

MADE PURPLE LTD

G-CLOUD 15

TERMS & CONDITIONS



BACKGROUND

- A. The Customer requires the use of selected cloud services.
- B. Made Purple Limited has offered to make its cloud services available to the Customer subject to the terms and conditions of this Made Purple Limited G-Cloud Service Agreement.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

- 1.1. The definitions of the terms used in this Agreement shall be as follows:

Agreement means this Made Purple Limited G- Cloud Service Agreement, and the terms and conditions herein.

Charges means the fees for the provision of the Service set out in the Service Specification.

Confidential Information means:

- (1) Information specific to the other party's business activities, technology or sales that has been disclosed in writing (including electronic formats) that indicates that the information is confidential,
- (2) Information specific to the other party's business activities, technology or sales that has been indicated as being confidential while being disclosed verbally or by demonstration and that has been presented in writing (including electronic formats) within 10 days of disclosure,
- (3) Customer-Specific Information, and
- (4) The content of this Agreement, but Confidential Information does not include:
 - A. Information that was already public knowledge at the time of disclosure, or which becomes public knowledge after the disclosure through no fault of the party receiving the Confidential Information (hereafter "the Recipient"),
 - B. Information that the Recipient has rightfully obtained from a third party without obligations of confidentiality,
 - C. Information that the Recipient already held at the time of disclosure, and
 - D. Information that the Recipient has developed independently without reliance on Confidential Information that has been disclosed.

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Confidential Materials means materials received from the other party that contain Confidential Information including Confidential Information received via a network, such as email, that have been fixed in a tangible form.

Customer Content means the data, information, and material that the Customer provides, stores, accesses or transmits using the Service.

Customer Organisation Number means the customer number allocated by Made Purple Limited to the Customer.

Customer-Specific Information means the information relating to the Customer that the Customer has personally registered, or that Made Purple Limited has collected, in connection with the Service.

Execution Date means the date that this Agreement is signed by the last party or if it is agreed electronically the date when the Service is first taken up following acceptance of this Agreement.

Force Majeure means a circumstance beyond the reasonable control of the party claiming the event of force majeure which results in that party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include, but are not limited to, acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and strikes.

Insolvency Event means if either party: (a) being a company, has a petition presented for its liquidation or calls a meeting to propose a resolution for its liquidation (other than solely for solvent amalgamation or reconstruction) or has a petition presented for the appointment of an administrator or has a receiver or administrative receiver appointed over it or any of its assets or makes any voluntary arrangement with its creditors; or (b) being an individual (or if a firm or partnership, any of its partners or members), has a petition presented for his bankruptcy, or has a receiver appointed over his affairs, or makes any voluntary arrangement with his creditors or (in the case of a firm or partnership) proposes or has presented against it a petition for its dissolution; or (c) in either case undergoes any analogous event in any jurisdiction where it is domiciled.

Intellectual Property means all copyright (including future copyright), patents, trademarks and service marks (registerable or not), rights in Internet domain names and website addresses and other rights in trade names, designs (registerable or not), database rights, eligible circuit layout rights, trade secrets, applications for any of the foregoing, know-how and other intellectual property rights in any country or jurisdiction.

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Minimum Term means the minimum period of time for which the Customer must purchase the Service(s), as set out in the relevant Service Specification.

Service means the cloud services provided by Made Purple Limited to the Customer as described in the relevant Service Definition.

Specification means a schedule(s) to this Agreement, which sets out the services purchased by the Customer.

Support means the support service provided by Made Purple Limited in connection with the Service(s), as set out in the relevant Service Specification.

Term means the Minimum Term plus all renewals thereof.

- 1.2. For terms that appear in the Schedules to this Agreement, the definitions shall be the same as the definitions in this clause 1, unless expressly stated otherwise in the Schedule.
- 1.3. In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- i) reference to “clause” shall mean a numbered clause in these Terms and Conditions and reference to “paragraph” shall mean a numbered paragraph in the schedules;
 - ii) the clause headings are for ease of reference only and will not be relevant to interpretation;
 - iii) a reference to a clause number is a reference to its subclauses;
 - iv) a reference to a subclause is a reference to a subclause of the clause in which that reference is made;
 - v) words in the singular number include the plural and vice versa;
 - vi) words importing a gender include any other gender;
 - vii) a reference to a person includes bodies corporate and unincorporated associations and partnerships;
 - viii) any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
 - ix) any reference to a statute, statutory provision, subordinate legislation, code or guideline (“legislation”) is a reference to such legislation as amended and in force from time to time;
 - x) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
 - xi) monetary references are references to pounds sterling.

