# IT Labs - Terms and Conditions Document

# G-Cloud 15: Lot 3 – Cloud Support

# 1. General

These General Terms and Conditions contain the contractual structure for the provision of services by IT Labs to the buyer, subject to applicable negotiations or mutually agreed modifications.

The Contractor provides and the Client may purchase one or more of the following services:

- Managed Cloud Services
- Cloud Financial Management Services
- Cloud Migration Planning
- Set Up and Migration
- Cloud Security Services
- Quality Assurance and Performance Testing
- Training
- Ongoing Support

# 2. Service Terms

**Confidential Information**: Each Party acknowledges and agrees that the names and addresses of the other Party's customers and prospective customers (collectively referred to herein as "**Customers**" and further defined herein as all customers that a Party sells or actively solicits to sell the goods and services provided by the Party) and all other confidential information relating to those Customers, including but not limited to all information such as information on the profitability and/or profit margins of a Party, Customer lists and potential leads, any other information relating to a Party's Customers that has been obtained or made known to the other Party solely as the result of providing or receiving services under this Agreement (whether or not patentable or registered under copyright or similar statutes), or any other confidential information regarding the manner of business operations of a Party are provided in confidence and constitute "**Confidential Information**." Each Party will hold all such Confidential Information of the other Party in confidence and not reveal same to any person or persons absent express written approval to do so from the other Party.

**Engagement, Service Schedules and Contractor Fees**: Client hereby engages Contractor to provide services along the timeframe, pricing structure and deliverables parameters detailed in Schedule(s) to be appended hereto from time to time and which shall be deemed incorporated herein by this reference.

**Term/Contracting Period**: Unless sooner terminated as provided below, the Term or Contracting Period of this Agreement shall commence on the Effective Date and continue for a minimum of three (3) years through such time as the services and any deliverables contemplated by the Schedule(s) and their Exhibits attached or appended to this Agreement have been completed pursuant to their terms. In addition, the Term shall automatically renew for additional one-year periods absent a written notice of non-renewal from either party delivered no later than ninety (90) days prior to the end of the previous term period.

**Payment Terms**: The full amount of each of Contractor's invoices to Client must be processed, paid and received into Contractor's accounts along the timeline specified on each active Schedule and any attached Exhibits (i.e. a Statement of Work ("**SOW**")). Notwithstanding anything herein to the contrary, Contractor may require Client to approve the use of an accounts receivable factoring financier.

a. In the event any such invoice is not paid within fifteen (15) days of the due date, then Contractor shall make a written demand for payment for the balance due penalty interest. The overdue amount will accrue interest at a rate of one and a half percent (1.5%) per month, calculated on all amounts in arrears from the day following the due date until payment is received in full.
b. In the event a payment is overdue or otherwise not paid in full (funds received by Contractor), within twenty (20) calendar days from the due date, Contractor shall have the right to immediately fully or partially suspend services without any liability to Client. The condition for Contractor to resume services shall be full and complete payment of such overdue invoices.
c. In the event any such invoice is not paid within thirty (30) days of the due date (funds received by Contractor), then Contractor shall make a written demand for payment for the balance due (including the one and a half percent (1.5%) interest rate) plus an advance deposit of one and a half (1.5) months calculated as the average monthly charges for the immediately preceding three (3) months. Such written demand for payment must be processed, paid and received into Contractor's accounts within seventy-two (72) hours of Client's receipt of such demand (with email to suffice to the contact first listed above). Thereafter, if payment is not received into Contractor's accounts, Contractor may terminate the Agreement with immediate effect upon written notice to Client.

**Termination**: This Agreement may be terminated as follows;

a. By Contractor if Client is in material breach of the Agreement for non-payment or delayed payment. In such event, the provisions of Payment Terms shall govern the conduct of the Parties.
a. By Contractor if Client is in material breach of the Agreement for matters unrelated to the bullet above and Client fails to remedy such breach within fifteen (15) days after written notice is delivered to Client.
b. By Contractor, if a person or entity directly or indirectly acquires control over the Client. For the purpose hereof, “control” shall mean the direct or indirect ownership of more than fifty percent (50 %) of the voting shares/stock or otherwise a controlling interest in Client.
c. By Contractor, without liability on its part, by written notice to the Client if the Client becomes insolvent, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.
d. By either Party if the other Party ceases carrying on its business for any reason.

