



G-Cloud Consultancy Services - Terms and Conditions

Pink Elephant EMEA Limited

G-Cloud Framework Compliance

These Terms and Conditions are supplementary to and subject to the G-Cloud 15 Framework Agreement. When Services are procured through the G-Cloud framework:

1. These terms apply only to the extent they do not conflict with the G-Cloud 15 Framework Agreement or any Call-Off Contract
2. In the event of any conflict or inconsistency, the following order of precedence shall apply:
 - G-Cloud 15 Framework Agreement
 - Call-Off Contract
 - Statement of Work or Order Form
 - These Terms and Conditions
3. Where these terms refer to limitation of liability, indemnities, termination rights, or contract duration, such provisions are subject to and shall not override the corresponding provisions in the G-Cloud Framework Agreement and Call-Off Contract

1. Definitions

In these Terms and Conditions, the following terms shall have the following meanings:

Affiliate: means any person that directly or indirectly controls, is controlled by, or is under common control with another person. For purposes of this definition, a person "controls" another person if that person directly or indirectly possesses the power to direct or cause the direction of the management and policies of that other person, whether through ownership of voting securities, by contract or otherwise.

Agreement: means the G-Cloud 15 Framework Agreement, the Call-Off Contract, the applicable Statement of Work or Order Form, and these Terms and Conditions, read together.

Business Day: means any day which is not (i) a Saturday or Sunday or (ii) a day observed as a holiday under the law of the United Kingdom.

Confidential Information: means all confidential or proprietary information and documentation of a party (whether or not designated as such), including but not limited to all information, written or oral, concerning the business and affairs of a party, knowledge and information relating to trade, business, activities, operations, organisations, finances, processes, methods, designs, software and technology, and data.

Intellectual Property Rights: means all copyrights, patents, patent rights, trademarks, service marks, trade secrets and other proprietary, intellectual, literary and artistic rights pursuant to



the Copyright, Designs and Patents Act 1988 and any other intellectual property laws and regulations.

ITIL or Information Technology Infrastructure Library: means certain internal/best practice consulting, books, tools, process models, educational materials and related documentation and manuals developed and administered by AXELOS or its successors.

Personnel: means Pink Elephant's employees, agents, contractors and other representatives assigned to provide the Services.

Pink Elephant Methodology: means all data, tools, templates, designs, concepts, methods, methodologies, know-how, technology (including software in executable code and source code), documentation or any other information, data or materials, and any expressions of the foregoing, developed by, owned by, or licensed to Pink Elephant prior to the provision of the Services and all improvements, enhancements or derivatives directly relating thereto.

Services: means the consulting, advisory, project management, ITSM implementation and other professional services described in the applicable Statement of Work or Order Form.

Statement of Work or Order Form: means the document(s) describing the specific Services to be provided, deliverables, timescales, resources, and fees.

Work Product: means the deliverables and reports produced or provided to the Customer by Pink Elephant in performing the Services under the Agreement.

2. Applicable Law

These Terms and Conditions are governed by and construed in accordance with English law. Each party agrees that the courts of England will have exclusive jurisdiction in relation to any claim, dispute or difference, subject to any dispute resolution procedures set out in the G-Cloud Framework Agreement.

3. Scope of Consulting Services

3.1 Service Overview

Pink Elephant provides expert ITSM (IT Service Management) consulting services and professional advisory services to help organisations optimise their IT service delivery, implement best practice frameworks, and improve operational efficiency.

3.2 Services Provision

Pink Elephant agrees to provide consulting services for the Customer which may include, without limitation:

- ITSM strategy development and implementation
- IT project management and delivery
- Process design, optimisation and improvement
- Service improvement programmes
- Framework implementation (ITIL, PRINCE2, Agile, DevOps, etc.)