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2. Term

- 2.1. This Agreement will commence on the Execution Date and, unless terminated earlier in accordance with this Agreement, continue for the Minimum Term. Thereafter this Agreement will automatically renew for subsequent Minimum Terms until such time as either party gives such written notice of termination to the other party as is set out in the Service Specification.

3. Termination

- 3.1. Either party may terminate this Agreement immediately by notice in writing if the other party
- (i) is in material breach of any term of this Agreement and such breach is not remedied within 7 days of it being notified of the breach, or
 - (ii) undergoes an Insolvency Event.

- 3.2. Made Purple Limited may immediately terminate this Agreement, without notice to the Customer, if:

- (i) requested by a law enforcement or regulatory authority or to avoid the Service infringing any law or regulation;
- (ii) the Customer is in breach of its obligations under clause 8 (Prohibitions).

- 3.3. On termination of this Agreement for any reason, the Service will immediately terminate and the Customer's right to use software and content licensed by this Agreement immediately ceases.

4. Provision of the Service

- 4.1. Made Purple Limited shall provide the Service to the Customer for the Term with due care and skill and in accordance with the terms of this Agreement and so that the Service complies in all material respects with the relevant Service Specification.

- 4.2. The Customer acknowledges that Customer Content is provided or transmitted at the Customer's own risk and that the Customer is solely responsible and liable for all of its Customer Content and its accuracy, quality and legality and the means by which the Customer acquired the Customer Content. The Customer acknowledges and agrees that Made Purple Limited makes no guarantees whatsoever regarding the Customer Content and is not responsible or liable for monitoring or otherwise ensuring the integrity, completeness or accuracy of any of the Customer Content.

- 4.3. Customer must:

- 4.3.1 only access and use the Service:

- 4.3.1.1 for its own business purposes and not access, use or reproduce any part of the Service for any other purpose (except, for security or back-up purposes);

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5 Intellectual Property

5.1 Intellectual Property in the Service (including related software and content) and any modifications or improvements to the same shall be held by Made Purple Limited or its third party licensors.

5.2 Unless expressly stipulated otherwise, the Customer shall not duplicate, adapt or make public broadcasts (including converting the software or content into a transmittable form), modify, decompile, disassemble, or reverse engineer any such related software or content.

5.3 The Customer shall not

- 5.3.1 create derivative works based on the Service except as authorised herein,
- 5.3.2 copy, frame or mirror any part or content of the Service, other than copying or framing on its own intranets or otherwise for its own internal business purposes,
- 5.3.3 reverse engineer the Service,
- 5.3.4

5.4 access the Service in order to (a) build a competitive product or service, or (b) copy any features, functions, graphics or processes of the Service.

If the Customer suggests improvements to the Service Made Purple Limited shall have a royalty free, worldwide, perpetual and irrevocable licence to incorporate such improvements into the Service.

5.5 Made Purple Limited warrants that in providing the Service it will not infringe the Intellectual Property rights of any third party. Made Purple Limited will indemnify the Customer against all loss and damage suffered by the Customer as a result of a breach by Made Purple Limited of the warranty. The Customer must immediately notify Made Purple Limited of any claim or allegation of infringement of the Intellectual Property rights. Made Purple Limited, at its own expense, will defend any action brought against the Customer to the extent that such action is based on a claim that the use of the Service violates the Intellectual Property rights of a third party. The Customer must cooperate with Made Purple Limited in relation to any actions conducted by Made Purple Limited relating to the infringement of intellectual Property rights in the Service.

5.6 The Customer shall indemnify and hold harmless Made Purple Limited against all and any liabilities, losses, costs and expenses (including legal fees) howsoever arising which Made Purple Limited may incur or suffer as a result of a claim by a third party that the Customer's installation, use, storage or accessing of the material or third party software infringes the Intellectual Property or other rights of a third party.

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6 Backups

- 6.1 Made Purple Limited shall provide the Customer with a Backup Service as detailed in the relevant Service Specification.

7 Support

- 7.1 Made Purple Limited shall provide the Customer with a Support as detailed in the relevant Service Specification.

