

G-Cloud 15

Terms and Conditions
Lot 3: Cloud Support Services

The Buyer and the Supplier hereby agree to the following terms ("Terms") apply to the provision of consulting services that the Supplier provides to the Buyer in relation to the G-Cloud services ("Services"). Capitalised terms have the meanings ascribed to each of them in the body of these Terms or as set out in Schedule 1.

1. SERVICES

- 1.1 By entering into an Order Form, the Buyer engages the Supplier to provide, and the Supplier agrees to provide, the Services solely to, and for the benefit of, the Buyer in accordance with these Terms. The Supplier will perform the Services with reasonable care and skill in a proper and professional manner consistent with Good Industry Practice. Except as otherwise expressly set forth in these Terms or the Order Form, the Supplier makes no, and disclaims all, express and implied warranties of any kind.
- 1.2 The Buyer agrees to actively cooperate in the delivery of the Services Deliverables and is responsible for: (a) providing data about The Buyer's needs, business, operations, personnel, customers, technology, requirements (including relevant legal and compliance requirements); (b) providing and maintaining materials and services such as computers, software, hardware, office space, furniture, facilities, utility and internet services, as required; (c) timely iteration, feedback and approvals of goals, timelines, requirements and outputs; (d) ensuring the use of Services complies with the laws and regulations applicable to the Buyer; and (f) such other assistance as necessary for Supplier to successfully deliver the Services. The Supplier will not be responsible for any delay, failure to perform or deliver, or alteration of the Services, or any loss or corruption of Buyer Data due to: (a) any failure by the Buyer to actively cooperate with the Supplier in the provision of the Services or to comply with its responsibilities under Section 1.1; (b) any breach by the Buyer of the Terms; or (c) the occurrence or continuation of any Force Majeure Event.
- 1.3 Where the Services include, or otherwise require, the provision of software-as-a-service ("SaaS") tools from the Supplier, the provisions of the Supplier SaaS Terms at Appendix 1 of the Supplier Terms shall, notwithstanding anything to the contrary in the Supplier Terms or the Order Form, apply to the provision of the SaaS Services supplied by the Supplier.

2. INTELLECTUAL PROPERTY RIGHTS

- 2.1 Each Party owns and retains all rights, title and interests in and to its respective Background IPR. The Buyer grants to the Supplier a worldwide, non-exclusive, royalty-free, sub licensable, non-transferable, fully paid, licence to use the Buyer's Background IPR to the extent necessary to enable the Supplier to provide the Services.
- 2.2 Subject to Sections 2.1, and upon payment of the Fees, the Supplier grants to Buyer a non-exclusive, non-transferable (other than to Buyer's Affiliates), royalty-free, worldwide, perpetual license to use, copy, translate, display, and prepare derivative works of the Foreground IPR in the deliverables for Buyer's internal business purposes, provided such use does not breach Buyer's confidentiality obligations to Supplier, Supplier's confidentiality obligations to third parties, or infringe Supplier's Background IPR.
- 2.3 To the extent the deliverables provided to the Buyer in connection with the Services ("Deliverables") contain any of the Supplier's Background IPR or third party IPR, the Supplier grants to the Buyer a worldwide, non-exclusive, non-transferable and non-sub-licensable,

fully paid, licence to use such Background IPR and third party IPR solely: (i) for the purpose of the Buyer using the Deliverables internally; (ii) as contemplated by the Order Form; (iii) in accordance with these Terms; and (iv) only to the extent embedded within a Deliverable - and never on a standalone basis.

