

G-CLOUD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

These Warner McCall Ltd (**WM**) G-Cloud Services Terms and Conditions ("**WM Terms**" or "**Supplier Terms**") form part of an agreement for the provision of services by Warner McCall Ltd (**WM**) under a call-off agreement ("**Call-Off Agreement**") as defined in the UK Government Procurement Services G-Cloud Services Framework Agreement between WM and the Government Procurement Service ("**Framework Agreement**"). They apply between WM and each party ("**the Customer**") entering into a Call-Off Agreement.

SERVICES COVERED

These Terms and Conditions apply to the G-Cloud Services under G Cloud 11 Cloud Support Services ("**CSS**") being provided by WM.

1 GENERAL TERMS

1.1 Services

1.1.1 Cloud Support Services (CSS) contains a range of consultancy services. Upon subscription to the relevant WM G-Cloud Service WM grants the Customer a non-exclusive, nontransferable right during the term specified in the Customer's Call-Off Agreement, to receive and use the specific Service described in the Service Description relating to that Service.

1.1.2 Unless specified in the Service-Specific Terms below the Customer may only use a Service for their internal business purposes, and services may not be re-sold.

1.1.3 Whilst using the Services the Customer may access software which is located on WM's servers ("Software"). Except in relation to SCS and in accordance with the relevant Call-Off Agreement, the customer does not have any right to receive a copy of such Software either in source or object code form; and does not receive any title rights or ownership in or to the software.

1.1.4 The Customer is responsible for ensuring that:

1.1.4.1 the infrastructure it uses to access the Services is compatible with the interfaces provided within the specific Service;

1.1.4.2 for taking adequate precautions within the Customer's own infrastructure to prevent the spread of viruses or malicious software;

1.1.4.3 for ensuring that those to whom it grants access rights comply with the provisions of any UK legislation including the 1998 Data Protection Act;

1.1.4.4 they comply with the Licence terms of any 3rd party Software provided by WM in the delivery of this service;

1.1.4.5 they comply with any further Service-Specific usage restrictions set out in the Service-specific section below.

1.1.5 The Customer will comply with all statutory and other legal requirements applicable to its conduct and operations.

1.1.6 WM shall have no liability or obligation with respect to the fitness for purpose, functionality or the performance of 3rd party Software Licences supplied.

1.1.7 Time shall not be of the essence as to the performance of WM's obligations.

1.1.8 All ownership, licence, intellectual property (IP) and WM rights and interests in the Software, services and any associated documentation remains solely with WM and or Licensors on whose behalf WM may be providing components of the Services.

1.1.9 WM reserves the right to change or update the Services or Software at any time so long as this does not materially affect the overall service. WM will provide the Customer 15 days' notice of any update which it regards as material, unless such an update is necessitated by security considerations, in which case the update and any associated notice will be immediate.

1.2 Service Restrictions

The Customer must not:

1.2.1 Exceed any set usage limits or restrictions set out in the Service Description and / or Call-Off Agreement;

1.2.2 Save as set out in any Service-specific section, sell, rent or lease the Services in any way, or transfer to any other person any of its rights hereunder;

1.2.3 Create any derivative works based upon the Software or Services, save as otherwise permitted in accordance within a Service Description;

1.2.4 Adapt, translate, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software, nor take any other steps to discover confidential information or trade secrets in the Software of Services, save as permitted under European Law for the purposes of Interoperability.

1.3 Additional Services

Additional Services may be ordered by the Customer:

1.3.1 By extension or issue of a Call-Off Agreement;

1.3.2 By electronic request via the Customer Administration Portal, if this is available for the Service;

1.3.3 By a request from a Customer representative who WM reasonably believe to have authority to place such a request;

1.4 Invoicing VAT and Payment

Unless otherwise stated, invoices will be raised for Services on a monthly basis. Value Added Tax will (where appropriate) be added to the amount of an invoice for any Service at the prevailing rate.

1.4.1 Invoices must be paid in full within 30 days of the date of issue;

1.4.2 If any payment is overdue WM may (without prejudice to any other right or remedy available to it) suspend the relevant Service until payment in full thereof has been made, at which point a re-connection charge equivalent to half a month's charges for the relevant Service will be applied. Invoices remaining unpaid after 60 days will attract a surcharge of 4% on the current Bank of England base rate for the full period the debt has been outstanding.

1.4.3 The Customer shall not be entitled to withhold payment in whole or in part on the ground that it has a claim, counterclaim or set-off against WM.

1.5 Liability

1.5.1 Except as provided in these Terms and Conditions, and in the Service Description relating to the Service, no warranty condition, undertaking or term, expressed or implied, statutory or otherwise, as to the condition, quality, performance, merchantability, durability or fitness for purpose of the Services is given or assumed by WM and all such warranties, conditions, undertaking and terms are hereby excluded.

1.5.2 WM will provide the Services with reasonable skill and care, but (except as provided in these Terms and Conditions and the relevant Service Description shall not under any circumstances in relation to its providing the Services be liable (whether in Contract, tort or otherwise) for any loss or damage of whatsoever nature suffered by the Customer whether arising from any act, default or neglect on the part of WM, its employees, agents or sub-contractors or from any defect in, failure in, or unsuitability for any purpose of, the Services, or otherwise howsoever, to the extent that the amount of such loss or damage exceeds (or would when aggregated with the amount of any previous loss or damage exceed) the greater of:

1.5.2.1 For the provision of CSS: the value of services called off over the previous three months;

1.5.2.4 The amount (if any) which WM is entitled to claim under the terms of any insurance policy in force at the time, up to a maximum of one million pounds (£1,000,000).

