Terms and Conditions

G-Cloud 14
May 2024
RM1557.14

Cloud Support Services

These Terms and Conditions are not intended to conflict with the terms and conditions of the G-Cloud 14 Framework Agreement, and where any conflict may exist, the G-Cloud 14 Framework Agreement will have precedence.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

1.2 Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 4.

1.3 Conditions: these terms and conditions as amended from time to time in accordance with clause 11.2.

1.4 Contract: the contract between Digi2al and the Customer for the supply of Services in accordance with these Conditions.

1.5 Deliverables: the deliverables set out in the Order.

1.6 Services: the services, including the Deliverables, supplied by Digi2al to the Customer as set out in the Specification.

2. SUPPLY OF SERVICES

2.1 Digi2al shall supply the Services to the Customer as described in the Order at the location(s) set out in the Order and supply the Deliverables.

2.2 Digi2al shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

2.3 Digi2al warrants to the Customer that the Services will be provided using reasonable care and skill.

2.4 Digi2al may replace its personnel assigned to you from time to time, and Digi2al will provide reasonable notice and justification for changes.

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2.5 The Deliverables will be accepted by the Customer when the acceptance criteria specified in the Order, if any, have been met or when the Customer makes any productive or live use of the Deliverables, whichever occurs first. Where no acceptance criteria are specified in the Order the Deliverables will be accepted on delivery to the Customer.

2.6 Either party may request changes to the Services or changes to any other aspect of this Contract. Requests for changes must be sufficiently detailed to enable the other party to assess the impact of the requested change on the cost, timetable or any other aspect of this Contract. Both parties agree to work together to consider, and if appropriate, seek to agree any changes. Until a change is agreed in writing both parties will continue to act in accordance with the latest agreed version of this Contract.

2.7 Each party will name a contact who will be responsible for managing all issues relating to the performance of this Contract. The initial contacts are named in the Order.

3. CUSTOMER'S OBLIGATIONS

3.1 The Customer shall:

(a) co-operate with Digi2al in all matters relating to the Services;

(b) carry out its responsibilities as set out in the Order;

(c) provide Digi2al, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Digi2al;

(d) provide Digi2al with such information and materials as Digi2al may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

(e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;

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3.2 The Customer shall ensure that its staff are available to provide such assistance as Digi2al reasonably require and that Digi2al is given reasonable access to senior management, as well as any members of the Customer's staff specified in the Order to enable Digi2al to provide the Services. The Customer will ensure that its staff have the appropriate skills and experience. If any of the Customer's staff fail to perform as required, the Customer will make suitable additional or alternative staff available. This includes staff from other suppliers and other third parties who may impact Digi2al's ability to deliver the Service.

4. CHARGES AND PAYMENT

4.1 The Charges for the Services shall be as stated in the Order and paid in accordance with the terms stated in the Order.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 Digi2al retains the Intellectual Property Rights to all prebuilt, operational, research or developmental intellectual property employed in providing the Services.

5.2 Unless otherwise agreed in the Order, all Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Digi2al.

5.3 The Customer will own the Intellectual Property Rights in all those Deliverables identified in the Order as "Client Materials. The Customer grants to Digi2al a non-exclusive, royalty-free, worldwide, perpetual right to use, copy, adapt, modify, sub-license and market such Client Materials. The Customer will not sub-licence the Deliverables or make them available to third parties without Digi2al's prior written consent.

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6. CONFIDENTIALITY

A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 6 shall survive termination of the Contract.

7. LIMITATION OF LIABILITY:

7.1 Nothing in these Conditions shall limit or exclude Digi2al's liability for:

   (a)   death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

   (b)   fraud or fraudulent misrepresentation; or

   (c)   breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

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7.2 Subject to clause 7.1:

(a)   Neither Party shall under no circumstances whatever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(b)   Each party total liability to the other in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% of the Charges of the previous 12 months under the Order.

8. TERMINATION

8.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 3 months' written notice.

8.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a)   the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

8.3 Without limiting its other rights or remedies, Digi2al may suspend provision of the Services under the Contract or any other contract between the Customer and Digi2al if the Customer fails to pay any amount due under this Contract on the due date for payment.

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9. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

(a) the Customer shall immediately pay to Digi2al all of Digi2al's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Digi2al shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all any Deliverables which have not been fully paid for.;

(c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(d) clauses which expressly or by implication survive termination shall continue in full force and effect.

10. FORCE MAJEURE

10.1 Neither party will be liable to the other for any failure to fulfil obligations caused by circumstances outside its reasonable control.

11. GENERAL

11.1 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its 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.

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11.2 Sub-Contracting: Digi2al reserves the right to employ agents and sub-contractors to assist it when providing any part of the Services. However, Digi2al will remain liable to the Customer in respect of any Services provided, subject to the other provisions of this Contract.

11.3 Data Protection: You agree to allow Digi2al, sub-contractors and agents to store and use the contact information of your relevant employees and contractors, including names, job titles, business addresses, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed in accordance with the General Data Protection Regulation 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

11.4 Variation. Except as set out in these Conditions, no variation of the Contract, shall be effective unless it is agreed in writing and signed by Digi2al.

11.5 Governing law. This Contract, 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 law of England and Wales.

11.6 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 Contract or its subject matter or formation (including non-contractual disputes or claims).

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Get in touch

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