- Tool implementation and configuration
- Organisational change management
- Target Operating Model
- SIAM strategy and design
- Service Management Office
- ITSM Tool Selection
- Value Stream Mapping
- ITIL Maturity Model
- ISO 20.000 and ISO 27001 consultancy
- Training and knowledge transfer
- Advisory and technical consultancy

Services may be delivered at the Customer's facility, remotely, or at other sites as mutually agreed in the Statement of Work.

3.3 Statement of Work

The Services shall be described in a Statement of Work which shall contain, unless the parties agree otherwise in writing:

- A description of the work to be conducted
- Work schedule and milestones
- Deliverables and delivery schedule
- Resource grades and allocation
- Fees and payment terms
- Any additional specific terms and conditions

3.4 Changes to Services

The Customer may request in writing changes to the scope of Services described in the Statement of Work ("Change Request"). In response to any Change Request, Pink Elephant shall determine the feasibility of providing the changes and shall estimate the increase or decrease in total fees payable.

Following receipt of Pink Elephant's written response, the parties shall negotiate an amended Statement of Work which sets out the changes to the Services and the amended fees. If the Customer wishes, it can elect to withdraw its request for changes and continue with the Services as currently defined.

Pink Elephant may also recommend changes to the scope of Services and shall estimate the impact on fees. The Customer shall review the recommendation and, if acceptable, the parties shall negotiate an amended Statement of Work.



4. Personnel

4.1 Personnel Qualifications

Pink Elephant agrees to ensure that its Personnel have the necessary technical skills, qualifications, experience and training to complete the Services in accordance with the Agreement and Statement of Work.

All consulting Personnel are professionally qualified in relevant frameworks (such as ITIL, PRINCE2, Agile, DevOps, COBIT) appropriate to their assigned roles.

4.2 Employment Status

The parties agree that Personnel are not, nor are they deemed to be, for any purpose, the employees or agents of the Customer.

4.3 Customer Site Requirements

Pink Elephant agrees to ensure that Personnel shall abide by all security, health and safety and IT regulations at the Customer's facility and comply with those of the Customer's policies and procedures of which Pink Elephant or the Personnel have been advised in writing.

4.4 Personnel Changes

The Customer may request termination of the assignment of any member of Pink Elephant's Personnel who the Customer reasonably believes to be inadequately qualified or whose performance is unsatisfactory, provided the Customer has previously given Pink Elephant written notice of the problem and a reasonable opportunity (typically 10 business days) to remedy the situation.

Pink Elephant will use reasonable endeavours to minimise changes of assigned personnel and will provide advance notice where changes are necessary.

5. Fees and Payment Terms

5.1 Fee Structure

The fees payable by the Customer for Services shall be determined in accordance with the Statement of Work and may be structured as:

- Daily or hourly rates for consultant time
- Fixed price for defined deliverables
- Monthly retainer for ongoing advisory services
- Blended rates for teams with multiple resource grades
- Or other commercial models as agreed

5.2 Invoicing

Invoices for amounts due shall be provided to the Customer and are payable within 30 days of the Customer's receipt of a valid and undisputed invoice, or as otherwise specified in the G-Cloud Framework Agreement and Call-Off Contract.

5.3 Late Payment

Should the Customer fail to pay any undisputed amount by the due date, interest may be



charged in accordance with the G-Cloud Framework Agreement or as permitted under applicable law.

Any suspension of services for non-payment will be conducted in accordance with the provisions of the G-Cloud Framework Agreement and Call-Off Contract.

5.4 Expenses

Unless otherwise agreed in the Statement of Work, reasonable and necessary expenses incurred by Pink Elephant in performing the Services (such as travel, accommodation, and subsistence) shall be reimbursed at cost, subject to:

- Prior approval by the Customer
- Compliance with the Customer's expense policy (if provided)
- Provision of appropriate receipts and documentation

5.5 Taxes

The Customer agrees to pay all sales, use, excise, goods and services, value added and similar taxes (except taxes on Pink Elephant's income) which Pink Elephant is required to collect and remit for the Services. All fees exclude VAT at the applicable UK rate (currently 20%).