- 2.4 The Buyer acknowledges and agrees that the Deliverables are prepared solely for the Buyer's internal use. The Buyer will not disclose the Deliverables or make the Deliverables available for use by any third party without the prior written consent of the Supplier.
- 2.5 Immediately upon the Supplier's assignment of Foreground IPR to the Buyer, the Buyer grants to the Supplier a non-exclusive, perpetual, transferable (including the right to sub-license), royalty-free, fully paid up, worldwide licence to use the Foreground IPR for any purpose, provided always that such use does not breach clause 4 (*Confidentiality*) of the Terms.
- 2.6 The Supplier shall not be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, that is competitive with, or similar to, any of the Services or Deliverables, provided that the Supplier does not use any Buyer Confidential Information for which it does not have a licence to use for such purposes. In addition, the Supplier shall be free to use its general knowledge, skills and experience and Know-How, expertise, ideas, techniques, approaches, concepts, or designs used, developed or acquired by or on behalf of the Supplier in the course of performing the Services, including, but not limited to, any know-how, concepts or information retained in the unaided memory of the Supplier employees or agents as a result of authorized access to Buyer Confidential Information.
- 2.7 The Buyer acknowledges that the Supplier may use, and upload Buyer IPR to, a secure cloud based solution and/or cloud-based file storage and sharing solutions when providing Services to the Buyer.
- 2.8 During the term of the Services, the Buyer grants the Supplier a licence to use any of the Buyer's IPR required to perform the Services and/or provide the Deliverables, as contemplated by the Proposal Letter or as mutually agreed in writing by the Parties.
- 2.9 The Supplier will own and retain all rights, title and interests in and to any and all Aggregate Data, including the rights to develop, test, maintain, improve, modify, create derivative works from, distribute, and otherwise commercialize Aggregate Data.

3. FEES AND PAYMENT

- 3.1 The Buyer will pay to the Supplier the fees for the performance of the Services and the provision of any Deliverables, as set out in the Order Form (the "**Fees**"). To the extent an Order Form is terminated prior to completion for any reason, the Buyer will pay the Fees incurred for Services performed and Deliverables provided up to the date of termination. The Fees do not include any applicable taxes. Unless otherwise agreed in the Order Form, the Supplier will invoice the Buyer for Fees payable four weeks following execution of the

Order Form and every subsequent four weeks. The Buyer will pay the invoices within thirty (30) days of the invoice date.

4. CONFIDENTIALITY

- 4.1 Each Party will keep confidential and, save as set out in Sections 4.2 and 4.3, will not disclose to any third party, any confidential information of the other Party disclosed in connection with the Services ("Confidential Information"). Confidential Information will not include any information that (a) is previously known to the receiving Party without an obligation not to disclose such information or was previously in its possession; (b) is acquired by a receiving Party from a third party which was not, to the receiving Party's knowledge, under an obligation not to disclose such information; or (c) which the receiving Party can demonstrate was independently developed by or for the receiving Party without reliance on any Confidential Information of the other Party; or (d) becomes publicly known and made generally available, through no breach of the Agreement; or (e) consists of Aggregate Data, provided that such Aggregate Data will neither identify the disclosing Party as the source of any component of the Aggregate Data nor categorize information in a manner that would permit a third party to reasonably infer that any component of the Aggregate Data relates specifically to the disclosing Party.
- 4.2 Each Party may use or make copies of the Confidential Information of the other Party only to the extent reasonably necessary for purposes of a Proposal or for the Parties' discussions regarding actual or potential services. Each Party will protect the Confidential Information of the other Party in the same manner it protects the confidentiality of its own Confidential Information, but in no event using less than a reasonable standard of care. Each Party will restrict access in and to the Confidential Information of the other Party to those of its personnel (including personnel employed by its Affiliates) and subcontractors engaged in the performance, management, receipt, support, or use of the Services for the applicable Engagement. Such access is permitted provided that such personnel and third parties are bound by obligations of confidentiality substantially similar to the confidentiality provisions under these Terms.
- 4.3 If either Party receives an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction requiring disclosure of the Confidential Information of the other Party, it will promptly notify the disclosing Party, to the extent legally permitted.
- 4.4 **Buyer Personal Data.** The parties agree that the Supplier does not require any Personal Data from the Buyer in order to perform the Services. The Buyer will use all reasonable efforts to ensure that it does not send any Personal Data to the Supplier. Notwithstanding the foregoing, if the Supplier processes any personal data of the Buyer, the Supplier will act as Processor and the Buyer will act as Controller (unless otherwise agreed in the Order Form), and the following terms "**controller**", "**process**" and "**processor**" will have the meanings as given to them in the EU Data Protection Directive (Directive 95/46/EC) and General Data Protection Regulation ((EU) 2016/679) ("GDPR"). The nature of the Services may require the Buyer to provide Buyer Personal Data to the Supplier or for the Supplier to collect or process Buyer Personal Data as a processor on Buyer's behalf. To the extent that the Supplier processes Buyer Personal Data on the Buyer's behalf as a processor in connection with the performance of the Services, Buyer and the Supplier agree to enter into a data processing agreement incorporating the terms required under article 28 of GDPR. Buyer as a controller alone will determine the purposes for which, and the manner in which, Buyer Personal Data is, or is to be, processed in the performance of the Services. When

