

GCloud 15

Infomomentum Standard Terms and Conditions

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1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

Contract: the Customer's purchase order and Infomentum's acceptance of it under condition 3.

Customer: the person, firm or company who purchases Services from Infomentum.

Customer's Project Manager: the Customer's manager for the Project appointed in accordance with condition 5.1(a).

Deliverables: all products and materials developed by Infomentum in relation to the Project in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Pre-existing Materials: materials which existed before the commencement of the Project.

Project: the project as described in the Statement of Works.

Project Milestone: a date by which a part of the Project is estimated to be completed, as set out in the Statement of Works.

Services: the services to be provided by Infomentum under the Contract.

Statement of Works: the detailed plan describing the Project and setting out the estimated timetable (including without limitation Project Milestones) and responsibilities for the provision of the Services by Infomentum in accordance with the Contract.

Infomentum's Project Manager: Infomentum's manager for the Project, appointed in accordance with condition 4.3.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
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- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to writing or written includes faxes and e-mail.
- 1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

2. Application of Conditions

- 2.1 These conditions shall:
 - a) Apply to and be incorporated in the Contract; and
 - b) Prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Infomentum unless in writing and signed by a duly authorised representative of Infomentum.

3. Effect of Purchase Order

- 3.1 The Customer's purchase order constitutes an offer by the Customer to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by Infomentum, or Infomentum's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

4. Infomentum's Obligations

- 4.1 Infomentum shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Statement of Works.
 - 4.2 Infomentum shall use reasonable endeavours to meet the performance dates specified in the Statement of Works, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
 - 4.3 Infomentum shall appoint Infomentum's Project Manager who shall have authority to contractually bind Infomentum on all matters relating to the Project. Infomentum shall use reasonable endeavours to ensure that the same person acts as Infomentum's Project Manager throughout the
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Project, but may replace him from time to time where reasonably necessary in the interests of Infomentum's business.

5. Customer's Obligations

5.1 The Customer shall:

- a) Co-operate with Infomentum in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project;
- b) Provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by Infomentum;
- c) Provide in a timely manner such information as Infomentum may request, and ensure that such information is accurate in all material respects.

5.2 If Infomentum's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to Infomentum on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Infomentum confirming such costs, charges and losses to the Customer in writing.

5.3 The Customer shall not, without the prior written consent of Infomentum, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from Infomentum or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Infomentum.

5.4 Any consent given by Infomentum in accordance with condition 5.3 shall be subject to the Customer paying to Infomentum a sum equivalent to 20% of the then current annual remuneration of Infomentum's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

6. Change Control

6.1 The Customer's Project Manager and Infomentum's Project Manager shall meet at least once every week to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

6.2 If either party requests a change to the scope or execution of the Services, Infomentum shall, within a reasonable time, provide a written estimate to the Customer of:

- a) The likely time required to implement the change;
 - b) Any variations to Infomentum's charges arising from the change;
 - c) The likely effect of the change on the Statement of Works; and
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- d) Any other impact of the change on the terms of the Contract.
- 6.3 If Infomentum requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 6.4 If the Customer wishes Infomentum to proceed with the change, Infomentum has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Statement of Works and any other relevant terms of the Contract to take account of the change.