1.5.3 WM shall not in any event be liable for any indirect or consequential loss whatever or however caused.

1.5.4 The Customer agrees fully and promptly to indemnify WM against all costs, claims, demands, damages, losses and expenses to which WM may become liable or which WM may suffer or incur as a result directly or indirectly of WM acting in accordance with the Customer's instructions, or arising from any act, default or neglect on the part of the Customer, its employees, agents or subcontractors.

1.5.5 Notwithstanding anything to the contrary, however, nothing in these Terms and Conditions shall operate to exclude or restrict WM's liability for death or personal injury resulting from negligence within the meaning of the Unfair Contract Terms Act 1977.

1.6 Termination

The supply of Services may be terminated by either party by notice in writing to the other having immediate effect if the other shall commit any breach of these Terms and Conditions which breach (if capable of remedy) is not remedied within 30 days of notification or if the other shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

The termination (howsoever arising) shall be without prejudice to the rights and remedies of the parties accrued before such termination and nothing shall prejudice the right of either party to recover any amount of outstanding at the termination howsoever caused.

1.7 Entire Agreement

These Terms and Conditions, the relevant Service Description, the Call-Off Agreement, and the Framework Agreement constitute the entire understanding between the Customer and WM relating to the subject matter, with the order of precedence as set out in Clause 1.2 of the Call-Off Terms at Framework Schedule 2). It supersedes all previous communications, representations and Contracts either written or oral. The Customer acknowledges that it is not entering into the Contract in reliance upon any representation not set out in the documents referred to above.

No amendment to these Terms and Conditions shall be binding unless in writing, signed by the parties or their duly authorised representatives and expressed to be for the purpose of such amendment.

2 SPECIFIC TERMS RELATING TO THE SUPPLY OF SCS

2.1 Charges

2.1.1 The Customer is charged on a daily basis at the rates quoted in the Service Description and / or Call-Off Agreement. Fractions of a day are charged on an hourly pro rata basis.

2.1.2 These rates do not include Value Added Tax which will (where appropriate) be added to the amount of an invoice at the prevailing rate.

2.1.3 WM's charges exclude travel or hotel expenses and the costs of materials and services not provided directly by WM, unless these have been explicitly included in the Service Description or Call-Off Agreement. Any additional expenses necessarily incurred with relation to the provision of SCS will be charged at cost. Clause 2.6 outlines how expenses are calculated for site work.

2.1.4 The charges quoted will be fixed for the period of service provision or 12 months, whichever is the shorter. Revised charges will be included in any published updates to the Service Description.

2.2 The Working Day and Overtime

The normal working day is eight hours. This may be subject to alteration by mutual agreement for work carried out on the Customer's premises. Overtime is charged at time and a third and work necessarily carried out during week-ends, or public holidays is charged at double time. Where the required working period is substantially outside the normal working day the charge rate premium will be subject to negotiation.

2.3 Invoicing

Unless specified otherwise in the Call-Off Agreement, invoices are submitted at the end of each calendar month. These are based on time logs filled in by staff on the project. These are included with the invoice. WM reserves the right to submit time sheets which have not been countersigned if the Customer unreasonably withholds authorisation.

2.4 Duties of WM

2.4.1 WM shall assign personnel of appropriate qualification and experience to perform the SCS.

2.4.2 WM shall use all reasonable efforts to avoid changes to the personnel named in the Call-Off Agreement to perform the SCS. In the event of any such named personnel being unavailable to perform the SCS, WM shall make all reasonable efforts to promptly replace such individual with another person of equivalent competence and experience.

2.4.3 WM will exercise reasonable skill and care in performing the SCS and shall comply with the reasonable requests and directions of the Customer including complying with reasonable health, safety and security policies advised to WM by the Customer while working on the Customer's premises.

2.5 Duties of the Customer

2.5.1 The Customer shall, at its own expense, supply WM with all documents, software, inventions, data or other materials and instructions necessary to perform the SCS in accordance with the Contract and shall retain copies of any such documents, software, data or other materials so supplied.

2.5.2 The Customer shall provide WM with access to all personnel of the Customer and to its systems and software and, where WM is required to work on the Customer's premises, accommodation and other assistance as may be necessary for performing the SCS.

2.5.3 The Customer shall arrange all interviews and meetings with its own personnel that may have been agreed in any project plan forming part of the SCS.

2.6 Site Work

Unless stated in the Call-Off Agreement, for work on the Customer's site, travelling time in excess of the employee's normal travel to work time will be charged at cost. On such journeys the cost of air travel, rail travel or a car mileage allowance at the prevailing company rate will be charged (as appropriate). For site work involving overnight stays the cost of bed, breakfast and evening meal and the cost of WM's standard employee disturbance allowance, and (only for site work outside the UK), any incidental expenses such as travel and medical insurance will be charged.

2.7 Staff Transfer

2.7.1 In this Clause 2.7, the "Relevant Period" is the period starting on the Commencement Date and ending 12 months after the Contract has ended;

2.7.2 Neither the Customer nor WM during the Relevant Period will employ directly or indirectly, make or seeks to make any offer of employment to any of the other's staff directly involved in executing or receiving Services;

2.7.3 The Customer and WM shall each procure that during after the Relevant Period, no related party (such as their own customers or suppliers involved with the execution or provision of the Services), will employ directly or indirectly, or make or seek to make any offer of employment to any of WM's or Customer's staff as the case may be) involved in executing or receiving the services.

2.8 Insurance

The Customer confirms that it has or shall obtain appropriate insurance to cover WM employees against loss or injury whilst performing the SCS at the Customer's premises or elsewhere (other than WM premises) on its behalf.

2.9 Cancellation

When an end date has not been specified in the case of SCS involving the supply of staff on a time and materials basis, should either the Customer or WM wish to terminate such provision prematurely, the terminating party shall give thirty (30) days written notice to the other.