

G-Cloud 13 Cloud Solutions Terms & Conditions



If you submit a purchase order (or Part A: Order Form of the template Call-Off Contract for the G-Cloud 13 Framework Agreement, framework reference RM1557.13), you create a legally binding contract which is governed by these terms and conditions. Therefore, please read these Terms and Conditions carefully and only submit your call-off purchase order if they are acceptable to you. These terms and conditions also govern trials of the services.

These terms and conditions apply to the provision of services by Gigastream plc. The Services may include managed services, professional services, software development services, consultancy and related services as described in the relevant Service Description. Such Services may involve the delivery of services incorporating the services and products of third parties; in particular in respect of managed services such as cloud hosting which may involve products and services including, but not limited, to Amazon Web Services (AWS), Microsoft Azure or Google services. Where third party services or products are involved, the relevant terms and conditions applicable to those services shall be applicable in addition to these terms and conditions and by signing the Call-Off Contract you agree to be bound by those applicable terms and conditions. Details of the third party conditions (which may include links to further terms and conditions) can be found within the relevant Service Description.

Gigastream plc Consultancy and Services Agreement

This Agreement is made between

GIGASTREAM PLC, a company registered in England and Wales whose registered office is at 274 Banbury Road, Oxford, OX2 7XY, (**"We", "Us", and "Our"**); and

The Buyer, the entity that enters into the Agreement with Us, as set out in the Call-Off Contract as defined within the G-Cloud 13 Framework Agreement, framework reference RM1557.13, (**"You", "Your" and "Yourself"**).

It is hereby agreed that in consideration of Your payment of the fees calculated in accordance with the applicable Service Description, Pricing Document and Skills For the Information Age (SFIA) rate card in respect of each type of Service or set out in the Call-Off Contract, We will provide the Services as detailed in the Call-Off Contract and as defined in the Service Description(s) and below, as specified under this Agreement.

1 Definitions

In this Agreement, the following words and expressions will have the meanings set opposite them:

Agreement This agreement and any schedules or other documents attached hereto or referenced herein, including but not limited to the Call-Off Contract and related Service Description(s);
Call-Off Contract The G-Cloud 13 Call-Off Contract (entered into following the provisions of the G-Cloud 13 Framework Agreement) for the provision of Services made between Us and You into which these terms and conditions are incorporated
Confidential Information Any document, material, idea, data or other information which relates to each party's research and development,

trade secret or business affairs which is marked as confidential and is disclosed by either party to the other or by its very nature is confidential;

Customer Data Any data You or Your associates have provided in the course of this Agreement which is in Our possession, including but not limited to that which may be stored on any equipment We use to provide the Service(s);
Service(s) Our services as specified under this Agreement.

Service Description(s) The detailed descriptions of the Services We offer under this Agreement. The Service Descriptions, including the service level agreements, guidelines for use of the Services, and **Pricing Documents** are published at <https://www.digitalmarketplace.service.gov.uk/>

2 Services

- 2.1 Subject to Your compliance with Your obligations under this Agreement, We shall use Our reasonable endeavours to provide the Services to You during the currency of this Agreement with reasonable care and skill. We reserve the right to vary the Service at any time. However, We shall inform You of such variations where We deem it necessary to do so and where reasonably practicable in the circumstances.
- 2.2 Time will not be of the essence in this Agreement in any way whatsoever.
- 2.3 No delay shall entitle You to reject any delivery or part of the Service or to repudiate the Agreement.
- 2.4 We will inform You as soon as reasonably possible if it is not possible for Us to deliver any part of the Service(s) to You, in which event those parts shall be deleted from the Call-Off Contract.
- 2.5 You must notify Us in writing within 3 days of the date of invoice or provision of the Service, whichever is earlier, of any claim based on:
- (i) any defect in the quality or condition of the Service;
 - (ii) the failure of the Service to correspond with the specification detailed in the Service Description(s).
- 2.6 Property in any equipment We use to provide the Service and all rights of use will remain with Us at all times.

