

MSC*Consulting*

G-CLOUD 15
TERMS OF BUSINESS

G - C L O U D 1 5 T E R M S O F B U S I N E S S

These Terms of Business govern any work conducted by MS Consulting Partners Limited, a company registered in England and Wales with company number 14109481 and registered address 214 Grangewood House Oakwood Hill, Loughton, England, IG10 3TZ ("MS Consulting Partners") under the G-Cloud framework, and are deemed to be accepted by any Buyer through the signature of a G-Cloud Order Form.

These Terms of Business are subordinate to the G-Cloud Order Form and the clauses of the G-Cloud Framework Agreement and the G-Cloud Call Off Contract.

1 . D E F I N I T I O N S A N D I N T E R P R E T A T I O N

In these Terms of Business, the following definitions shall apply:

"Consultancy Personnel"	means any individuals employed or engaged by MS Consulting Partners who will carry out the Services ;
"Engagement"	means Services performed under these Terms of Business in accordance with a G-Cloud order form;
"G-Cloud"	means the framework RM1557.15 awarded by the Minister for the Cabinet Office represented by Crown Commercial Service ;
"G-Cloud Order Form"	means an order form signed by a Buyer and MS Consulting Partners for the provision of services from MS Consulting Partners in accordance with the terms of the G-Cloud Framework Agreement ;
"Services"	means the specific services to be provided by MS Consulting Partners to the Buyer in accordance with the G-Cloud Order Form .

2 . O R D E R I N G O F T H E S E R V I C E S

2.1. The Buyer acknowledges that it is responsible for determining that G-Cloud is an appropriate framework to utilise for its requirements and for conducting appropriate searches on the Digital Marketplace to ascertain which G-Cloud service best meets its needs.

2.2. In providing a signed G-Cloud Order Form to MS Consulting Partners, the Buyer confirms that it has determined in accordance with clause 2.1 that the service provided by MS Consulting Partners is the most appropriate for its needs, and that the Services it is purchasing from MS Consulting Partners are in accordance with the G-Cloud Framework Agreement and the service definition provided by MS Consulting Partners.

3 . S E R V I C E S

3.1. MS Consulting Partners shall engage the Consultancy Personnel to provide the Services on the terms and conditions of these Terms of Business. The Buyer acknowledges that the Consultancy Personnel may be engaged through a third party organisation, but that MS Consulting Partners shall take responsibility for the Services.

3.2. The Services shall be delivered at any location specified in the G-Cloud Order Form or at other locations agreed between the parties.

3.3. The Services shall be delivered with all due care, skill and ability and the Consultancy Personnel shall promptly give the Buyer all such information and reports as the Buyer may reasonably require in connection with the provision of the Services.

3.4. The Consultancy Personnel shall co-operate with the Buyer's reasonable instructions and shall agree to observe and comply with the Buyer's rules, regulations and policies (including without limitation its policies on equal opportunities, harassment and bullying and health and safety) and any relevant legislation affecting or relating to the business of the Buyer.

3.5. The Consultancy Personnel shall not engage in any conduct detrimental to the interests of the Buyer, which includes any conduct tending to bring the Buyer into disrepute or which results in the loss of custom or business.

3.6. The Buyer acknowledges that this is a contract for the provision of a managed service and not for the provision of individual resources, and accordingly that MS Consulting Partners may determine how to deliver the Services and in particular which Consultancy Personnel to utilise, subject to any Consultancy Personnel being suitably qualified and having the appropriate skills and experience. Whilst MS Consulting Partners shall use reasonable endeavours to ensure continuity of supply, it shall be entitled to change the Consultancy Personnel used at any time.

4 . V E R I F I C A T I O N O F S E R V I C E D E L I V E R Y

4.1. The Buyer agrees verify the satisfactory delivery of the Services on a frequency defined on the G-Cloud Order Form using a manual or electronic system as defined by MS Consulting Partners and to accept invoices generated and sent electronically to the Buyer.

4.2. The Buyer shall approve the Services within two working days verifying the number of days worked by the Consultancy Personnel during the applicable week. Approval of the Services by the Buyer constitutes acceptance that the Services have been provided in accordance with these Terms of Business. Failure to approve the Services does not waive the Buyer's obligation to pay any fees in respect of the Services delivered.