**Effects of Expiration, Termination or Suspension**: Unless specified to the contrary in other provisions of this Agreement, upon expiration, termination or suspension (as applicable);

a. Both Parties will return all Confidential Information or other proprietary material relating to the services rendered during the Term; and
b. All outstanding amounts payable to Contractor or invoiced to Client pursuant this Agreement which have not been paid shall immediately become due and payable and any performed services by Contractor prior to the date of termination is billable and is deemed approved.
c. In the event of termination under the Payment Terms, all services will cease and team resources will be assigned to other projects and clients, without any liability by Contractor towards the Client. In

the event services are suspended but not terminated, Contractor will not assign personnel to other projects for 15 days, upon which period, Contractor shall have the right to assign personnel to other projects and clients and in the event that services resume, Contractor will then offer new personnel to Client at that time.

**Independent Contractor Relationship**: Client and Contractor expressly agree and understand that they are creating an independent contractor relationship and that neither Contractor nor any employee or other resource of Contractor shall be considered an employee of Client for any purposes whatsoever. In its capacity as an independent contractor, Contractor agrees and represents, and Client agrees, as follows:

a. Contractor shall retain the full right to perform the same and/or similar or other services for any third party during the Term/Contracting Period;
b. Contractor has the right to perform the services required by this Agreement at any place or location and at such times as the Contractor may determine using any subsidiary or third-party partners.

**Data Protection:** Schedules requires process of personal data, each Party shall have all permissions necessary to do so from the other Party and each Party agrees that such information will only be processed in strict compliance with the provisions of applicable Data Protection legislation. Each Party also undertakes not to do or permit anything to be done which might jeopardize or contravene the responsibilities under any data protection, equal opportunity or anti discriminatory legislation in any jurisdiction. When a Data Processing Agreement ("DPA") is required to be signed between the Parties and when the (EU) 2016/679 General Data Protection Regulation (hereinafter referred to as "GDPR") or Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 and Data Protection Act (2018) (hereinafter referred to as "**UK GDPR**"), is applicable (together referred to as "**Data Protection Regulation**"), the Parties shall conclude such DPA in writing, which shall take precedence over the provisions of this Agreement for the subject matter of processing Personal data. The provisions of this paragraph shall survive termination of this agreement.

**Warranties**:

a. Contractor warrants that:
   i. it has taken all necessary corporation actions to authorize and approve the execution and delivery of this Agreement;
   ii. it has good and sufficient capacity, power, authority and right to enter into, execute and deliver this Agreement, to complete the transactions contemplated hereby and to duly observe and perform the covenants and obligations contained herein;
   iii. all information, materials, Pre-Existing Work and Developed Tools are owned by or controlled by Contractor at the moment of use during the provision of services and Contractor represents that no such information, materials, Pre-Existing Work or Developed Tools infringes upon the copyright, trade secret, patent or other intellectual property rights of any third party.
b. Client warrants that:
   i. it is duly incorporated, organized and validly existing under the jurisdiction defined above;
   ii. it has taken all necessary corporation actions to authorize and approve the execution and delivery of this Agreement;

iii. it has good and sufficient capacity, power, authority and right to enter into, execute and deliver this Agreement, to complete the transactions contemplated hereby and to duly observe and perform the covenants and obligations contained herein;

iv. all information, materials, direction or instruction provided to Contractor under the Agreement by Client (written or otherwise) is owned or controlled by Client at the moment of such delivery to Contractor and Client represents that no such information, materials, directions or instructions infringes upon the copyright, trade secret, patent or other intellectual property rights of any third party.

**Taxes**:

a. All amounts payable according to this Agreement are payable net of and expressly exclude any and all applicable value added taxes ("**VAT**"), sales, use or other taxes, duties and fees if any, relating to the sale, purchase, transfer of ownership, delivery, installation, license or provision of any Services under this agreement, which shall be charged separately and which Client agrees to pay in full. All invoices shall be in a form to allow Contract to reclaim VAT where possible.

b. All amounts payable according to this Agreement are payable net of and expressly exclude withholding taxes if any (i.e. without deduction of any such withholding taxes) and any such withholding taxes imposed on any amounts due to Contractor under this agreement. The Parties undertake obligation to use all efforts to support the other Party in reclaiming any such withholding taxes with delivery and submission of any required documentation or certificate by any respective, applicable taxing authorities.

