

DISCOVER DIGITAL SOLUTIONS LIMITED

TERMS AND CONDITIONS FOR G-CLOUD 15 SERVICES

1. DEFINITIONS

In these Terms and Conditions, the following definitions apply:

Agreement means together the Call-Off Contract, the Order and these Terms and Conditions.

Applicable Data Protection Laws means the UK GDPR, the Data Protection Act 2018, and any other applicable data protection legislation.

Applicable Laws means all applicable laws, statutes, and regulations from time to time in force.

Business Day means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Business Hours means 9:00am to 5:00pm on any Business Day.

Buyer means the public sector organisation purchasing Services under the G-Cloud 15 Framework.

Buyer Data means all data, information and materials provided by or on behalf of the Buyer to the Supplier in connection with the Services.

Buyer Personal Data means any personal data which the Supplier processes on behalf of the Buyer in connection with this Agreement.

Call-Off Contract means the contract formed between the Buyer and Supplier under the G-Cloud 15 Framework Agreement.

Change Order means a document signed by both parties setting out agreed changes to the Services.

Confidential Information means information disclosed by one party to the other which is marked as confidential or which ought reasonably to be considered confidential.

Deliverables means any outputs of the Services to be provided by the Supplier to the Buyer as specified in the Order.

Fees means the charges for the Services as set out in the Order and/or Pricing Document.

Framework Agreement means the G-Cloud 15 Framework Agreement between the Supplier and Crown Commercial Service.

HubSpot means HubSpot, Inc. and its affiliates, the provider of the underlying SaaS platform.

HubSpot Terms means HubSpot's standard terms of service applicable to the use of the HubSpot platform.

Intellectual Property Rights means patents, copyrights, trade marks, database rights, rights in designs, know-how, trade secrets and all other intellectual property rights.

Order means the order for Services placed by the Buyer.

Services means the HubSpot subscription, support and consultancy services provided by the Supplier as described in the Service Definition Document.

Supplier means Discover Digital Solutions Limited, a company registered in England and Wales.

UK GDPR has the meaning given in section 3(10) of the Data Protection Act 2018.

2. COMMENCEMENT AND DURATION

2.1 This Agreement shall commence on the date specified in the Call-Off Contract and shall continue for the term specified therein, unless terminated earlier in accordance with clause 12.

2.2 The Agreement is subject to the G-Cloud 15 Framework Agreement. In the event of any conflict between these Terms and Conditions and the Framework Agreement or Call-Off Contract, the order of precedence shall be: (a) the Call-Off Contract; (b) the Framework Agreement; (c) these Terms and Conditions.

3. SUPPLIER'S RESPONSIBILITIES

3.1 The Supplier shall provide the Services with reasonable skill and care and in accordance with the Service Definition Document.

3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Order, but such dates shall be estimates only and time shall not be of the essence.

3.3 The Supplier shall assign appropriately qualified and trained personnel to deliver the Services.

3.4 The Supplier is a reseller of HubSpot services. The Buyer acknowledges that the HubSpot platform is provided by HubSpot and is subject to the HubSpot Terms. The Supplier shall not be liable for any failure or limitation of the HubSpot platform itself.

4. BUYER'S OBLIGATIONS

4.1 The Buyer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide the Supplier with such information, materials and access as the Supplier may reasonably require;
- (c) ensure the accuracy and completeness of any data and materials provided;
- (d) obtain and maintain all necessary licences, consents and permissions required for the Services;
- (e) comply with the HubSpot Terms and any applicable usage policies;
- (f) appoint a representative with authority to make decisions relating to the Services.

4.2 If the Supplier's performance is delayed by any act or omission of the Buyer, the Supplier shall be entitled to an extension of time.

5. HUBSPOT PLATFORM AND THIRD-PARTY SERVICES

5.1 The Buyer acknowledges that the HubSpot platform is a third-party SaaS service subject to HubSpot's own terms, conditions and service levels.

5.2 All Buyer Data stored within HubSpot remains within the Buyer's own HubSpot portal and is subject to HubSpot's data processing terms.

5.3 The Supplier does not separately host or store Buyer Data outside of the Buyer's HubSpot portal.

5.4 HubSpot subscription fees and licensing are subject to HubSpot's standard pricing and terms. Any changes to HubSpot's pricing or terms are outside the Supplier's control.

6. CHANGE CONTROL

6.1 Either party may propose changes to the scope or execution of the Services. No changes shall come into effect until a Change Order has been agreed and signed by both parties.

6.2 A Change Order shall set out the proposed changes and the effect on the Services, Fees, and timetable.

6.3 The Supplier may charge for time spent preparing Change Orders requested by the Buyer at the rates specified in the Pricing Document.

7. FEES AND PAYMENT

7.1 The Buyer shall pay the Fees in accordance with the Order and Pricing Document.

7.2 The Supplier shall invoice the Buyer as specified in the Order. Unless otherwise agreed, invoices are payable within 30 days of receipt.