6. Intellectual Property and Work Product

6.1 Work Product Ownership

Pink Elephant acknowledges and agrees that all proprietary right, title and interest in and to the Work Product, exclusive of the Pink Elephant Methodology, shall be owned by the Customer.

For the avoidance of doubt, "Work Product" means the specific deliverables and reports produced for the Customer by Pink Elephant in performing the Services, but does not include Pink Elephant's pre-existing methodologies, tools, templates or know-how.

6.2 Pink Elephant Methodology

The Customer acknowledges and agrees that all proprietary right, title and interest in and to the Pink Elephant Methodology, including all Intellectual Property Rights therein, are owned by Pink Elephant.

The Customer receives a non-exclusive licence to use elements of the Pink Elephant Methodology incorporated into Work Product for the Customer's internal business purposes.

6.3 Use of Work Product

The Services and the Work Product are intended solely for the Customer's business use. The Customer accepts sole responsibility and liability for use of or reliance by third parties on the Services or the Work Product.

6.4 Pre-Existing Materials

Each party retains all ownership rights in its pre-existing intellectual property. Nothing in this Agreement transfers ownership of pre-existing intellectual property from one party to the other.

7. Confidentiality



7.1 Confidentiality Obligations

Each party shall keep confidential all Confidential Information and shall not divulge the same to any third party without the prior written consent of the other party, except:

- To its auditors, legal and other professional advisors
- To its employees or the employees of its subsidiaries and Affiliates who have a need to know
- Where ordered to disclose by a court or tribunal of competent jurisdiction

The party receiving Confidential Information must ensure that recipients are aware of and comply with these confidentiality obligations.

7.2 Exceptions

The confidentiality obligations shall not apply to Confidential Information that:

- Is published or has otherwise entered the public domain without breach of this Agreement
- Is obtained by the receiving party from a third party with no obligation of confidentiality
- Is independently developed by the receiving party without breach of this Agreement
- Was already known by the receiving party without a duty of confidentiality at the time of receipt

7.3 Limited Disclosure

Each party shall only divulge Confidential Information to those employees who are directly involved in the Agreement or the use of the Services and have a need to know the same.

7.4 Permitted Disclosure

It is not a breach of this Agreement to:

- Disclose Confidential Information required to be disclosed by law, judicial or arbitration process, provided that the disclosing party first gives the receiving party reasonable prior written notice of such requirement
- Disclose the other party's Confidential Information with the prior written consent of the party which owns the Confidential Information

7.5 Return of Information

Upon termination or expiration of the Agreement, each party will return all documents and information, however recorded, including all copies, which contain any Confidential Information of the other party, or will confirm their secure deletion.

8. Data Protection

8.1 Compliance

Each party shall comply with the provisions of the Data Protection Act 2018 and UK GDPR when processing personal data in connection with the Agreement.

8.2 Data Processing

Where Pink Elephant processes personal data on behalf of the Customer, the parties acknowledge that:



- Pink Elephant acts as a data processor
- The Customer acts as the data controller
- Processing shall be in accordance with the Customer's written instructions
- Additional data processing terms shall be set out in a separate Data Processing Agreement or Schedule as required by the G-Cloud Framework Agreement

8.3 Security Measures

Pink Elephant shall implement and maintain appropriate technical and organisational measures to ensure an appropriate level of security for personal data processed in connection with the Services.

9. Representations and Warranties

9.1 Service Warranty

Pink Elephant represents and warrants that the Services will be performed in a diligent and workmanlike manner, consistent with standards generally observed in the industry for similar services, in accordance with the requirements of the Agreement and the applicable Statement of Work.

Should any portion of the Services fail to comply with this warranty, Pink Elephant agrees to remedy the failure to comply promptly at its own expense, subject to the limitations set out in the G-Cloud Framework Agreement.