**Indemnification**:

a. **<u>Contractor</u>** hereby agrees to indemnify, defend and hold harmless Client and any parent, subsidiary, or affiliate thereof, and all directors, officers, attorneys and employees of Client (collectively, "**Client Indemnitees**") from and against all direct demands, claims, actions or causes of action, assessments, losses, damages, judgments, arbitration awards, liabilities (whether absolute or accrued, contingent or otherwise), costs and expenses, including, but not limited to, interest, penalties, and attorneys' fees and expenses imposed upon Client Indemnitees by reason of or resulting from Contractor's gross negligence or willful misconduct.

b. **<u>Client</u>** hereby agrees to indemnify, defend and hold harmless Contractor and any parent, subsidiary or affiliate thereof, and all directors, officers, attorneys, employees, sub-contractors or resources of Contractor (collectively, "**Contractor Indemnitees**") from and against all demands, claims, actions or causes of action, assessments, losses, damages, judgments, arbitration awards, liabilities (whether absolute or accrued, contingent or otherwise), costs and expenses, including, but not limited to, interest, penalties, and attorneys' fees and expenses asserted against, imposed upon or incurred by Contractor Indemnitees, by reason of or resulting from or relating to any breach by Client of the terms of this Agreement or any of its representations or warranties contained herein.

c. The provisions of this paragraph shall survive termination of this Agreement.

**<u>Mutual Non-Solicitation Covenant</u>**: During the Term and for two (2) years following the termination or cessation of the last Schedule under which Contractor provides services under this Agreement: (a) Neither Party shall directly or indirectly solicit or attempt to solicit any of the other Party's Customers for purposes of providing products or services that are competitive with those provided by the other Party; and

(b) Neither Party shall directly or indirectly solicit or attempt to solicit any of the other Party's employees, independent contractors or vendors for purposes of providing products or services that are competitive with those provided by the other Party or otherwise to secure the services of such personnel as employees, consultants or contractors.

**Ownership**:

a. Upon Contractor's receipt of payment for all deliverables and Services, and provided Client is not then in uncured material breach of this Agreement or any operative Schedule, the ownership of all final deliverables provided to Client from Contractor as specified on the applicable Schedule, including all rights, title and interest in and to the final deliverables (collectively "**Rights**") shall become the property of Client except as may be expressly stated to the contrary in any applicable Schedule.
b. Notwithstanding the foregoing or any other provisions in this Agreement, the Parties recognize and acknowledge that the performance of Contractor hereunder may require the pre-existing skills, code and tools of Contractor. Therefore, pre-existing tools, code, know-how, ideas, techniques, concepts or other intellectual property that Contractor uses in providing the Services under this Agreement ("**Pre-existing Work**"), or tools, techniques, methods, concepts, derivative works, code or other intellectual property developed by Contractor in the course of providing the Services under this Agreement ("**Developed Tools**"), shall not be considered "works made for hire" under this paragraph, and all rights, title and interests shall be owned exclusively by Contractor. To the extent such Pre-existing Work or Developed Tools are delivered with or as part of a final deliverable, Contractor hereby grants to Client a royalty-free license to use the Pre-existing Work or Developed Tools solely with the final deliverables. The Parties will cooperate with each other and execute such other documents as may be appropriate to achieve the objectives of this paragraph.
c. The rights and/or licenses granted above are contingent upon Client's full and final payment of all compensation due to Contractor hereunder, and no Rights or license is granted or conveyed by Contractor to Client except when such obligation has been performed.
d. Notwithstanding anything herein to the contrary, any act in contravention of any portion of this paragraph, as determined in the sole discretion of Contractor, will serve to void the rights, title, interest and/or license granted hereunder and will be deemed an uncurable material breach of this Agreement. Additionally, in such event, the rights, title, interest and/or license granted to Client shall be deemed *void ab initio* if (1) a petition in bankruptcy or for reorganization is filed by or against the Client under any federal or state bankruptcy law or regulation now or hereafter in force and is not dismissed within thirty (30) days (unless prohibited by law); (2) the Client makes an assignment for the benefit of creditors, or a receiver, trustee, liquidator or custodian is appointed for all or a substantial part of its property, and the order of appointment is not vacated within thirty (30) days; or (3) the Client assigns or encumbers this Agreement contrary to the terms hereof or contrary to Contractor's standard business practices. In such event, Client's sole remedy shall be an action at law for damages.

