transfer; (b) the Data Subject has enforceable rights and effective legal remedies; (c) Protiviti complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred; and (d) Protiviti complies with Client's reasonable instructions notified to Protiviti in advance, with respect to the processing of the Personal Data,
- (v) assist Client at Client's cost, in responding to any request from a Data Subject and in ensuring compliance with Client's obligations under the Data Protection Law with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators,

28. Data Protection.

(vi) at Client's written direction, confidentially and irretrievably delete or return Personal Data and any copies to Client on termination of the Agreement, except where to the extent that this is held in back up or archival storage in which case it shall continue to be subject to security, confidentiality, and restrictions on use and otherwise unless Protiviti are required by applicable law to store the Client's Personal Data,

(vii) maintain complete and accurate records and information to demonstrate compliance with this section, and

(vii) notify Client without undue delay on becoming aware of a Personal Data Breach impacting the Client's Personal Data.

(e) Sub-processors: Client consents to Protiviti appointing any Sub-processor, including any affiliate or member firm, to Process Client Personal Data under this Agreement, including affiliates and member firms that have not been granted adequacy status. Protiviti confirms it has entered into, or will enter into, a written agreement with each Sub-processor incorporating terms which are substantially the same as those set out in this section and/or the standard contractual clauses approved by the UK Information Commissioner and European Commissioner (as applicable) as providing Personal Data with equivalent protection that Personal Data has when it is processed within the UK/EEA. Protiviti will include appropriate additional safeguards and when required, incorporate adequate technical and organisational measures to protect the Personal Data from surveillance and monitoring by public authorities in the Third Country. Protiviti shall remain fully liable for all acts and omissions of any Sub-processor appointed by Protiviti pursuant to this section.

29. Release: Use of Certain Automated Tools. Client understands and agrees that Protiviti's testing procedures and the tools that Protiviti uses, including security assessment tools and/ or security software solutions and other automated tools, are designed to detect possible weaknesses in network security controls. Client understands and acknowledges, however, that Protiviti cannot provide assurance that these tools or any other procedures that Protiviti might apply will identify all possible vulnerabilities. There is a possibility that the tools referenced above may, because of certain attributes of Client's software, inadvertently impact Client's network performance or Client's software configuration or data. Client agrees not to hold Protiviti responsible or liable for any adverse effects relating to the use of such tools.