9.2 Customer Obligations

The Customer represents and warrants that it shall:

- Cooperate reasonably and in good faith with Pink Elephant
- Provide timely, accurate and complete information, access and materials as reasonably required for delivery of the Services
- Comply with all applicable laws, regulations and contractual obligations in connection with its use of the Services

9.3 Disclaimer

Except as expressly provided in this Agreement, Pink Elephant makes no express or implied representations, warranties or conditions of any kind in respect of the Services, including but not limited to implied or statutory warranties or conditions of merchantability, merchantable quality or fitness for a particular purpose.

10. Limitation of Liability

The limitations of liability applicable to Services procured under G-Cloud are set out in the G-Cloud Framework Agreement and Call-Off Contract. These provisions shall prevail over any conflicting terms in these Terms and Conditions.

Without prejudice to the provisions of the G-Cloud Framework Agreement, the parties acknowledge that:



- Neither party shall be liable for special, indirect, incidental or consequential damages, including loss of profits or revenue
- Liability caps and exclusions are subject to statutory exceptions (such as for death, personal injury, fraud)
- Indemnities for third party claims are as specified in the G-Cloud Framework Agreement

11. Indemnities

11.1 Third Party Claims

Each party shall indemnify and hold harmless the other party from and against third party claims resulting from:

- Personal injury, including death, caused directly by the negligence or wilful misconduct of the indemnifying party
- Loss of or damage to tangible property caused directly by the negligence or wilful misconduct of the indemnifying party

This indemnity is subject to the limitations and procedures set out in the G-Cloud Framework Agreement.

11.2 Indemnity Conditions

Any indemnity is contingent upon:

- The indemnified party promptly notifying the indemnifying party in writing of any claim
- The indemnifying party being allowed to control the defence and settlement of such claim
- The indemnified party reasonably cooperating with the indemnifying party (at the indemnifying party's expense)

12. Insurance

12.1 Insurance Coverage

Throughout the term of service provision, Pink Elephant shall maintain in full force and effect appropriate insurance coverage including:

- Professional indemnity insurance with aggregate limits of at least £5 million
- Public liability insurance
- Employer's liability insurance (as required by UK law)
- Any other insurance required by applicable law or good industry practice

12.2 Evidence of Insurance

Pink Elephant shall, on request, provide the Customer with certificates of insurance evidencing the coverage required.

13. Non-Solicitation



13.1 Non-Solicitation of Personnel

Except where staff have been made redundant or dismissed by the other party, each party agrees that during the period of service provision and for a period of twelve (12) months thereafter, it shall not directly or indirectly solicit or entice away any of the other party's staff who have been directly associated with the Services, without the other party's prior written agreement.

This shall not prevent either party from making general recruitment advertising or solicitations not specifically targeted at the other party's personnel.

14. Term and Termination

14.1 Term

The term and any renewal provisions applicable to Services procured under G-Cloud are set out in the G-Cloud Framework Agreement and Call-Off Contract.

14.2 Termination Rights

Termination rights are as specified in the G-Cloud Framework Agreement and Call-Off Contract, which provide for:

- Termination for convenience
- Termination for breach
- Termination for insolvency events

14.3 Effect of Termination

Upon termination or expiration:

- The Customer shall be liable for all fees payable for Services delivered prior to the date of termination
- The Customer shall be liable for fees for Services which would have been provided but were not provided due to causes directly attributable to the Customer
- Pink Elephant will deliver to the Customer all Work Product rendered up to the effective date of termination
- Rights and obligations that by their nature should survive termination shall continue
- Confidentiality obligations shall survive termination

15. Force Majeure

15.1 Force Majeure Relief

Neither party shall be liable for delay or failure to meet its obligations (other than payment obligations) if such delay is caused directly by Force Majeure.

15.2 Definition

"Force Majeure" means any cause preventing either party from performing any or all of its obligations which arises from or is attributable directly to acts, events, omissions or accidents beyond reasonable control, including acts of God, acts of government, acts of war, acts of



terrorism, epidemics, riots, fire, unavailability of communications or power services provided by third parties, and similar disasters.