7. Charges and Payment

- 7.1 Condition 7.2 shall apply if the Services are to be provided on a time-and-materials basis. Conditions condition 7.3 and condition 7.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 7 shall apply in either case.
 - 7.2 Where the Services are provided on a time-and-materials basis:
 - a) the charges payable for the Services shall be calculated in accordance with Infomentum's standard daily fee rates as amended from time to time;
 - b) Infomentum's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - c) Infomentum shall be entitled to charge at an overtime rate of 1.5 times of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 7.2(b) on a pro-rata basis;
 - d) Infomentum shall ensure that all members of the project team complete time sheets recording time spent on the Project, and Infomentum shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 7.2(e); and
 - e) Infomentum shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 7. Each invoice shall set out the time spent by each member of the project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
 - 7.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Statement of Works. The total price shall be paid to Infomentum (without deduction or set-off) in instalments as set out in the Statement of Works on its achieving the corresponding Project Milestone. On achieving a Project Milestone, Infomentum shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 7.4.
 - 7.4 Any fixed price contained in the Statement of Works excludes:
 - a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Infomentum for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Infomentum at cost; and
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- b) VAT, which Infomentum shall add to its invoices at the appropriate rate.
- 7.5 The Customer shall pay each invoice submitted to it by Infomentum in full, and in cleared funds, within 30 days of receipt.
- 7.6 Without prejudice to any other right or remedy that Infomentum may have, if the Customer fails to pay Infomentum on the due date Infomentum may:
 - a) charge interest on such sum from the due date for payment at the annual rate of 1.5% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. Infomentum may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - b) suspend all Services until payment has been made in full.
- 7.7 Time for payment shall be of the essence of the Contract.
- 7.8 All payments payable to Infomentum under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.9 Infomentum may, without prejudice to any other rights it may have, set off any liability of the Customer to Infomentum against any liability of Infomentum to the Customer.

8. Intellectual Property Rights

- 8.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by Infomentum. Infomentum hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If Infomentum terminates the Contract under condition 11.1, this licence will automatically terminate.
- 8.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on Infomentum obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Infomentum to license such rights to the Customer.

9. Confidentiality and Infomentum's Property

- 9.1 The Customer 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 Customer by Infomentum or its agents, and any other confidential information concerning Infomentum's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to Infomentum, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
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- 9.2 All materials, equipment and tools, drawings, specifications and data supplied by Infomentum to the Customer shall at all times be and remain the exclusive property of Infomentum, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Infomentum, and shall not be disposed of or used other than in accordance with Infomentum's written instructions or authorisation.
- 9.3 This condition 9 shall survive termination of the Contract, however arising.

10. Limitation of Liability

- 10.1 The following provisions set out the entire financial liability of Infomentum (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- a) Any breach of the Contract howsoever arising;
 - b) Any use made by the Customer of the Services, the Deliverables or any part of them; and
 - c) Any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes the liability of Infomentum:
- a) For death or personal injury caused by Infomentum's negligence; or
 - b) For fraud or fraudulent misrepresentation.
- 10.4 Subject to condition 10.2 and condition 10.3:
- a) Infomentum shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) Loss of profits; or (ii) Loss of business; or
 - (iii) Depletion of goodwill or similar losses; or
 - (iv) Loss of anticipated savings; or
 - (v) Loss of goods; or
 - (vi) Loss of contract; or
 - (vii) Loss of use; or
 - (viii) Loss or corruption of data or information; or
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- (ix) Any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- b) Infomentum's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

11. Termination

- 11.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:
- a) The other party commits a material breach 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 of the breach; or
 - b) An order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
 - c) An order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - d) A receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
 - e) The other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
 - f) The other party ceases, or threatens to cease, to trade; or
 - g) There is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the other party; or
 - h) The other party takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt.
- 11.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
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12. Force Majeure

- 12.1 Infomentum shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Infomentum or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

13. Waiver

- 13.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 13.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14. Severance

- 14.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

15. Entire Agreement

- 15.1 Each of the parties acknowledges and agrees that in entering into the Contract and the documents referred to in it or annexed to it, it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty (Representation) (whether in writing or not) of any person (whether party to this agreement or not) other than as expressly set out in the Contract or those documents.
- 15.2 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in the Contract.
- 15.3 Nothing in this clause shall limit or exclude any liability for fraud.
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16. Assignment

- 16.1 The Customer shall not, without the prior written consent of Infomentum, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 16.2 Infomentum may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

17. No Partnership or Agency

- 17.1 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18. Third Party Rights

- 18.1 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

19. Notices

- 19.1 Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Contract.
- 19.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

20. Governing Law and Jurisdiction

- 20.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 20.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including without limitation non-contractual disputes or claims).
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