



Transforming IT, Powering Growth

G-Cloud 15: Terms & Conditions

Service Offering - All Services – ServiceNow &
ManageEngine

THIS AGREEMENT is made the day of

BETWEEN:

- (1) **Neyo Ltd**, a company registered in England and Wales under number 08869191 whose registered office is at 20-22, Wenlock Road, London N1 7GU ("the Service Provider") and
- (2) <<Name of Client>>, a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<insert Address>> ("the Client")

WHEREAS:

- (1) The Service Provider provides IT support services and has reasonable skill, knowledge, qualifications and experience in that field.
- (2) The Client wishes to engage the Service Provider to provide IT support services subject to, and in accordance with, the terms and conditions of this Agreement.
- (3) The Service Provider wishes to accept such engagement and shall provide IT support services to the Client subject to, and in accordance with, the terms and conditions of this Agreement.

IT IS AGREED as follows:

For G-Cloud 15 Call-Off Contracts, this Agreement applies only in addition to, and does not override, the RM1557.15 Framework Agreement and Call-Off Contract terms.

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Business Day"	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England and Wales;
"Confidential Information"	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
"Data Protection Legislation"	means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;

“Equipment”	means the Client's IT equipment in relation to which the Service Provider is to provide the Support Services as detailed in Schedule 2;
“Fees”	means the fees payable by the Client to the Service Provider in consideration of the Support Services as fully described in Schedule 4;
“Software”	means the computer software operating on the Equipment in relation to which the Service Provider is to provide the Support Services as detailed in Schedule 3; and
“Support Services”	means the services to be provided by the Service Provider to the Client as fully described in Schedule 1.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
 - 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
 - 1.2.4 a Schedule is a schedule to this Agreement; and
 - 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.
 - 1.2.6 a “Party” or the “Parties” refer to the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include any other gender.
- 1.6 References to persons shall include corporations.

2. **Service Provider's Obligations**

- 2.1 The Service Provider shall use reasonable endeavours to provide the Support Services in accordance with Schedule 1 in all material respects.
- 2.2 The Service Provider shall provide the Support Services with reasonable skill and care.
- 2.3 The Service Provider shall use reasonable endeavours to meet deadlines agreed from time to time with the Client, but any such dates shall be estimates only. Time for performance shall not be of the essence of this Agreement.
- 2.4 The Service Provider shall use reasonable endeavours to act in accordance with all reasonable instructions given to it by the Client, provided such instructions are compatible with the scope of the Support Services as set out in Schedule 1.
- 2.5 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct, and any other rules relevant to the provision of the Support Services.
- 2.6 The Service Provider shall use reasonable endeavours to accommodate any reasonable changes in the Support Services that may be requested by the Client, subject to the Client's acceptance of any reasonable changes to the Fees that may be due as a result of such changes.

3. **Client's Obligations**

- 3.1 The Client shall:
 - 3.1.1 Allow the Service Provider access to the Equipment and all relevant Software as reasonably required by the Service Provider in the course of providing the Support Services;
 - 3.1.2 Provide adequate working space and facilities for the Service Provider, its employees, agents, and sub-contractors as reasonably required by the Service Provider; and
 - 3.1.3 Co-operate with the Service Provider upon the Service Provider's reasonable request in the diagnosis of any defect or malfunction in the Equipment or Software.
- 3.2 The Client shall allow the Service Provider the use of any Equipment that is reasonably necessary to enable the Service Provider to provide the Support Services.
- 3.3 The Client shall make freely available to the Service Provider:
 - 3.3.1 any and all documentation associated with the Software;
 - 3.3.2 any and all documentation associated with the Equipment;
 - 3.3.3 original Software installation media;
 - 3.3.4 current data backups;
- 3.4 The Client shall use reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Support Services and shall use reasonable endeavours to ensure the accuracy and completeness of such information.
- 3.5 The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Support Services. Any such instructions must be compatible with the scope of the Support Services as set out in Schedule 1.
- 3.6 In the event that the Service Provider requires the decision, approval, consent or any other form of authorisation or communication from the Client in order to continue providing the Support Services (or any part thereof), the Client shall use reasonable endeavours to provide the same in a reasonable and timely manner.
- 3.7 The Client shall use reasonable endeavours to inform the Service Provider of all health and safety rules and regulations that apply at its premises.
- 3.8 The Client shall obtain and maintain any and all necessary licences and consents necessary with respect to the Software and the Equipment.
- 3.9 The Client shall use reasonable endeavours to ensure that data backups are created regularly and in such a manner as to minimise any potential data loss.

