



Kings House Business Centre | Kings Langley | Hertfordshire | WD4 8LZ

G-CLOUD 14 RM1557.14

SUPPLIER TERMS AND CONDITIONS

Terms and Conditions

1.1 SCOPE OF AGREEMENT

1.1.1 The Supplier Terms and Conditions specified herein apply to the provision of all G-Cloud Services and any G-Cloud Additional Services by the Supplier

1.2 Definitions

1.2.1 In these supplier terms and conditions, the following expressions shall have the following meanings:

"Customer Data" means information, text, drawings, diagrams, images, or sounds, which are embodied in any electronic, magnetic, optical, or tangible medium which are:

- (a) supplied to the Supplier by or on behalf of the Customer in connection with the Services; or
- (b) generated by the Supplier under the Call Off Agreement.

"Customer Materials" means the Customer Data together with any materials, documentation, information, programs, and codes supplied by the Customer to the Supplier, the IPR in which:

- (a) are owned or used by or on behalf of the Customer; and
- (b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Specially Written Material, Supplier Material and Third-Party Material.

"IPR Claim" means any claim, action or demand made (or litigation or other dispute resolution process commenced) due to any infringement or alleged infringement of any Intellectual Property Rights used to provide the Services or otherwise provided or made available by the Supplier under the Call Off Agreement (but not any Intellectual Property Rights originally owned or licensed by the Customer);

"Source Code" means software in eye readable form and in such form that it can be compiled or interpreted into equivalent object code together with all technical information and documentation necessary for the use, reproduction, modification, enhancement and support of such software without recourse to any other document or materials.

"Specially Written Material" means any Specially Written Software and / or any technical specifications, user manuals, operating manuals, process definitions and procedures, and other documentation relating to the Services that are written by or on behalf of the Supplier to specifically meet the Customer service requirements.

"Specially Written Software" means programs and codes which are written for the Services by or on behalf of the Supplier to specifically meet the Customer service requirements.

"Supplier Material" means any product, processes, manuals, documents, equipment or other resource or item including Supplier Software that are owned by the Supplier and used by the Supplier in the provision of the Services but excluding any Specially Written Material or Third Party Material.

"Supplier Software" means programs in object code used by the Supplier to provide the Services the IPR in which are owned by the Supplier but excluding any Specially Written Software.

"Term" means the period commencing on the Effective Date and continuing until the expiry date set out in the Order Form, or for such longer period as the Call Off Agreement may be extended in accordance with the Order Form.

"Third Party Material" means any product, processes, manuals, documents, equipment or other resource or item including Third Party Software that are owned by a third party and used by the Supplier in the provision of the Services but excluding any Specially Written Material.

"Third Party Software" means any computer programs, the IPR in which are owned by a third party and used by the Supplier to provide the Services.

2.0 Customer Responsibilities

2.1 In addition to the Buyer's responsibilities included in Section Buyer contractual details of the Order Form, the Customer shall be responsible for the following under each Call Off Agreement:

2.1.1 Ensuring that the Customer's computer, operating system, and software used by the Supplier and the Supplier Staff to provide the Services are either the property of the Customer or are legally licensed to the Customer.

2.1.2 Providing accommodation and office facilities for the Supplier Staff on the Customer's premises as mutually agreed including secretarial and transportation services as are necessary for the provisions of the Services.

2.1.3 Ensuring that its employees, agents, contractors, subcontractors, and consultants who are involved in or associated with the Services co-operate fully with the Supplier and the Supplier Staff in relation to the provision of the Services.

2.1.4 Providing such documentation, data and/or other information that the Supplier reasonably requests, provided that such documentation, data and/or information is available to the Customer.

2.1.5 Providing the Supplier with access to appropriate members of the Customer's staff and ensuring such staff are competent to carry out their responsibilities under the Implementation Plan.

2.1.6 To the extent that the following are not expressly provided for elsewhere in the Call Off Agreement, using its reasonable endeavours to respond to requests for approval, authority to proceed, guidance or assistance from the Supplier in a prompt and timely manner.

2.1.7 Being responsible for any acts, omissions and errors of its agents, contractors, subcontractors, and consultants who are involved in or associated with the Services, where they are acting on behalf of the Customer under this Call Off Agreement.

2.1.8 Procuring for the Supplier Staff such agreed access and use of the Customer's premises, facilities, including relevant IT systems as is reasonably required by the Supplier in relation to the provision of the Services.

2.1.10 Responding promptly to requests for approvals and/or information from the Supplier in order for the Supplier to discharge its obligations under the Call Off Agreement.

2.1.11 Acting promptly, reasonably and in good faith in reviewing and agreeing all Variations

3. Ownership of Intellectual Property Rights

3.1 In addition to the clauses in section 11. Intellectual Property Rights of the Order Form the following clauses will apply:

3.1.1 Each party shall promptly notify the other in writing when it becomes aware of any IPR Claim.

3.1.2 All IPR Claims shall be managed by the Supplier at its own expense and with all due diligence using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute and the Supplier shall keep the Customer fully informed and consult with the Customer with respect to any such IPR Claim.

3.1.3 The Customer shall at the request of the Supplier provide reasonable assistance to the Supplier in the management of any IPR Claim. In such circumstances:

- 3.1.3.1 The Supplier shall reimburse the Customer for any costs and expenses incurred in providing such assistance; and

- 3.1.3.2 The Customer shall not make any admissions which could be prejudicial to the defence or settlement of the IPR Claim without first consulting with the Supplier.

3.1.4 At the option of the Customer, the Customer shall be entitled to manage an IPR Claim including the conduct of any litigation and all discussions and negotiations regarding any proposed settlement. In doing so, it shall consult with and pay due regard to the interests and views of the Supplier and shall, where it is reasonable to do so, comply with such views. If the Customer agrees to settlement of any IPR Claim without having received either:

3.1.4.1 the prior written consent of the Supplier; or

3.1.4.2 if the Supplier refuses or withholds consent, an opinion in writing from a practising barrister of at least ten (10) years' call expressing the view that the settlement proposed is in all of the circumstances reasonable, it shall not be entitled to indemnity against Losses in relation to that IPR Claim.

3.1.5 Nothing in the Call Off Agreement shall prevent the Supplier from developing and using any techniques, ideas, concepts, methodologies or know-how learnt by the Supplier during the provision of the Services provided that the same are of general application and do not infringe the Intellectual Property Rights or Confidential Information of the Customer.

3.1.6 The provisions of this Clause 3 will survive the expiry or termination of the Call Off Agreement.

4. Termination

4.1 Effect of Termination without cause

4.1.1 Where the Call Off Agreement specifies a fixed volume of Services to be delivered during the Term then the Supplier shall be entitled to invoice for the pro-rata value based on the minimum period allowable for termination.

Where the Call Off Agreement allows for a variable volume of Services to be delivered during the Term then the Supplier shall be entitled to invoice either;

- For the value of the anticipated Services to be delivered during the minimum period for termination where this is defined in the Order Form; or

- For the value of the actual Services in the preceding period equivalent to the minimum period for termination.

5. Non-Solicitation

5.1 The Customer and the Supplier shall not, and the Supplier shall procure that any Sub-contractor shall not, during the Term and for twelve (12) months following the termination of the Call Off Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away otherwise than by general advertising) from the employment of the other party any person employed by such other party in the provision of the Services or (in the case of the Customer) in the receipt and/or administration of the Services.