8 Prohibitions

- 8.1 In using the Service, the Customer agrees not to perform any of the following acts.
- 8.1.1 Infringing, or risking the infringement of, the Intellectual Property rights of Made Purple Limited or third parties.
 - 8.1.2 Infringing, or risking the infringement of, the property, privacy or confidentiality rights of Made Purple Limited or third parties.
 - 8.1.3 Access the Service for the purpose of monitoring availability, performance or functionality, or for any other benchmarking or competitive purposes.
 - 8.1.4 Interfering with or disrupting the integrity or performance of the Service or third-party data contained therein
 - 8.1.5 Discriminating against, defaming or slandering Made Purple Limited or third parties, or facilitating discrimination against third parties, or undermining the reputation or good name of Made Purple Limited or third parties.
 - 8.1.6 Installing, storing, accessing or disseminating any defamatory, slanderous, offensive or illegal material.
 - 8.1.7 Collecting personal information about a third party by fraudulent means, or without obtaining the consent of the person in question.
 - 8.1.8 Erasing or falsifying the information that can be used with the Service.
 - 8.1.9 Using the Service as a service bureau or any similar activity for the benefit of any third party.
 - 8.1.10 In cases where the Customer is obliged to perform procedures in accordance with laws and regulations, such as making submissions to regulatory authorities or obtaining permits or licenses, failing to implement such procedures or violating these laws and regulations in other ways.
 - 8.1.11 Compelling a third party to perform actions applicable to any of the preceding items, or failing to take appropriate measures to prevent such actions or omissions despite being aware of such actions or omissions by a third party.

9 Security

- 9.1 The Customer acknowledges that Made Purple Limited can apply updates to the software and take other necessary measures, at Made Purple Limited's discretion, to reduce software security vulnerabilities.

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10 Confidential Information and Data Protection

10.1 Subject to clause 10.3 and clause 13, each party shall maintain the confidentiality of Confidential Information disclosed by the other party, and neither party shall disclose such information to any person other than those employees or directors of their own organisations and affiliates who need to know the information in order to use the Service (or, in the case of Made Purple Limited, in order to operate and develop the Service).

10.2 Subject to clause 10.3 and clause 13, each party shall store and manage Confidential Materials with due care and skill, and neither party shall transfer or provide Confidential Materials to third parties nor allow persons other than employees or directors of their own organisation and affiliates to view or otherwise access such Confidential Materials.

10.3

Each party may disclose or provide the other party's Confidential Information or Confidential Material to relevant third parties in the following circumstances:

10.3.1 When compelled to by law;

10.3.2 Where information is provided to a person with a legal obligation of confidentiality; and

10.3.3 When either party commissions work relating to the Service to a third party and that third party has an obligation of confidentiality equivalent to the obligation of confidentiality in this clause 10.

10.4

Each party shall only use Confidential Information disclosed by the other party for purposes related to the Service, and shall not use such information for any other purpose.

10.5 Each party may duplicate Confidential Materials to the extent necessary in order to use the Service.

10.6 Each party must, without delay, destroy, erase or return to the other party all Confidential Materials (including any duplicates) if requested to do so by the other party upon termination of the Agreement.

10.7 Each party must ensure that any employees or directors in their own organisation and affiliates who come to know the other party's Confidential Information to comply with the content of this clause 10.

10.8

Made Purple Limited shall not access the Customer Content without the Customer's consent and acknowledges that the Customer Content remains the property of the Customer. If consent is given, the parties agree that Made Purple Limited will act as Data Processor in relation to any Personal Data contained in the Customer Content and the Customer will be

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accordance with the instructions of the Customer and will ensure that all Customer Personal Data will be protected in accordance with the standards imposed by the General Data Protection Regulation. The terms Data Processor, Personal Data and Data Controller shall have the meanings ascribed to them and the parties will comply with the Data Protection legislation.

10.9 The conditions in this clause 10 shall remain in effect even after the termination of this Agreement.

11 Liability and Exclusions

11.1 In the event that Made Purple Limited fails to provide the Service in accordance with the terms and conditions of this Agreement for reasons attributable to Made Purple Limited, the Customer shall be entitled to the service credits set out in the relevant Service Specification. Such service credits shall be the Customer's exclusive remedy for the Service failure to which they relate.

11.2

Made Purple Limited shall not be liable to the Customer or anyone else for any loss or damage (including, without limitation, any direct, indirect, special or consequential loss) arising from reasons that cannot be directly attributed to Made Purple Limited.