4. **Insurance**

- 4.1 The Service Provider shall have in place, in relation to the Support Services, public liability insurance with a minimum limit of indemnity of £2,000,000 in any one occurrence.
- 4.2 The Service Provider shall have in place, in relation to the Support Services, professional indemnity insurance with a minimum limit of indemnity of £2,000,000 in any one occurrence.

5. Fees and Payment

- 5.1 In consideration of the Support Services, the Client shall pay the Fees to the Service Provider in accordance with the provisions of Schedule 4 and this Clause 5.
- 5.2 The Service Provider shall invoice the Client for Fees due in accordance with the provisions of Schedule 4.
- 5.3 The Client shall pay the Fees due within 30 days of receipt of the relevant invoice from the Service Provider.
- 5.4 All payments to be made by the Client under this Agreement shall be made in GBP in full and in cleared funds, to such bank in Barclays Bank as the Service Provider may from time to time nominate in writing.
- 5.5 Where any payment under this Agreement falls due on a day that is not a Business Day, it may be made on the next following Business Day.
- 5.6 Without prejudice to sub-Clause 10.4.1 and any other rights or remedies open to it, if the Client fails to pay the Service Provider within the period set out in sub-Clause 5.3:
 - 5.6.1 The Client shall pay interest on the overdue sum at the rate of 4% per annum above the base rate of Barclays Bank from time to time. Such interest shall accrue on a daily basis from the due date until payment is made in full to the Service Provider of the overdue sum, whether before or after judgment. The Client shall pay the interest due together with the overdue sum.
 - 5.6.2 The Service Provider shall have the right to suspend the Support Services until payment of the overdue sum (together with any interest due) is made in full.
- 5.7 All sums due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (except such amount (if any) of tax that is to be deducted or withheld by law).

6. **Limitation of Liability**

- 6.1 Nothing in this Agreement shall limit or exclude either Party's liability for death or personal injury caused by its negligence (or the negligence of that Party's employees, agents, or subcontractors); for fraud or fraudulent misrepresentation; or any other liability which cannot be limited or excluded by law.
- 6.2 Nothing in this Agreement shall limit the Service Provider's liability for breach of the implied terms implied by section 2 of the Supply of Goods and Services Act 1982 (relating to title and quiet possession).
- 6.3 Subject to sub-Clauses 6.1 and 6.2, neither Party shall be liable to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising out of or in connection with this Agreement.
- 6.4 The total liability of the Service Provider to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising out of or in connection with this Agreement shall be limited to £1,000,000 or an amount equal to the total Fees payable by the Client under this Agreement, whichever is the greater sum.
- 6.5 The total liability of the Client to the Service Provider, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising out of or in connection with this Agreement shall be limited to £1,000,000 or an amount equal to the total Fees payable by the Client under this Agreement, whichever is the greater sum.
- 6.6 The Client's rights under this Agreement are in addition to, and not instead of, any rights or remedies to which is may be entitled under common law.

7. Confidentiality

- 7.1 Each Party undertakes that, except as provided by sub-Clause 7.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and after its termination:
- 7.1.1 keep confidential all Confidential Information;
 - 7.1.2 not disclose any Confidential Information to any other party;
 - 7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;
 - 7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 7.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4 above.
- 7.2 Either Party may:
- 7.2.1 disclose any Confidential Information to:
 - 7.2.1.1 any sub-contractor or supplier of that Party;
 - 7.2.1.2 any governmental or other authority or regulatory body; or
 - 7.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

a) to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the provision of the Support Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 7.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 7, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
 - 7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.
- 7.3 The provisions of this Clause 7 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

8. Assignment and Sub-Contracting

- 8.1 Subject to sub-Clause 8.2, this Agreement is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence any of its rights hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
- 8.2 The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Service Provider.

9. **Force Majeure**

- 9.1 No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

10. Term and Termination

- 10.1 This Agreement shall come into force on <<insert Commencement Date>> and shall continue for a Term of <<insert Term>> from that date, subject to the provisions of this Clause 10.
- 10.2 Either Party may terminate this Agreement by giving to the other not less than 3 months written notice, to expire on or at any time after 3 months.
- 10.3 Either Party may immediately terminate this Agreement by giving written notice to the other Party if:
 - 10.3.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 30 Business Days of the due date for payment;
 - 10.3.2 the other Party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 30 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 10.3.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 10.3.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 10.3.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);
 - 10.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 10.3.7 that other Party ceases, or threatens to cease, to carry on business; or
 - 10.3.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 10, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 10.4 For the purposes of sub-Clause 10.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 10.5 The rights to terminate this Agreement given by this Clause 10 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

11. **Effects of Termination**

Upon the termination of this Agreement for any reason:

- 11.1 any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable;
- 11.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain In full force and effect;
- 11.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;
- 11.4 subject as provided in this Clause 11 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 11.5 each Party shall (except to the extent referred to in Clause 7) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

12. Data Processing

- 12.1 In this Clause 12, “personal data”, “data subject”, “data controller”, “data processor”, and “personal data breach” shall have the meaning defined in the Data Protection Legislation.
- 12.2 The Parties hereby agree that they shall both comply with all applicable data protection requirements set out in the Data Protection Legislation. This Clause 13 shall not relieve either Party of any obligations set out in the Data Protection Legislation and does not remove or replace any of those obligations.
- 12.3 For the purposes of the Data Protection Legislation and for this Clause 12, the Service Provider is the “Data Processor” and the Client is the “Data Controller”.
- 12.4 The type(s) of personal data, the scope, nature and purpose of the processing, and the duration of the processing are set out in Schedule 5.
- 12.5 The Data Controller shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in this Agreement.
- 12.6 The Data Processor shall, with respect to any personal data processed by it in relation to its performance of any of its obligations under this Agreement:
 - 12.6.1 Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor shall promptly notify the Data Controller of such processing unless prohibited from doing so by law;
 - 12.6.2 Ensure that it has in place suitable technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures. Measures to be taken are set out in Schedule 5;
 - 12.6.3 Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential;
 - 12.6.4 Not transfer any personal data outside of the UK without the prior written consent of the Data Controller and only if the following conditions are satisfied:
 - 12.6.4.1 The Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data;
 - 12.6.4.2 Affected data subjects have enforceable rights and effective legal remedies;
 - 12.6.4.3 The Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and
 - 12.6.4.4 The Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data.
 - 12.6.5 Assist the Data Controller at the Data Controller’s cost, in responding to any and all requests from data subjects and in ensuring its compliance

- with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner's Office);
- 12.6.6 Notify the Data Controller without undue delay of a personal data breach;
 - 12.6.7 On the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of this Agreement unless it is required to retain any of the personal data by law; and
 - 12.6.8 Maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause 12 and to allow for audits by the Data Controller and/or any party designated by the Data Controller.
- 12.7 The Data Processor shall not sub-contract any of its obligations to a sub-contractor with respect to the processing of personal data under this Clause 12 without the prior written consent of the Data Controller (such consent not to be unreasonably withheld). In the event that the Data Processor appoints a sub-contractor, the Data Processor shall:
- 12.7.1 Enter into a written agreement with the sub-contractor, which shall impose upon the sub-contractor the same obligations as are imposed upon the Data Processor by this Clause 13 and which shall permit both the Data Processor and the Data Controller to enforce those obligations; and
 - 12.7.2 Ensure that the sub-contractor complies fully with its obligations under that agreement and the Data Protection Legislation.
- 12.8 Either Party may, at any time, and on at least 30 calendar days notice, alter this Clause 12, replacing it with any applicable data processing clauses or similar terms that form part of an applicable certification scheme. Such terms shall apply when replaced by attachment to this Agreement.

13. **No Waiver**

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

14. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

15. **Costs**

Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

16. **Set-Off**

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any other agreement at any time.

17. Relationship of the Parties

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

18. Non-Solicitation

- 18.1 Neither Party shall, for the term of this Agreement and for a period of 3 months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to this Agreement.
- 18.2 Neither Party shall, for the term of this Agreement and for a period of 3 months after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party.

19. Third Party Rights

- 19.1 No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 19.2 Subject to this Clause 20 this Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

20. Notices

- 20.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 20.2 Notices shall be deemed to have been duly given:
 - 20.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 20.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
 - 20.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 20.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- b) In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

21. Entire Agreement

- 21.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 21.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

22. **Counterparts**

This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

23. **Severance**

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

24. Dispute Resolution

- 24.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 24.2 If negotiations under sub-Clause 24.1 do not resolve the matter within 30 business days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.
- 24.3 Nothing in this Clause 24 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 24.4 The Parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 24 shall not be final and binding on both Parties.

25. Law and Jurisdiction

- 25.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 25.2 Subject to the provisions of Clause 24, any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

SIGNED for and on behalf of the Service Provider by:

<<Name and Title of person signing for the Service Provider>>

Authorised Signature

Date: _____

SIGNED for and on behalf of the Client by:

<<Name and Title of person signing for the Client>>

Authorised Signature

Date: _____

SCHEDULE 1

The Support Services

<<Insert a detailed specification of the Support Services to be provided by the Service Provider>>

SCHEDULE 2

Equipment

<<Insert details of the Client's (relevant) Equipment>>

SCHEDULE 3

Software

<<Insert details of the Client's (relevant) Software>>

SCHEDULE 4

Fees

<<Insert full details of fees and payment>>