15.3 Notification and Mitigation

The party prevented from performing must:

- Notify the other party in writing as soon as possible of the Force Majeure event
- Provide details of the anticipated impact and duration
- Use commercially reasonable efforts to perform in a timely manner
- Notify the other party when the Force Majeure event has ended

15.4 Termination for Extended Force Majeure

If the delay caused by Force Majeure extends for more than 30 days, either party may terminate the affected Statement of Work in accordance with the provisions of the G-Cloud Framework Agreement.

16. Disputes and Resolution

16.1 Escalation Process

Any dispute arising out of or related to this Agreement shall initially be brought for resolution before representatives of each party. If the dispute cannot be resolved within 10 Business Days, it shall be escalated to senior officers of each party.

16.2 Formal Resolution

If disputes cannot be resolved through escalation within a reasonable timeframe, the dispute resolution procedures set out in the G-Cloud Framework Agreement shall apply.

17. General Provisions

17.1 Entire Agreement

For Services procured under G-Cloud, the entire agreement between the parties comprises the G-Cloud Framework Agreement, Call-Off Contract, Statement of Work, and these Terms and Conditions, read together in the order of precedence set out above.

This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, negotiations and discussions. This provision is not intended to affect any liability either party may have for fraud.

17.2 Amendment

This Agreement may not be amended, supplanted or otherwise modified except by written instrument executed by the parties, subject to the change control procedures in the G-Cloud Framework Agreement.

17.3 Severability

If any provision of these Terms and Conditions is held to be void or unenforceable, that provision shall be deemed not to form part of these terms and the remainder shall continue in full force and effect.



17.4 Waiver

No failure or delay by either party to exercise any right shall constitute a waiver of that right. Any waiver must be in writing and signed by the party giving it.

17.5 Assignment

Assignment rights are as specified in the G-Cloud Framework Agreement and Call-Off Contract. Generally, neither party may assign this Agreement without the prior written consent of the other party.

Notwithstanding the foregoing, either party may assign this Agreement without consent to any successor in title or entity with which the party's business or assets may be merged, acquired, consolidated or reorganized.

17.6 No Partnership

Nothing in these terms shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between Pink Elephant and the Customer.

17.7 Third Party Rights

Except as specifically set forth herein, nothing in these terms is intended to confer any rights or remedies on any person other than the parties and their successors and permitted assigns.

17.8 Further Assurances

Each party shall execute and deliver such further documents and perform such further acts as may be reasonably required to give full effect to this Agreement.

17.9 Public Announcements

Except to the extent required by applicable law, neither party shall make any public announcement or disclosure regarding this Agreement without the prior written consent of the other party.

17.10 Time of the Essence

Time shall be of the essence of this Agreement with respect to deadlines and milestones specified in Statements of Work, subject to Force Majeure and the Customer's cooperation obligations.

17.11 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original. Electronic signatures shall constitute valid execution.

18. Notices

Notices should be given in accordance with the notice provisions set out in the Call-Off Contract or, if not specified there, sent to:

Pink Elephant EMEA Limited
6th Floor, Reading Bridge House
George Street, Reading RG1 8LS
United Kingdom

Email: g.huisman@pinkelephant.co.uk



Attention: Gijs-Jan Huisman, Managing Director

Any notice delivered personally shall be deemed received on the day of delivery if delivered before 5:00 p.m. (recipient's time) on a Business Day; otherwise on the first Business Day thereafter.

Any notice mailed shall be deemed received on the third Business Day after mailing, provided there are no known disruptions to postal services.

Any notice transmitted by email shall be deemed received on the day of transmission if sent before 5:00 p.m. (recipient's time); otherwise on the first Business Day thereafter.

Pink Elephant EMEA Limited
6th Floor, Reading Bridge House
George Street, Reading RG1 8LS
United Kingdom