providing any Personal Data, Buyer confirms that it is doing so in accordance with all applicable data protection legislation including without limitation GDPR.

- 4.5 Audit.** Should the Buyer elect to conduct an Audit under the terms of G-Cloud 14, the Buyer will give reasonable notice to the Supplier in writing of its intent to conduct an Audit and the Parties shall agree the scope of any Audit prior to commencement of the relevant Audit, including agreeing to the identity of the Buyer's appointed auditor where relevant. The Buyer shall be entitled to conduct an Audit once per calendar year, such time period commencing from the date of commencement of the Services being audited and ending on the date 18 months from the date on which the Services to which an Audit relates are deemed to be completed. Any Audit conducted by the Buyer shall be at the Buyer's cost. Whilst conducting an Audit, the Buyer and/or its appointed auditor (as relevant) will have due regard for the requirements of the Supplier including (but not limited to) the Supplier's duty of client confidentiality, its commercial sensitivities, and protection of the Supplier's business and affairs (including its Confidential Information), and will use reasonable endeavours to ensure that any Audit does not disrupt the Supplier, the supply of the Services, or the Supplier's business activities in general. Where required by the Supplier, the Buyer will procure entry by its appointed auditor or other persons involved with any Audit into any reasonable non-disclosure requirements specified by the Supplier, prior to the commencement of any Audit.

5. LIMITATION OF LIABILITY

- 5.1** Subject to Section 5.3, but notwithstanding any other provisions of Terms herein, in no event will either Party be liable to the other Party for any: (i) indirect, special, exemplary, incidental or consequential damages; or (ii) for any direct or indirect loss of business, data, profits or goodwill, in each case whether arising out of contract (including under an indemnity), tort (including negligence), statute, strict liability or otherwise, resulting from or related to the Services and/or the Deliverables under the relevant Order Form (whether or not such party knew of should have known of the possibility of any such damages).
- 5.2** Subject to the remainder of this Section 5, under no circumstances will the Supplier's aggregate liability to the Buyer for any and all claims (including third party claims) arising from or in connection with or relating to the Services (whether in contract (including under an indemnity), tort (including negligence), strict liability, statute or otherwise) exceed an amount equal to the Fees paid by the Buyer to the Supplier for the applicable Services and / or Deliverables that gave rise to the claim.
- 5.3** In respect of a defaulting Party, nothing in these Terms limits or excludes such Party's liability for: (i) personal injury or death suffered by the other (non-defaulting) Party caused by the defaulting Party's negligence; (ii) fraud; or (iii) any matter for which it would be illegal for the defaulting Party to exclude or limit or to attempt to exclude or limit its liability under applicable law.
- 5.4** Buyer indemnifies Supplier from any actual or threatened claims and losses, including as a party or witness in any claim, arising from or related to: (a) disclosure of the Deliverables by Buyer to a third party, or any use of, or reliance on, the Deliverables by such third party; (b) a third party claim that Supplier's use of Buyer's IPR or Buyer's data in performance of the Services breaches any third party intellectual property right or the confidentiality of a third party; and (c) a third party claim against Supplier with respect to any decisions made

or actions taken by Buyer based on outputs obtained from Supplier's Services and Deliverables.