11.3 Subject to clause 11.4, Made Purple Limited's total liability under or in connection with this Agreement (including the payment of any service credits) whether arising in contract, tort or otherwise shall be limited to the Charges paid by the Customer for the Service over the 12 months period immediately prior to the claim arising.

11.4

In no event is Made Purple Limited, its affiliates, agents or subcontractors, and each of their partners, principals, members, employees and other personnel liable in contract, tort or otherwise for any lost profits, opportunity costs or lost data, loss of management time or failure to realise anticipated savings or for any special, indirect, incidental, consequential or punitive damages, costs, expenses or losses of any nature.

11.5

Without limiting the foregoing, Made Purple Limited shall not be held legally responsible for damages to the Customer caused by any of the following reasons:

11.5.1 regular maintenance;

11.5.2 Force Majeure;

11.5.3 orders from government or judicial institutions to halt business activities;

11.5.4 defects with the Customer's facilities;

11.5.5 defects with the Customer's access line for connecting to the Service;

11.5.6 defects with the settings that the Customer has implemented for Virtual Systems;

11.5.7 illegal operations by the Customer;

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- 1 1 . 5 . 9 operating instructions and procedures and documentation set out or referred to in the specification or that Made Purple Limited notifies to the Customer from time to time, including procedures and policies relating to security, access and passwords;
- 1 1 . 5 . 1 0 loss or damage (including, without limitation, any direct, indirect, special or consequential loss) arising from Customer Content;
- 1 1 . 5 . 1 1 any failure or lack of security arising from the use of the Internet and/or the World Wide Web to access information about services; and attacks or invalid actions on or related to the Service by third parties.

11.6 To the extent permitted by law, the liability of Made Purple Limited for loss or damage sustained by the Customer will be reduced proportionately to the extent that such loss or damage has been directly caused by the Customer's failure to comply with its obligations under this Agreement or the negligence of the Customer has directly contributed to such loss or damage, regardless of whether a claim is made by the other party in contract, tort (including negligence) or any other basis.

11.7 The Customer shall be entitled to rely on the express warranties and remedies provided by Made Purple Limited in this Agreement and to the extent permitted by law, Made Purple Limited disclaims all implied conditions or warranties without limitation, including conditions or warranties of fitness for purpose. Where legislation implies into this Agreement any condition or warranty, and that legislation voids or prohibits the exclusion of that condition or warranty, the liability of Made Purple Limited for any breach of that condition or warranty is limited at Made Purple Limited's option to the re-supply or the cost of re-supplying the Service.

11.8 Made Purple Limited does not warrant that the information accessible through Made Purple Limited's Website is accurate, without errors, omissions or viruses or that it is suitable for the Customer's purposes.

11.9 The Customer shall indemnify and hold harmless Made Purple Limited against all and any liabilities, losses, costs and expenses (including legal fees) howsoever arising which Made Purple Limited may incur or suffer as a result of a claim by a third party arising from the Customer's use of the Service in breach of this Agreement.

12 Charges and Payment

12.1 The Customer shall pay the Charges to Made Purple Limited in accordance with the detail set out in the relevant Service Specification. All payments shall be made in pounds sterling (GBP).

12.2 Unless expressly stated otherwise, all Charges are exclusive of VAT and the Customer must pay Made Purple Limited an additional amount equal to such tax.

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12.3

With respect to the calculations for the Charges for the Service(s) and the VAT amounts, any fractional amounts less than one penny shall be rounded down.

12.4

Made Purple Limited will invoice the Customer for the Charges as stated in the Specification and Customer must pay all invoices within thirty (30) days of the date of the invoice.

12.5 If the payment date falls on a non-business day for financial institutions, the payment date shall be moved forward to the preceding business day.

12.6 If the Customer neglects to discharge financial liabilities arising from the Agreement (including payment of the Charges and any debts due and payable), the Customer shall pay Made Purple Limited interest on any amount due from the due date of payment until the date of actual payment at the rate of 2.5% per annum above Barclays Bank plc sterling base rate. Interest is to be calculated on a daily basis.

12.7 Made Purple Limited may vary the Charges in the manner provided for in the Service Specification.

13 Compliance with Law

13.1

Made Purple Limited is under no obligation to the Customer to supply any Service under this Agreement or otherwise if its possession or processing of the Customer Content constitutes a breach of any relevant law or regulation.

13.2 Made Purple Limited is under no obligation to refrain from delivering the Customer Content into the custody of a duly authorised law enforcement officer or government representative, officer or agency or from providing such persons or instrumentalities with access to the Service or the Customer Content if Made Purple Limited receives a valid and proper request or demand for such information.