3 Term

This Agreement shall subsist from the date of the last signature hereto for a period of three (3) years and thereafter may be terminated by no less than three (3) calendar months' notice in writing by either party to the other.

4 Usage

- 4.1 You will ensure:
- that any equipment with which Our staff are required to interact is suitable for the purpose and is electronically and mechanically safe to be connected to the mains power supply for an unspecified duration, with or without interruption;
 - that all statutory requirements relating to the health and safety of Our staff are fulfilled at any location they may be required to attend in the course of providing the Service(s) to You, including but not limited to the provision at Your expense of any suitable information, training, equipment or protection that may be required to comply with the laws of all applicable jurisdictions;
 - that You will make all reasonable efforts to assist Us in the provision of the Service(s) to You and You will not unreasonably prevent or delay us from providing the Service(s) to You;
 - that You will execute promptly any documents and carry out any actions which We determine may reasonably be necessary to allow Us to provide the Service;

- that nothing is transmitted or stored by or on behalf of Yourself or using Your equipment in violation of any UK or international law, regulation or treaty or in breach of the intellectual property rights of any person and that Our staff are not required to come into contact with any such material in the course of providing the Service(s) to You;
- that at all times any information and material downloaded, stored, or used, whether permanently or temporarily, by You on Our equipment or any equipment We interact with for You shall comply with the laws of all applicable jurisdictions;
- that You will fully and effectually indemnify Us from and against all losses, liabilities, damages, costs, claims, demands and expenses which We may incur in relation to or arising from:
 - a) any breach by You of Your obligations under this clause;
 - b) any criminal or civil legal action brought against Us as a result of Our storage or transmission of such information or material or Our provision to You of the Service(s).

- 4.2 You will not pledge or in any way charge by way of security for any indebtedness any of the Service which remain Our property. If You do so any charges due under this Agreement become due for immediate payment.
- 4.3 Without prejudice to any other right, We shall be entitled to take such action as We think appropriate to ensure that any material We consider to offend the principles set out in this clause is not capable of being transmitted, downloaded or stored. We shall not however be obligated to take, or consider whether We should take, any such action.
- 4.4 A breach of this clause and/or Our Abuse Policy shall also be grounds for Us to terminate this Agreement without notice and with immediate effect, at Our discretion.

5 Confidential Information

- 5.1 Except in so far as such matters are properly in, or come into, the public domain, You agree to keep secret and confidential all information which You receive about Our research and affairs, and not to disclose any such information to any person unless otherwise expressly authorised by this agreement or unless ordered to do so by a court of law.
- 5.2 You undertake at all times to hold Our Confidential Information in strictest confidence and except as expressly provided in this Agreement You will not disclose the Confidential information to any third party in whole or in part and shall only disclose that Confidential Information to Your employees or individual contractors solely in order to comply with Your obligations under this Agreement after making known to them its confidential nature.

6 Intellectual Property

- 6.1 All intellectual property arising from the performance of this Agreement shall belong to Us.
- 6.2 At Our request and cost You will execute promptly any documents and carry out any actions which may reasonably be necessary to vest Us with all rights in any arising intellectual property.
- 6.3 We shall have no liability to account to You for any revenue or profit derived or resulting from the arising intellectual property.

7 Charges and Payment

- 7.1 You will pay Us the charges for the Services as set out in this Agreement inclusive of any value added taxes (which will be paid to Us in addition) within 28 days of the date of invoice.
- 7.2 If it will be necessary for any of Our staff to visit Your premises or make any other journeys in the course of providing the Services, unless otherwise stated in the Service Description You will reimburse Us for All reasonable travelling and subsistence expenses incurred in so doing.
- 7.3 If You fail to pay any sum due under this Agreement, interest will be charged from the date of issue of the applicable invoice until the date payment is made (whether before or after judgment) at the rate of 8% per annum over the base rate of Barclays Bank PLC from time to time in force.
- 7.4 If You fail to make any payment when due under this Agreement, We may cease future provision of any Service until such payment is made, without prejudice to any other rights or remedies which may be available to Us in accordance with this Agreement, at law or otherwise.
- 7.5 If You fail to make any payment when due under this Agreement, or You become subject to any of the events listed in clause 9.1(ii), or We reasonably believe that any such event is about to occur and notify You accordingly, then We may immediately invoice You for the full sum set out in the Call-Off Contract and such sum will become due for immediate payment, at Our discretion, and no amount paid by You to Us under this agreement will be refundable to You in whole or in part.