4.3. If the Buyer is unable to provide approval of the Services because the Buyer disputes the number of days claimed, then the Buyer shall notify MS Consulting Partners within two working days from presentation of the claimed days for verification and shall co-operate fully and in a timely fashion with MS Consulting Partners, including providing documentary evidence of the days worked by the Consultancy Personnel, to enable MS Consulting Partners to establish what periods of time, if any, the Consultancy Personnel worked.

5 . F E E S

5.1. In consideration of MS Consulting Partners performing its obligations under these Terms of Business, the Buyer shall pay MS Consulting Partners the consultancy fees and any expenses as set out in the G-Cloud Order Form.

5.2. All amounts payable pursuant to these Terms of Business are exclusive of any VAT. The Buyer shall pay VAT at the rate for the time being properly chargeable in respect of the Services.

5.3. MS Consulting Partners reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended or replaced from time to time) on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

6 . D I S S A T I S F A C T I O N W I T H D E L I V E R Y O F S E R V I C E S

If the Buyer reasonably considers that the delivery of the Services is unsatisfactory the Buyer must notify MS Consulting Partners as soon as reasonably possible. MS Consulting Partners will then liaise with the Buyer and the Consultancy Personnel to agree a satisfactory resolution. If the parties cannot agree on a resolution or any changes made as a result of such resolution are not implemented to the Buyer's satisfaction, the Buyer may terminate the agreement.

7 . R E L A T I O N S H I P O F T H E P A R T I E S

Nothing in these Terms of Business is intended to create a partnership, joint venture or legal relationship of any kind between the parties 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. Except where otherwise expressly provided in these Terms of Business, neither party shall have authority to make representations, act in the name or on behalf of, or otherwise to bind the other.

8 . N O N - S O L I C I T A T I O N

8.1. The Buyer agrees that it shall not during the term of the engagement and for a period of six months following termination engage ("the **Exclusion Period**") or employ any of the Consultancy Personnel directly or indirectly other than through MS Consulting Partners, save as provided for in clause 8.2.

8.2. If the event that the Buyer employs or engages any of the Consultancy Personnel directly or indirectly during the Exclusion Period other than through MS Consulting Partners, the Buyer agrees to pay a fee equivalent to the charge for the relevant Consultancy Personnel for a period of 60 working days.

9 . D A T A P R O T E C T I O N

9.1. In this clause 9:

Complaint	means a complaint or request relating to a Party's (defined below) obligations under Data Protection Laws relevant to these Terms of Business and/or the processing of any of the Shared Personal Data, including any compensation claim from a Data Subject or any notice, investigation or other action from a Data Protection Supervisory Authority relating to the foregoing (and Complainant means the Data Protection Supervisory Authority, Data Subject or other person initiating or conducting a Complaint);
Consent	means a consent in respect of the relevant transfers and/or other processing as construed in accordance with, and meeting all applicable requirements of, Data Protection Laws;
Controller	has the meaning given in applicable Data Protection Laws;
Data Protection Laws	means, as applicable to a Party or the Services: the GDPR; the Data Protection Act 2018; the Directive 2002/58/EC (ePrivacy Directive) and/or the Privacy and Electronic Communications (EC Directive) Regulations 2003; any other applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to a Party or the Services; any laws which implement any such laws; and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
Data Protection Supervisory Authority	means any regulator, authority or body responsible for administering Data Protection Laws;
Data Subject	has the meaning given in applicable Data Protection Laws from time to time;
Data Subject Request	means a request made by a Data Subject to exercise any right(s) of Data Subjects under Data Protection Laws in relation to any of the Shared Personal Data or concerning the processing of such data;
GDPR	means the General Data Protection Regulation, Regulation (EU) 2016/679;
Party	has the meaning given to it in clause 9.2.

Permitted Purpose	means the purpose of performance of these Terms of Business.
Personal Data	has the meaning given in applicable Data Protection Laws from time to time;
Personal Data Breach	has the meaning given in the GDPR;
Processing	has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including process, pro-cessed, processing, and processes shall be construed accordingly); and
Shared Personal Data	means Personal Data made available by or otherwise shared between MS Consulting Partners, the Consultancy Personnel and/or the Buyer for the Permitted Purpose.

