



**Absolute EPM Limited**  
**G-Cloud 15 Terms and Conditions**

This Agreement incorporates the terms and conditions set out in the G-Cloud Framework Agreement, G-Cloud Call-Off Contract and the completed Order Form.

Should there be any conflict between those agreements, the parties agree that the following order of precedence applies:

1. G-Cloud Framework Agreement
2. G-Cloud Call-Off Contract
3. The completed Order Form
4. Any additional supplier terms, to the extent they are consistent with and do not conflict with the G-Cloud Framework Agreement or the G-Cloud Call-Off Agreement.

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine, and vice versa.
- 1.2 The headings contained in the Agreement are for convenience only and do not affect their interpretation.
- 1.3 **"AEL"** means Absolute EPM Limited, a company registered in England and Wales with the company registration number 07597217 and having its registered offices at 1-4 London Road, Spalding, Lincolnshire, England, PE11 2TA.
- 1.4 **"Affiliate"** means any person, partnership, joint venture, corporation, subsidiary, or other form of enterprise, domestic or foreign, directly or indirectly controlling, controlled by or under common control with the Buyer or AEL.
- 1.5 **"Agreement"** means these terms and conditions together with the Schedules and any Agreed Form documents (including the Project Documents)
- 1.6 **"Buyer"** means A UK public sector body, or contracting authority, as described in the FTS Contract Notice or Regulation 2 of the Public Contracts Regulations 2015, that can execute a G-Cloud Call-Off Contract under the G-Cloud Framework Agreement; or the contracting authority ordering services as identified in the Order Form (as the context provides).
- 1.7 **"Equipment"** means any computer hardware and equipment owned by the Buyer and/or to be acquired and supplied by the Buyer relating to the Services in accordance with the Agreement.
- 1.8 **"Fees"** means the fees payable for Services to be provided under this Agreement as detailed in a Order Form.
- 1.9 **"Force Majeure"** means acts of God, war, hostilities, riot, fire, explosion, accident, flood, sabotage, lack of adequate power, failure of telecommunications networks, raw materials or labour, failure of a supplier, strike, lock-out or injunction compliance with governmental laws, regulations or orders, sickness or indisposition of key AEL employees, or any other cause whether or not of the class or kind enumerated which affects performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party affected.
- 1.10 **"Location"** means an address of the Buyer at which Services are to be delivered as detailed in an Order Form or other Project Documentation.

- 1.11 **"Order Form"** means the Call-Off Order Form or any other Order Form agreed between the parties that details the Services and the related Fees, signed by the Buyer, or any other agreement between the Parties in writing that details Services to be provided and any related Fees.
- 1.12 **"Project Document"** means the latest dated project document issued by AEL in respect to any aspect of the Services being provided.
- 1.13 **"Services"** means the services to be provided by AEL to the Buyer under this Agreement as described in an Order Form and associated Project Documentation
- 1.14 **"Software"** means any Third-Party Software specified in an Order Form.
- 1.15 **"Statement of Work" (SOW)** means a Statement of Work signed by each of the parties detailing the scope of the Services, any Project Plan (describing the work to be completed, the estimated timetable and responsibilities for the provision of Services), implementation plan, acceptance tests and acceptance criteria, specifications, training to be provided, Support Services and related Fees or other matters relating to (and incorporating) the Agreement.
- 1.16 **"Support Agreement"** means AEL providing support services in relation to the Services as more described in the Order Form ("Support Services"), as amended by AEL from time to time.
- 1.17 The Order Form and any SOW form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

## **2. Scope of Services.**

- 2.1 This agreement and the G-Cloud Terms together with any Statement of Work, Order Form and associated Schedules and any other Project Documents provided by AEL ("the Agreement") applies to services provided under a G-Cloud Call-Off Contract and supplements the contractual terms and conditions set out in the G-Cloud Framework Agreement and G-Cloud Call-Off Contract.