8 Cancellation

After the date of this Agreement, You may not cancel Your order for any of the Software, Hardware or Services without Our prior written consent.

9 Termination

- 9.1 We may without further notification or prejudice to any other remedy, suspend or disable the Service or terminate this Agreement forthwith by giving You notice in writing:
 - (i) if You have not paid any sums due under the Agreements within 30 days of the date on which payment of the relevant sum is due
 - (ii) if You are unable to pay Your debts as they fall due, are deemed to be unable to pay Your debts under section 123 of the Insolvency Act 1986 or

if You compound with Your creditors generally or have a receiver, administrative receiver, administrator or similar officer appointed over all or a substantial part of Your assets or if a petition is presented or an order is made or an effective resolution passed for the purpose of reconstruction or amalgamation

- (iii) if You break any part of this Agreement and, where We determine such a breach is capable of remedy, You fail to remedy the same within 30 days of receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

- 9.2 Termination will not relieve You of Your responsibilities under this Agreement, including Your responsibility to pay all fees up to the date of termination and any costs and expenses incurred by Us in providing the Service including any costs of resources committed to providing the Service to You which cannot be reallocated elsewhere.
- 9.3 We shall be under no obligation to retain or provide a copy of any of the Customer Data following the termination of this Agreement. Should We receive, no later than ten (10) days after the effective date of the termination of this Agreement, a written request for the delivery to You of the then most recent back-up of the Customer Data, We shall use reasonable commercial endeavours to deliver a copy of the Customer Data to You within thirty (30) days of Our receipt of such a written request, provided that You have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You shall pay all reasonable costs and expenses incurred by Us in returning or disposing of the Customer Data.

10 Limited Warranty

- 10.1 Subject to clause 2, We warrant that the Service shall not be substantially different from any written description of the Service previously supplied by Us in the Service Description.
- 10.2 We will supply the Service to You subject to the terms and conditions of any third party supplier and/or manufacturer upon which it may be dependent.
- 10.3 We do not warrant that the functions or specifications of the Service will meet Your requirements or that they will be free from defects or errors. You assume responsibility for the selection of the Service to achieve Your intended results.
- 10.4 We shall not be liable for any advice or representation provided to You before a contract is made unless the advice is in writing and signed by a representative duly authorised by Our board.

11 Limitation of Liability

- 11.1 Without prejudice to the express warranties contained in clause 10 above and to the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or otherwise by general law into this Agreement or relating to the Services are hereby excluded.
- 11.2 We have no liability for the quality or performance of the Service.
- 11.3 You will be liable for the cost of replacement, servicing, repair or correction, of the equipment, data and information in Our care and Your applications, arising from equipment failure, damage, loss or whatsoever other cause.
- 11.4 We will not be liable to You for loss of profits, loss of contracts, loss of business, loss of anticipated savings, loss of goodwill, lost or wasted management time or time of other employees, special, incidental or consequential losses, any other losses or damages even where such potential or reasonably foreseeable losses were notified to us or in the contemplation of the parties, and whether such loss arose from negligence or any other tortious act, breach of contract under any indemnity or in any other way arising directly or indirectly from any aspect of the service provided by us.
- 11.5 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or otherwise including but not limited to the implied warranties of satisfactory quality and fitness for a particular purpose.
- 11.6 In any event and notwithstanding the limitations expressed elsewhere Our maximum liability in contract, tort or otherwise, including legal costs, arising from or as a result of this Agreement shall be the total sum of fees paid to us under this Agreement in the twelve months preceding the event or the start of circumstances giving rise to a loss, of whatever nature.
- 11.7 Any claim relating to the provision of this Service must be received within six (6) months of the termination of the Service.

