



Through
Technology

Terms & Conditions

G-Cloud 15 (RM1557.15)

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1 Applicability and Precedence

The following terms and conditions shall apply to all Services provided under the G-Cloud 15 Framework by Through Technology unless explicitly stated in the relevant G-Cloud Framework Call Off Contract. Precedence between the framework documents and these terms is defined within the G-Cloud 15 Framework Contract.

2 Terms and Conditions

2.1 Services

Through Technology provides a full range of Cloud Support and Cloud Software services on the G-Cloud Framework. These can be found on the Digital Marketplace Apply to Supply Portal¹.

Through Technology will provide the services ("Services") as described in each Statement of Work ("SOW") to public sector organisations with which it signs a G-Cloud Call Off Contract (the Buyer). A SOW may only be amended or modified by a written change control document signed by authorised representatives of Through Technology and Buyer. In the event of any conflict between this Agreement and an applicable SOW, this agreement has precedence. At a minimum, the SOW will define the service requirement, duration, deliverables, and charges for that engagement.

2.2 Buyer's Duties and Responsibilities.

The Buyer agrees to provide Through Technology promptly with accurate and complete information concerning the Buyer's activities, decisions, and approvals relevant to the Services and/or the Deliverables and to fulfil any dependencies set out in the SOW (the "Buyer Responsibilities"). If any of Through Technology's personnel work on the Buyer's premises to provide the Service, the Buyer will provide such personnel with suitable office space and services, and full and free access to any required computing and ancillary facilities. The Customer has sole responsibility for informing Through Technology personnel of the Customer's policies that affect visitors to site, providing any required site induction training and ensuring that any Buyer premises used by Through Technology personnel comply with applicable Health and Safety legislation.

The Buyer acknowledges that should

- (i) the Buyer fail to perform any of its obligations (including a failure to fulfil the Buyer Responsibilities) in a timely manner, or
- (ii) any of the assumptions made by Through Technology, as set out in the SOW, prove to be inaccurate or incorrect, this may result in Through Technology being unable to provide the Services or the Deliverables to the agreed timescales, or for the fees envisaged in the SOW. In such circumstances, Through Technology shall have no liability in respect of such delay and the Buyer shall grant to Through Technology such additional time as is reasonable to provide the Services and/or the relevant Deliverables, as the case, and shall pay Through Technology any additional fees necessary to compensate Through Technology for any necessary additional work or costs.

The Buyer shall make available in a timely manner at no charge to Through Technology all data, computer facilities, programs, files, documentation, test data, sample output, systems access or other information and resources required by Through Technology for the performance of the Services. The Buyer will be responsible for, and assumes the risk of any problems resulting from, the content, accuracy, completeness, and consistency of all such data, materials and information supplied by the Buyer.

¹ <https://www.applytosupply.digitalmarketplace.service.gov.uk/>

2.3 Relationship of Parties.

Through Technology and the Buyer agree that successful provision of the Services and Deliverables is the responsibility of both parties and that both parties shall use reasonable endeavours to meet any agreed target dates.

Each party will be and function as an independent body and not as an agent or partner of, or joint venture for other parties. Neither party will by virtue of this Agreement have any right, power, or authority to act or create any obligation, express or implied, on behalf of other parties.

2.4 Confidentiality.

Through Technology and Buyer each agree to retain in confidence such information as the other party declares as Confidential, or which a reasonable person would deem Confidential under the circumstances ("Confidential Information"). Each party agrees to:

- (a) preserve and protect the confidentiality of the other party's Confidential Information;
- (b) refrain from using the other party's Confidential Information except to support delivery of the Services; and
- (c) not disclose such Confidential Information to any third party except as is required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein).

Notwithstanding the foregoing, either party may disclose Confidential Information of the other party which is:

- (i) already publicly known.
- (ii) legally received from another third party which was not, to the receiver's knowledge, under obligation not to disclose such information; and
- (iii) required to be disclosed by law or court order.

Both Parties will adopt the UK Government's scheme of protective marking.

2.5 Copyright and Intellectual Property Rights.

Subject to payment in full by the Buyer of all fees payable and owing to Through Technology under the agreement, Through Technology grants to the Buyer a nonexclusive, non-transferable, royalty-free license for the use of any Project Specific IPR (including background IPR embedded within Project Specific IPR) for the Buyer's internal use.

The Buyer grants to Through Technology a perpetual, irrevocable, transferable, worldwide, royalty-free, fully paid-up license to use, copy, modify and prepare derivative elements of the Deliverables outlined in the agreement.

The Buyer agrees that it will not have nor obtain rights in any Background IPR including proprietary products, materials, and methodologies (or in any modifications or enhancements thereto) except where these form part of a Deliverable under this agreement.

Where Project Specific IPR is to be made available as Open-Source Software under the terms of the Framework or Call Off contracts, both parties agree that the MIT Open-Source License² will be used, listing Through Technology Limited as the copyright holder.