## **3. Performance of Services**

- 3.1 Subject to the Buyer's compliance with this Agreement, AEL shall, subject to and in accordance with this Agreement and any applicable Project Documents:
  - 3.1.1 perform the Services in accordance with the Project Documentation with all reasonable skill and care and in a timely, reliable and professional manner using employees with appropriate skills, qualifications and experience.
  - 3.1.2 carry out, in conjunction with the Buyer, any applicable Acceptance Tests; and,
  - 3.1.3 use reasonable endeavours to provide the Services Ready for Use by any agreed completion date.

## **4. Service and Software Recommendations.**

- 4.1 Any advice provided by AEL on Software or Service selection is based upon the requirements of the Buyer's business as made known by the Buyer to AEL at the time of the Order Form and shall be consistent with such standards as is applicable to those providing such advice.
- 4.2 The Buyer's use of any Third-Party Software is governed by the terms of the agreement with the provider of that Third-Party Software, and its warranties. Use of Third-Party Software is at the Buyer's sole risk. AEL is not responsible in any way for any Third-Party Software's performance, features or failures and makes no warranty in respect to the Third Party Software being fit for the Customer's specific purposes.

## **5. Agreeing Services and Project Documents.**

- 5.1 The Buyer acknowledges that:
- 5.1.1 AEL is reliant on the information being provided to it by the Buyer as being complete and accurate, and that the due diligence AEL carries out and questions asked of the Buyer, as well as the Order Form, SOW and other Project Documents prepared and agreed will all be based upon this information.
  - 5.1.2 AEL is reliant on the Buyer being able to provide it with, or provide it with access to, all assets (including documentation, content, code, software, intellectual property rights, and any other physical or digital materials) that AEL deems necessary to fully carry out the due diligence process, and subsequently to perform the Services.
- 5.2 The Buyer acknowledges that the Services may not be able to be performed adequately or meet the Buyer's requirements where information provided by the Buyer to AEL is incomplete, incorrect, or misleading.
- 5.3 On receipt of any Project Document from AEL (at any time), the Buyer shall promptly review such documents and may reject them (having provided AEL in writing its reasons for any rejection) no later than 7 Business Days after they are first delivered to the Buyer. Any documents provided to the Buyer in respect to the provision of Services under this Agreement which are not rejected by the Buyer within seven Business Days of receipt shall be deemed accepted only where acceptance is confirmed in writing by the Buyer or in accordance with the acceptance provisions of the G-Cloud Call-Off Contract.
- 5.4 If the Buyer does reject any Project Document, AEL shall then revise the document (taking reasonable account of the Buyer's comments) and re-submit the document to the Buyer for approval within 10 Business Days of the Buyer's notice of rejection. The process in this clause shall continue to apply to any subsequent rejections.
- 5.5 The Buyer acknowledges that any work which is not specifically detailed in a Project Document is out of scope and subject to additional charges only where such work has been agreed in writing by the Buyer through a formal variation to the relevant Order Form or Statement of Work.

## **6. Delivery Dates for Services.**

- 6.1 AEL shall use reasonable endeavours to meet the performance dates specified in any Project Document or applicable Schedule, but unless otherwise agreed in writing, any such dates shall be estimates only.
- 6.2 Delivery shall be made during normal Business Hours (excluding bank or public holidays). AEL may levy additional charges for any deliveries made outside such hours at the Buyer's request.
- 6.3 Unless otherwise detailed in applicable Project Documentation, the Buyer shall be responsible (at the Buyer's cost) for preparing the delivery location for the delivery of the Services and for the provision of all necessary access and facilities reasonably required by AEL.
- 6.4 AEL shall be given an extension of the timetable of any one or more of the stages of the services if one of more of the following events occurs:
- 6.4.1 a variation to Services is made at the Buyer's request or a request is made for something out of scope;
  - 6.4.2 a Force Majeure Event occurs as described in this Agreement;