14 Force Majeure

14.1 Neither party shall be liable for any failure to comply with this Agreement which is due to Force Majeure.

14.2 If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 30 days, either party may immediately terminate the Agreement on providing notice in writing to the other party.

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15 Prohibition of Transfer of Rights and Obligations

15.1

The Customer shall not assign or otherwise in any other way transfer its rights or obligations under this Agreement to any third party without Made Purple Limited's prior written consent. Made Purple Limited shall be entitled to assign, or otherwise transfer its rights or obligations under this Agreement upon written notice to the Customer.

16 Governing Law and Jurisdiction

16.1 The construction, validity and performance of this Agreement and all non-contractual obligations arising from or connected with this Agreement shall be subject to clause 17 be governed by the law of England and the parties submit to the exclusive jurisdiction of the English courts.

17 Dispute Resolution

17.1 A party must not start court proceedings unless it has complied with this clause 17.

17.2 A party claiming that a dispute, difference or question arising out of this Agreement ("Dispute") has arisen must notify the other party giving details of the Dispute ("Notification").

17.3 Within 7 days (or any longer period agreed between the parties) after a Notification is given, each party's relationship manager must personally or through a nominee use reasonable efforts to resolve the Dispute through negotiation.

17.4 If the parties' relationship managers cannot resolve the Dispute within 14 days after the Notification is given (or any longer period agreed between the parties), the relationship managers must immediately refer the Dispute to a General Manager (or equivalent) of each party or their nominated representatives.

18 Subcontract

18.1 Made Purple Limited may subcontract for the performance of this Agreement or any part of this Agreement and may engage subcontractors, whether or not operating under a corporate structure, to assist in the provision of Service pursuant to this Agreement at any time without the Customer's consent.

19 Variation

19.1 The Customer acknowledges and agrees that Made Purple Limited may change the terms of this Agreement and its Schedules at any time during the Term, in which case the new (changed) Agreement shall apply to the Customer.

19.2 Made Purple Limited will provide the Customer with at least 30 days' advance notice of any proposed change to the terms by email. If the Customer does not agree with the terms of the new (changed) Agreement, the Customer may terminate the Agreement without penalty by providing 30 days written notice to Made Purple Limited.

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20 Express rights

20.1 Any express statement of a right of Made Purple Limited under this Agreement is without prejudice to any other right of Made Purple Limited expressly stated in this Agreement or existing at law.

21 Publicity

21.1 Except as required by applicable law, the requirements of any governmental authority or other regulatory body which restricts the undertaking of marketing and promotional activities or press releases and public announcements in respect to the Service provided under this Agreement, Made Purple Limited may, with notice to the Customer, undertake marketing and promotional activities and make press releases and other public announcements in respect to the Service provided under this Agreement.

22 Waiver

22.1

No right under this Agreement will be deemed to be waived except by notice in writing signed by each party. Any waiver by Made Purple Limited will not prejudice its rights in respect of any subsequent breach of the Agreement by the Customer.

22.2 Any failure by Made Purple Limited to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by Made Purple Limited to the Customer will not be construed as a waiver of Made Purple Limited's rights under this Agreement.

23 Severability

23.1

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement will remain otherwise in full force apart from such provisions which will be deemed deleted.

24 Entire Agreement

24.1

The Agreement sets forth the entire understanding between the Customer and Made Purple Limited regarding the subject matter of this Agreement.

24.2

The content of this Agreement shall take precedence over, and neither party shall be entitled to rely on and shall have no remedy in respect of, any other agreements, materials, statements, representations, understandings or offers that were made or exchanged between the parties. This clause shall not operate to exclude liability for fraud.

24.3 Neither party shall be responsible for or have obligations for any matters in relation to the Service other than those specified in this Agreement.

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25 Third Party Rights

25.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

26 Relationship of the Parties

26.1 Nothing in this Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

27 Notices

27.1 Any notice or communication given under this Agreement shall be:

27.1.1 in writing and served by hand, prepaid recorded or special delivery post or prepaid international recorded airmail to the relevant addressee at the address referred to on the cover page of this Agreement or such other address as the relevant party may designate to the other in writing from time to time; or

27.1.2 made by electronic mail or other electronic means in accordance with any procedures set up for such purposes.

Any such notice shall be deemed to have been served at the time of delivery.