7.3 All Fees are exclusive of VAT, which shall be added where applicable.

7.4 If the Buyer fails to pay any sum due, the Supplier may charge interest at 2% per annum above the Bank of England base rate and may suspend Services until payment is received.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 The Buyer retains all Intellectual Property Rights in Buyer Data and materials provided to the Supplier.

8.2 The Supplier and its licensors retain all Intellectual Property Rights in the Supplier's methodologies, tools, templates and materials.

8.3 HubSpot and its licensors retain all Intellectual Property Rights in the HubSpot platform.

8.4 The Supplier grants the Buyer a non-exclusive licence to use any Deliverables for the Buyer's internal business purposes.

9. DATA PROTECTION

9.1 Both parties shall comply with Applicable Data Protection Laws.

9.2 To the extent the Supplier processes Buyer Personal Data on behalf of the Buyer, the Supplier shall act as a processor and the Buyer as controller.

9.3 The Supplier shall:

- (a) process Buyer Personal Data only on the Buyer's documented instructions;
- (b) implement appropriate technical and organisational security measures;
- (c) ensure personnel are subject to confidentiality obligations;
- (d) assist the Buyer in responding to data subject requests;
- (e) notify the Buyer without undue delay of any personal data breach;
- (f) delete or return Buyer Personal Data on termination as directed by the Buyer.

9.4 The Buyer acknowledges that Buyer Data stored in HubSpot is subject to HubSpot's Data Processing Agreement.

10. CONFIDENTIALITY

10.1 Each party shall keep confidential all Confidential Information of the other party and shall not disclose it except to employees, officers or advisers who need to know for the purposes of this Agreement.

10.2 This clause shall not apply to information that is publicly available, already known, independently developed, or required to be disclosed by law.

10.3 This obligation shall survive termination of this Agreement for a period of five years.

11. LIMITATION OF LIABILITY

11.1 Nothing in this Agreement limits liability for death or personal injury caused by negligence, fraud, or any other liability that cannot be limited by law.

11.2 Subject to clause 11.1, the Supplier's total aggregate liability under this Agreement shall not exceed the greater of: (a) the Fees paid or payable in the 12 months preceding the claim; or (b) £100,000.

11.3 Subject to clause 11.1, neither party shall be liable for any indirect, special or consequential loss, loss of profits, loss of business, loss of goodwill, or loss of data.

11.4 The Supplier shall not be liable for any failure, unavailability or limitation of the HubSpot platform or any other third-party service.

12. TERMINATION

12.1 Either party may terminate this Agreement with immediate effect by written notice if the other party:

- (a) commits a material breach and fails to remedy it within 14 days of written notice;
- (b) becomes insolvent or enters administration, liquidation or similar proceedings.

12.2 The Supplier may terminate if the Buyer fails to pay any sum due within 14 days of a written reminder.

12.3 On termination, the Buyer shall pay all outstanding Fees and the Supplier shall provide reasonable assistance with handover and data export as described in the Service Definition Document.

13. CONSEQUENCES OF TERMINATION

13.1 On termination or expiry:

- (a) the Buyer shall pay all outstanding invoices;
- (b) the Supplier shall return or delete Buyer materials as directed;
- (c) Buyer Data in HubSpot remains accessible to the Buyer via their HubSpot portal.

13.2 Clauses 8, 9, 10, 11, 13, and 17 shall survive termination.

14. FORCE MAJEURE

14.1 Neither party shall be liable for failure to perform obligations due to circumstances beyond its reasonable control, including acts of God, war, terrorism, pandemic, government action, or failure of third-party services.

14.2 The affected party shall notify the other promptly and use reasonable endeavours to mitigate the effects.

15. GENERAL PROVISIONS

15.1 **Assignment:** The Buyer shall not assign this Agreement without the Supplier's prior written consent. The Supplier may assign or subcontract with notice to the Buyer.

15.2 **Variation:** No variation shall be effective unless in writing and signed by both parties.

15.3 **Waiver:** Failure to exercise any right shall not constitute a waiver of that right.

15.4 **Severance:** If any provision is found invalid, the remaining provisions shall continue in force.

15.5 **Entire Agreement:** This Agreement constitutes the entire agreement between the parties regarding its subject matter.

15.6 **Third Party Rights:** No third party shall have any rights under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

15.7 **Notices:** Notices shall be in writing and sent to the addresses specified in the Order or Call-Off Contract.

16. DISPUTE RESOLUTION

16.1 The parties shall attempt to resolve any dispute through good faith negotiation.

16.2 If the dispute cannot be resolved within 30 days, either party may refer it to mediation under the CEDR Model Mediation Procedure.

16.3 Mediation shall not prevent either party from commencing court proceedings.

17. GOVERNING LAW AND JURISDICTION

17.1 This Agreement shall be governed by the laws of England and Wales.

17.2 The courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute arising from this Agreement.