12 Non-Solicitation

You will not, and You will ensure that any person acting as Your agent or on Your behalf will not, either directly or indirectly induce, solicit or attempt to induce or solicit, any of Our employees which have provided Services to You under this Agreement to leave his or her employment with Us or engage or employ any such employees from the date of this Agreement until 6 months after the termination of this Agreement or the completion of any Services provided to You under this Agreement (whichever is the earlier). If You do induce, solicit or attempt to solicit or engage or employ any such employees, You will pay Us a sum equivalent to 6 months of the salary and other benefits which You pay such an

employee in the first year of his or her employment.

13 General

- 13.1 With respect to the subject matter of this Agreement the parties are independent entities and nothing will be deemed to create a relationship constituting agency, partnership, employment or joint venture between the parties.
- 13.2 If any provision of the Agreement is for any reason adjudged by a court of law to be invalid or unenforceable in any way, such invalidity or unenforceability will not affect the validity or enforceability of the remainder of the Agreement that will continue in full force and effect.
- 13.3 You will not assign or otherwise transfer the Agreement or any of the rights and obligations under the Agreement whether in whole or in part without Our prior written consent. We may assign the Agreement or any of Our rights or obligations under it to any third party.
- 13.4 Notwithstanding anything else contained in the Agreement, neither party will be liable for any delay in performing its obligations under the Agreement if such delay is caused by circumstances beyond its reasonable control (including, without limitation, any Act of God, war, riot, malicious acts of damage by third parties, civil commotion, strike, lockout, industrial dispute, fire, floods or any delay caused by any act or omission of the other party or any third party).
- 13.5 Any and all notices and communications required or permitted to be given by Us to You under the Agreement will be delivered to Your address as set out in the Agreement or as otherwise stipulated by You from time to time. Any and all notices and communications required to be given by You to Us will be delivered to Our registered office or as otherwise stipulated by Us from time to time. Either party may deliver any notices or communications to the other of them either by hand or first class post. The date of service for any postal notice or communication will be deemed to be the business day after the date on which such notice or communication is posted.
- 13.6 Any delay, neglect or forbearance in enforcing any term or condition in the Agreement will not be deemed to be a waiver of either party's contractual rights nor will it have any prejudicial effect whatsoever on the party entitled to enforce that term, condition, warranty or guarantee.
- 13.7 The Agreement will be governed by and construed in accordance with the laws of England. Unless the parties agree to resolve any dispute by mediation, arbitration or some other form of dispute resolution, any dispute that may arise between the parties concerning the Agreement will be determined by the English Courts and the parties hereby submit to the exclusive jurisdiction of the English courts for such purpose.

- 13.8 The Agreement contains the entire agreement and understanding of the parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the Services. Each of the parties acknowledges and agrees that it does not enter into the Agreement on the basis of and does not rely, and has not relied upon, and will have no remedy in respect of, any statement or representation or warranty or other provision made, given or agreed to by the other party to the Agreement (whether negligently or innocently made) except those expressly repeated or referred to in the Agreement and the only remedy available in respect of any misrepresentation or untrue statement made to it will be a claim for breach of contract under this Agreement. Nothing in this clause will operate to limit or exclude liability for fraud.
- 13.9 No variation, supplement, deletion or replacement of or from the Agreement or any of their terms shall be effective unless made in writing and signed by or on behalf of each party.
- 13.10 Should conflict or inconsistency arise, the following order of preference shall apply (from highest to lowest), except that clause 7 shall not be overridden by the Call-Off Contract unless it specifically refers to that clause and expresses the intent to override it:
- (i) The Call-Off Contract;
 - (ii) The Service Description(s);
 - (iii) The Pricing Document; and
 - (iv) These terms and conditions.