² <https://opensource.org/licenses/MIT>

2.6 Information Assurance & Security Vetting.

Security vetting requirements will be established as part of the initial engagement for any piece of work. Where security vetting of Through Technology people is required beyond that provided by Through Technology, the Buyer will undertake such vetting at its cost. The Buyer will allow Through Technology personnel temporary dispensation to work until any vetting is complete where possible.

Through Technology's infrastructure is only suitable for the processing and storage of information classified as "Official." All material will be handled in accordance with this classification and in accordance with relevant NCSC guidelines. Where the work requires access to, or processing of, information of a higher security classification or with additional handling requirements beyond what would be expected for general Official data, the Buyer will be responsible for the provision of suitable computing facilities at no charge to Through Technology.

2.7 Term and Termination.

Upon termination of this Agreement and/or any SOWs, the Buyer shall pay Through Technology for all work performed under the affected SOW(s) up to the effective date of termination.

The Buyer will provide Through Technology 30 calendar days' notice in the event they wish to terminate the contract or any part thereof for convenience.

In addition to any right of termination for non-payment of fees by the Buyer, Through Technology may, without waiving its right to terminate and without thereby incurring any liability to the Buyer, instead suspend the provision of the work until it has received payment.

Any attempt by the Buyer to alter Through Technology's determination of the IR35 status of any role delivering our managed services shall be grounds for immediate termination of the agreement by Through Technology without incurring any liability to the Buyer.

2.8 Notice.

All notices required or permitted hereunder will be in writing sent as a PDF document to enquiries@throughtechnology.uk.

2.9 Solicitation of Employees.

The Buyer acknowledges and agrees that the employees and consultants of Through Technology (or its affiliates) performing the Services are an asset to Through Technology and are difficult to replace. Accordingly, the Buyer agrees that, for a period of one (1) year after the completion of the Services, it will not offer employment as an employee, independent contractor, or consultant to any Through Technology employee, consultant, or affiliate (including employees or consultants of Through Technology subcontractors) who perform any of the Services or seek to engage such persons through an intermediary. Neither will it arrange such engagement through intermediaries.

2.10 Terms of Payment

Any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for within the Contract or Statement of Work without reference to and notwithstanding any defect or default in the delivery of any other instalment or of any other instalment under any other contract or Statement of Work.

All fees and expenses must be paid within 30 days of our delivery of an invoice, without set-off against other projects or deduction of any other liabilities whatsoever. Failure of the buyer to correctly configure their financial systems or raise purchase orders will not alter the payment terms, and invoices will be overdue after 30 days irrespective of any issues with the Buyer's financial systems and processes.

2.11 Pricing

Pricing for Through Technology's Services under this agreement is provided in the Pricing Document uploaded with each individual service.

Where the Services involve assurance, delivery or support of products based upon Microsoft Subscription Licensing, the Buyer agrees to designate Through Technology as the Claimed Partner of Record (CPoR), Partner Admin Link (PAL) and Customer Usage Attribution (CUA) throughout the entire subscription term of the Services under the programme established by Microsoft to designate its partners as key services/lifecycle support partner engaged in providing ongoing support. Through Technology's designation as CPoR, PAL and CUA together with it having a dedicated subscription within Buyer's Azure tenancy (where necessary) will enhance our ability to provide more immediate and effective service to the Buyer. The parties acknowledge that this designation may also involve Through Technology's receipt of certain credits and payments from Microsoft to drive consumption of Microsoft products.

2.12 Equal Opportunity Employer.

Through Technology will not discriminate in any area of employment (including its subcontractors), or in the provision of its services to the public and accepts its responsibilities to comply with all relevant legislation including the Sex Discrimination Acts 1975 and 1986, the Equal Pay Act 1970, the Race Relations Act 1976, the Disability Discrimination Act 1995, and the Rehabilitation of Offenders Act 1975.

2.13 Cloud Software Licensing Terms & Conditions

Where Through Technology resells cloud software through the G-Cloud Framework, the software manufacturers licensing terms and conditions shall apply. Any Project Specific IPR which is to be made available Open Source will use the MIT Open-Source License, listing Through Technology Limited as the copyright holder.

2.14 IR35 Legislation

Under no circumstances will provision of services under the agreement be considered to create a relationship of "employment" between Through Technology's resources (or those of its subcontractors) and the Buyer's organisation. In accordance with the terms of the G-Cloud

Framework, all services provided by Through Technology and its Subcontractors under the Framework will be "Outside of IR35" legislation. As a managed service provider, Through Technology shall be the "End Client" for all people engaged in the delivery of the Services. As a UK Small Business, Through Technology is exempt from Off-Payroll Worker Legislation (IR35 reform). Should Through Technology grow beyond the designated terms for a UK Small Business, Through Technology will retain full responsibility all IR35 employment status determination. The Buyer shall notify Through Technology immediately should the status of the engagement be considered in doubt or believed to have changed.

2.15 Publicity

Barring any specific security requirements for secrecy regarding an engagement or statement of work, The Buyer shall grant Through Technology the right to list its name, logo, and description as a customer of Through Technology in promotional material, including but not limited to the Through Technology website, posts on Microsoft's LinkedIn website, email newsletters or flyers and to describe the general nature, scope and outcome of work in case study articles therein.

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