- 6.4.3 a delay is caused in whole or in part by an action or omission of the Buyer or its employees, agents or any third-party.
- 6.5 If AEL is entitled to an extension of time under clause 6.4, it shall give written notice to the Buyer not later than thirty days after having become aware of the event. Such notice shall specify the event relied on and, in the case of a force majeure event, shall estimate the probable extent of the delay.
- 6.6 The Parties shall use best endeavours to agree in writing, signed by both Parties, what extension of time and variation to the Agreement is reasonable in the circumstances. Any SOW or any applicable timetable or Fees payable shall be deemed amended accordingly.
- 6.7 If AEL's performance of its obligations under this Agreement is hindered, prevented or delayed by any act or omission of the Buyer, the Parties shall agree in writing any reasonable and evidenced additional costs directly incurred by AEL as a result, in accordance with the G-Cloud Call-Off Contract.
- 6.8 Where applicable the Parties shall agree acceptance tests for the Services as detailed in a SOW. These criteria and data ("Acceptance Tests") shall be such as are reasonably required to show that the Services in whole or part comply with any specification agreed between the Parties in writing.

## **7. Changes to the Services.**

- 7.1 If either party requests a change to the scope or execution of the Services, AEL shall, within a reasonable time, provide a written estimate to the Buyer of:
- 7.1.1 the likely time required to implement the change;
  - 7.1.2 any variations to AEL's Fees arising from the change;
  - 7.1.3 the likely effect of the change on any project documents; and
  - 7.1.4 any other impact of the change on the terms of this Agreement.
- 7.2 AEL has no obligation to make any changes to the Services unless and until the parties have agreed in writing on the necessary variations to its Fees, the Project Documents and any other relevant terms of this Agreement to take account of that change.
- 7.3 The Buyer acknowledges that AEL may from time to time and with or without notice, change the Services to comply with any applicable law and regulation. In such circumstances, AEL will use reasonable endeavours to ensure that the Services continue to meet the requirements agreed between the Parties. Any variation to Fees arising from a change in law or regulation shall be subject to written agreement between the Parties in accordance with the G-Cloud Call-Off Contract.

## **8. Project Personnel.**

- 8.1 Both Parties shall appoint suitably qualified, competent and trained individuals (and provide details of those individuals to the other Party), who shall have the responsibility and commensurate authority for the overall progress of the Services and to whom all questions regarding this Agreement can be referred.
- 8.2 Both Parties' Project Managers shall co-operate with the other and shall attend meetings agreed at reasonable intervals or where otherwise specified in applicable Project Documentation to advise and assist AEL on all matters relating to the Services.

- 8.3 Both Parties agree to take all reasonable steps to maintain continuity in relation to their Project Team for any Services and that any Key Individuals (named in any Order Form) shall not be replaced without notice to the other, unless;
- 8.3.1 the individual to be replaced is prevented by ill health from carrying out his duties in connection with the agreement for a significant period;
  - 8.3.2 the individual resigns from employment with that Party;
  - 8.3.3 the contract of employment of the individual is terminated; or
  - 8.3.4 either Party makes a reasonable, written request to the other to replace the individual because they have performed unsatisfactorily or have caused a breach of any of the other Party's obligations under this Agreement.
- 8.4 If any such person is replaced, each Party shall consult with the other about the identity of a suitable replacement. The Parties shall meet as soon as practicable to discuss its implications and to negotiate in good faith with a view to agreeing such changes as are reasonably required to this Agreement or any Project Document.

## **9. Buyer Obligations.**

- 9.1 The Buyer shall: complete all its obligations as detailed in any Project Documents and provide AEL with timely co-operation in relation to this Agreement; and access to such information as may be required by AEL in order to render the Services, including but not limited to, Buyer personnel, premises and other facilities, security access information and configuration services and Buyer Data and documentation requested for the provision of the Services (and ensure that such information and data is accurate in all material respects) and afford to the authorised personnel of AEL during normal working hours, or as otherwise agreed, access to any relevant Location and shall provide adequate free working space and such other facilities at such Location as may be reasonably requested by AEL for the delivery, implementation and, if applicable, testing of the Services or to provide the Services. The Buyer shall comply with its obligations under applicable health and safety regulations with respect to the provision of such access and facilities to AEL. AEL will take all practical steps to ensure that its personnel will, whenever on Buyer's premises, obey all reasonable security and health and safety standards, procedures and directions notified to it by Buyer. In the event of any delays in the Buyer's provision of such assistance as agreed by the Parties, AEL may adjust any agreed timetable or delivery schedule as reasonably necessary.
- 9.2 The Buyer acknowledges that AEL's ability to provide the Services is dependent upon the Buyer's full and timely co-operation as well as the accuracy and completeness of materials and any information and data the Buyer provides. AEL is not responsible for any loss suffered by the Buyer if the Buyer does not provide it with this access, cooperation, and information.
- 9.3 The Buyer shall:
- 9.3.1 subject to any Training provided by AEL as detailed in an Order Form, be solely responsible for ensuring that all users of the Services are trained in the use of the same. AEL shall have no responsibility to provide support if support issues are deemed by AEL to be the result of misuse or lack of appropriate training by the Buyer in the use of Services;
  - 9.3.2 be responsible for the provision of and ongoing payment of any and all fees for the provision of third party services required for the use of the Services unless otherwise provided for by AEL in an Order Form;
  - 9.3.3 obtain and shall maintain all necessary licences, consents, and permissions necessary for AEL, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