6. GENERAL PROVISIONS

- 6.1 The Supplier will not assign consultants who have worked with the Buyer to provide services to a Buyer's direct competitor where the services to be provided are materially similar to the services the Supplier has performed for Buyer under an Order Form. The Supplier agrees that this restriction will last for 6 months from the conclusion of the individual's work with Buyer on the Services. This restriction will not apply to any senior professionals who serve as the Supplier practice area leaders (PALs), any topic experts or advisors, who specialize in an industry or specific business discipline, or any personnel of the Supplier's subsidiary entities which perform a specialist consultancy business. The involvement of such an individual in the Services will not preclude them from working for other clients.
- 6.2 The Terms will be governed by and construed in accordance with the laws of England and Wales. The Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.
- 6.3 The provisions of the Terms will be deemed severable, and the invalidity or unenforceability of any one or more of its provisions will not affect the validity and enforceability of its other provisions. If any such provision is held to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force.
- 6.4 Pursuant to the Terms, the Supplier is an independent contractor to the Buyer and neither of the Parties is a partner or agent of the other Party. No Party is authorized to enter into or incur any agreement, commitment, obligation, or liability in the name of or on behalf of the other Party.
- 6.5 The Terms exist solely for the benefit of the Parties to the Order Form. Only the Parties (or any Party), or in the case of the Supplier, its Affiliates, may enforce the terms of these Terms in respect of the relevant Services. The Parties to each Proposal do not intend to confer any right or benefit in connection with such Services on any third party.
- 6.6 The delay or failure of a Party to insist upon or enforce another Party's strict performance of any provision herein, or to exercise any right or remedy under the Terms, will not be interpreted or construed as a waiver to any extent of that Party's right to assert or rely upon any such provision, right or remedy in that or any other instance.
- 6.7 The Terms, which are by their nature intended to survive the expiration or termination of an Proposal will survive, including but not limited to Sections 2 (Intellectual Property Rights), 3 (Fees and Payment), 4 (Confidentiality), 5 (Limitation of Liability), 6.1 (Restrictions on Personnel), 6.2 (Governing Law), 6.3 (Severability), 6.5 (third party Beneficiaries), 6.5 (Waiver) and 6.7 (Survival).
- 6.8 Neither Party will assign, voluntarily, by operation of law, or otherwise, any rights or delegate any obligations under these Terms (other than the right to receive payments) without the prior written consent of the other Party, and any attempt to do so will be void, provided that the Supplier may assign its rights under the Terms to any of its Affiliates. The

Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

- 6.9 The Order Form signed by the Parties and referencing these Terms, contains the entire agreement and understanding by and between the Parties with respect to the relevant Services, and no prior representations, promises, agreements or understandings that are not set out in them (whether written or oral) will be of any force or effect.

7. SCHEDULE 1 DEFINITIONS

- 7.1 “**Aggregate Data**” means de-identified, sanitized or anonymized data that is derived from Buyer Data and used for analytical and statistical reporting purposes, but excludes Buyer Personal Data.
- 7.2 “**Background IPR**” means any IPR: (i) developed by a Party independently of an Engagement; or (ii) owned by a Party, or licensed to such Party (other than by the other Party), as at the commencement date of the applicable Engagement, including any and all modifications or enhancements to the same.
- 7.3 “**Buyer Personal Data**” means the information, in any form, that is provided to the Supplier by or on behalf of the Buyer that alone, or in combination with other information: (a) is considered personal data or personal identifiable information under the applicable data privacy laws; or (b) identifies or could be reasonably used to identify an individual data subject, including names, addresses, email addresses, telephone numbers, Social Security numbers, government identification numbers or any other personally identifiable information.
- 7.4 “**Foreground IPR**” means any and all IPR except: (i) Background IPR; and (ii) third party IPR.