**Client Trademarks**: Client does not grant to Contractor any license or permission under the Agreement to use any Client trademarks except that Contractor may refer to Client by name and by logo/trademarks on Contractor's website, in case studies and in presentations identifying Contractor's goods and services.

**Notice**: Any notice, request, demand, or other communication required or permitted to be given hereunder shall be in writing and sent via the channel agreed between the Parties, additionally in writing. In addition, a copy of all notices to Contractor shall be given to legal@it-labs.com.

**Insurance**: Contractor shall obtain and maintain throughout the term of this Agreement and any renewals or extensions thereof, continuous commercial insurance coverage including but not limited to, professional indemnity insurance coverage of not less than £5,000,000. Contractor shall ensure that Client is provided proof of such coverages on at least an annual basis.

**Limitation of Liability**: CONTRACTOR SHALL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOSS OR REVENUES OR PROFITS. CONTRACTOR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY REASON WHATSOEVER AND FOR ANY CAUSES OF ACTION ARISING IN RELATION TO THIS AGREEMENT SHALL BE LIMITED TO AN AMOUNT EQUAL TO AMOUNTS PAID BY THE CLIENT TO CONTRACTOR DURING THE FOUR (4) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE SUCH CAUSE OF ACTION FIRST AROSE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS AND OTHER TORTS, PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO CONTRACTOR'S GROSS NEGLIGENCE OR INTENTIONAL WRONGFUL ACTS.

**Force Majeure**:

a. Except for Client’s payment obligations under this Agreement, neither Party shall be liable for any delay or failure to perform any material obligation under this Agreement if the failure is due to an event beyond its reasonable control which is defined under applicable law as a Force Majeure event. The Force Majeure events referred to in this paragraph include, but are not limited to; labor strikes (either internal or external), war, terrorist attacks, lock-out, epidemic, pandemic, blockage of means of transport or of supplies for whatever reason, earthquake, fire, storm, flood, water damages and governmental or legal restrictions.
b. Except for Client's payment obligations under this Agreement, in the event a disruption or interruption of services under the Agreement through any Force Majeure event continues for more than 180 days, either Party shall have the right to terminate this Agreement with a 10-day written notice. Prior to issuing such notice, the Parties agree to negotiate the parameters of such termination and continued business operations, if applicable. Notwithstanding anything to the contrary herein or otherwise in this Agreement, the Client shall remain obligated to make payment of all amounts due and owing to Contractor including but not limited to invoices then outstanding.

**Governing Law; Venue; Costs of Suit; Collection**: The provisions of this Agreement shall be governed by and construed in accordance with the laws of England and Wales without giving effect to the principles of conflict of laws. Each party agrees to submit to the personal and exclusive jurisdiction of the courts of England and Wales. To the maximum degree permitted per applicable law, should Contractor commence legal proceedings to collect on the amounts due and owing under this Agreement, Client expressly agrees that it will be obligated to pay all attorneys fees and all costs associated with any such proceedings including but not limited preparation for such proceedings, service of process regarding same, prosecution of same, costs of suit including engagement of expert witnesses. In addition, in the event a collection agency or company is assigned to collect on unpaid invoices, all fees and costs related to such collection will be paid by Client and the balance of outstanding invoices will be increased by all such fees and costs in the pursuit of any such collection. There is no dollar limited or cap that Client may be due and owing should a collection effort by Contractor be necessary.

**Entire Agreement**: This Agreement which is inclusive of the attached and/or appended Schedules and any Exhibits attached hereto or thereto constitutes the entire agreement between Client and Contractor regarding the subject matter hereof and supersedes any and all prior or contemporaneous agreements regarding these issues. This Agreement contains a series of separate covenants. If any separate covenant, word or provision of this Agreement is found unenforceable it may be severed from this Agreement with the remainder of the Agreement remaining in full force and effect. This Agreement may be executed in counterparts and transmitted by electronic means, a copy of which shall constitute an original.