- 9.3.4 be responsible for procuring any third party co-operation reasonably required for the receipt of Services and hold current up-to-date maintenance, support or active subscription agreements in place with all aspects of the Buyer Infrastructure and systems to allow AEL to seek and receive technical assistance when necessary in respect to the Support Services. In the event that there is no such third party support agreement in place, AEL shall have no obligation to provide support and may at its sole option provide reasonable assistance to the Buyer in resolving any issue or may be unable to provide certain elements of the Services to the extent reasonably affected. For the avoidance of doubt, unless otherwise provided in writing in an Order Form the Buyer shall be responsible for the provision of and ongoing payment of any and all fees for the provision of Third Party Services required for the use of the Services;
- 9.3.5 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Buyer's network connections or telecommunications links or caused by the internet;
- 9.3.6 upgrade any part of the Buyer's Infrastructure as may be requested by AEL only where such requirement has been agreed in writing and documented in the relevant Order Form or Statement of Work where required to meet any the minimum specification detailed in any Project Document (as amended from time to time) to continue to use the Services. In the event that the Buyer fails to follow such instructions, neither AEL nor its suppliers shall be liable for any degradation or disruption to the Services in the event the Buyer does not make the required upgrade;
- 9.3.7 operate best practice and ensure appropriate security precautions are taken in connection with its use of the Services. The Buyer is responsible for taking all reasonable steps to mitigate the risks inherent in the provision and receipt of the Services, including data loss and taking all reasonable and usual precautions to safeguard the Buyer technology infrastructure, including operating firewalls and virus checks and implementing effective and appropriate data security in respect to the receipt of Services.
- 9.3.8 not make any material changes to the Buyer Infrastructure whatsoever, without AEL' prior written consent.

## **10. Expenses.**

- 10.1 Any fixed price contained in the Order Form excludes:
  - 10.1.1 Unless otherwise agreed in an Order Form, the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the AEL team in connection with completing the work, and the cost of any materials or services reasonably and properly provided by third parties required by AEL to complete the work. Such expenses, materials and third-party services shall be invoiced by AEL at cost; and include VAT, which AEL shall add to its invoices at the appropriate rate.
  - 10.1.2 The Buyer shall reimburse AEL for any reasonable expenses necessarily incurred by AEL in connection with the provision of the Services as detailed in an Order Form.
  - 10.1.3 Any change to Charges shall be subject to written agreement between the Parties in accordance with the G-Cloud Call-Off Contract to reflect any increase in fees from its suppliers at any time.

## **11. Warranties.**

- 11.1 AEL does not warrant or represent:
  - 11.1.1 that the Services will be fit for any purpose or use other than that specifically stated by AEL in writing; or
  - 11.1.2 that it will be able to rectify all defects, provided that it shall use all reasonable endeavours to rectify such defects in accordance with service levels in the applicable Support Agreement. The Buyer acknowledges that non-material defects in the Services shall not constitute a material breach of this Agreement or prevent acceptance of the Services.
- 11.2 AEL:
  - 11.2.1 does not warrant that the Buyer's use of the Services will be uninterrupted or error-free; nor other than to the extent specifically detailed in any Project Document, that the Services, will meet the Buyer's requirements; and
  - 11.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Buyer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and,
  - 11.2.3 shall not be obliged to rectify or be liable in any way for, and any authorised modifications, alteration, use, repair or maintenance of the Services by any other person other than a representative of AEL, shall render any warranties, obligations and support obligations in relation to this Agreement, null and void.

## **12. Confidentiality & Publicity**

- 12.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
  - 12.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 16; and
  - 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## **13. Buyer Data and Materials.**

- 13.1 All materials or content provided by the Buyer for incorporation into the Services shall be owned by the Buyer (provided that they do not contain any of AEL' Intellectual Property Rights) and the Buyer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Buyer Data. The Buyer warrants that all Intellectual Property Rights in such content and data are the Buyer's property or that the Buyer has a license to use the same for the purpose of their incorporation and use as part of the Services. The Buyer grants AEL the non-exclusive right to use such items for the purpose of performing its obligations under this Agreement. The Buyer shall own all rights, title and

interest in and to all of the Buyer data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Buyer data.

- 13.2 AEL shall not be responsible or liable for any loss, destruction, alteration or disclosure of Buyer Data or Materials caused by any third party.

#### **14. Term and Termination.**

- 14.1 The provision of ongoing Services shall commence on the date specified in an Order Form and throughout any Initial Term detailed therein.
- 14.2 Either Party may terminate the Agreement or any Order Form by written notice to the other if the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
- 14.3 On termination all outstanding unpaid invoices in respect of the Services shall become payable within 30 days (except where fees are the subject of a bona fide dispute). AEL shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Buyer shall pay these invoices within 30 days on receipt.
- 14.4 Following the service of a termination notice for any reason, AEL may on agreement between the parties for a maximum period of three months, continue to provide the Services in accordance with this Agreement, (subject to the Buyer's full compliance with the Agreement and provided that all undisputed Fees are paid in full) and shall, if requested by the Buyer, provide reasonable assistance to the Buyer and/or any Replacement Supplier (subject to appropriate confidentiality undertakings being entered into) to the extent reasonably required to facilitate the smooth migration of the Services to the Buyer, or a Replacement Supplier.

#### **15. Non-Solicitation**

- 15.1 Any non-solicitation arrangement shall apply only where expressly agreed in writing by the Buyer in the relevant Order Form.

#### **16. Use of Sub-Contractors and Agents**

- 16.1 Unless otherwise expressly set out to the contrary in the relevant Accepted Order(s), AEL may engage any person, company or firm as its agent or sub-contractor to perform all or any of its
- 16.2 obligations or duties under this Agreement.

#### **17. General.**

- 17.1 Neither Party may assign, transfer, or otherwise dispose of any of its rights or obligations under the Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, except that AEL may assign within its group of companies without consent. Each Party shall remain primarily liable to the other in respect of any act or omission of any sub-contractors as if any act or omission were its own.
- 17.2 This Agreement, including the Schedules, supplements and does not replace, override or take precedence over the G-Cloud Framework Agreement or the G-Cloud Call-Off Contract. Each Party warrants to the other that it has not relied on any representation arrangement understanding or agreement (whether written or oral) not expressly set out or referred to in this agreement. Neither party may make any claim or seek any remedy under this agreement in respect of

misrepresentation (whether negligent or otherwise) or untrue statement made by the other party except that this clause does not purport to exclude any liability for fraudulent misrepresentation.

- 17.3 The application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) shall be determined in accordance with applicable law and the provisions of the G-Cloud Call-Off Contract.
- 17.4 Any variation of this Agreement must be in writing, and signed by an authorised representative of each of the parties. No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent will be in writing and signed by the party whose waiver or consent is required.
- 17.5 Nothing in this Agreement or any document referred to in it or any arrangement contemplated by it shall be construed as creating a partnership between the parties for any purpose whatsoever and neither party shall have the power or authority to bind the other party or impose any obligations on it to the benefit of any third party.
- 17.6 Each provision of this document shall be construed separately and notwithstanding that the whole or any part of any such provision may be held by any body of competent jurisdiction to be illegal invalid or unenforceable the other provisions of this agreement and the remainder of the provision in question shall continue in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.