9.2. MS Consulting Partners and the Buyer (each a Party for the purposes of this clause 9) shall each be Controller of the Shared Personal Data. If the Parties share the Shared Personal Data, it shall be shared and managed in accordance with the terms of this clause

9.3. Subject to clause 9.4, each Party shall comply with all Data Protection Laws in connection with the exercise and performance of its respective rights and obligations under these Terms of Business.

9.4. MS Consulting Partners shall ensure that at all times:

9.4.1. all Shared Personal Data transferred to the Buyer is accurate and up-to-date and has at all times been collected, processed and transferred by and on behalf of MS Consulting Partners in accordance with Data Protection Laws;

9.4.2. each relevant Data Subject has been provided with sufficient information (in an appropriate form) so as to enable fair, transparent and lawful processing (including sharing) of the Shared Personal Data for the Permitted Purpose in accordance with the obligations of each Party under all Data Protection Laws;

9.4.3. MS Consulting Partners is entitled to transfer, and the Buyer are entitled to process all Shared Personal Data for the Permitted Purpose in accordance with all Data Protection Laws, including that Data Subjects have each given Consents, including where necessary explicit Consents and that the transfer to (and processing in) all countries outside the United Kingdom by each Party in accordance with the Permitted Purpose comply with Data Protection Laws;

9.4.4. the Shared Personal Data is transferred to (and received by) the Buyer and MS Consulting Partners in a secure manner using appropriate technical and organisational security measures that comply with the obligations of each Party under Data Protection Laws;

9.4.5. it shall immediately notify the Buyer if it becomes aware of any change or circumstance which will, may or is alleged to impact the lawfulness of any processing of the Shared Personal Data by the Buyer or the Consultancy (including if a Data Subject withdraws any necessary Consent or requests their Shared Personal Data is no longer processed or is erased or if any of the Shared Personal Data is not accurate or up-to-date), together with full details of the circumstances and (immediately once available) revised and corrected data;

9.4.6. it shall not by any act or omission cause the Buyer or the Consultancy Personnel (or any other person) to be in breach of any Data Protection Laws;

9.4.7. it shall keep copies of all notices, Consents or other records and information necessary to demonstrate its compliance with this clause 9; and

9.4.8. it shall promptly (and in any event within 2 Business Days) on request from time to time provide the Buyer with copies of all notices, Consents and other records and information referred to in clause 9.4.7.

9.5. Subject to the remainder of this clause 9, as between the Parties, responsibility for compliance with and responding to:

9.5.1. any Data Subject Request;

9.5.2. any Complaint;

9.5.3. each Party's respective obligations in respect of any Personal Data Breach (including notification of the Data Protection Supervisory Authority and/or Data Subject(s)) impacting or relating to any Shared Personal Data in the possession or control of MS Consulting Partners (or any third party with whom it has shared such data) falls on MS Consulting Partners; and

9.5.4. each Party's respective obligations in respect of any other obligation under Data Protection Laws (including any obligation to notify the Data Protection Supervisory Authority and/or Data Subject(s) of any other Personal Data Breach) falls on each Party subject to such obligation(s) under the Data Protection Laws.

9.6. Each Party shall promptly co-operate with and provide reasonable assistance, information and records to the other to assist each Party with their respective compliance with Data Protection Laws and in relation to all Complaints and Data Subject Requests.

9.7. Each Party (Indemnifying Party) shall indemnify and keep indemnified the Parties against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by the Indemnifying Party of its obligations under this clause 9.7.

9.8. MS Consulting Partners shall indemnify and keep indemnified the Buyer against all amounts paid or payable by the Buyer to a third party which would not have been paid or payable if MS Consulting Partners's breach of this clause 9 had not occurred.

9.9. Any breach by MS Consulting Partners of any of its obligations under this clause shall be regarded as being material for the purposes of these Terms of Business.

9.10. Except as expressly stated in this clause 9, each Party shall pay its own costs and expenses incurred in connection with the performance of this clause 9.

9.11. The provisions of this clause 9 shall survive termination or expiry of these Terms of Business and continue indefinitely.

10 . C O N F I D E N T I A L I T Y

10.1. **"Confidential Information"** means information (whether or not recorded in documentary form, or stored on any magnetic or optical disk or memory) relating to the business, products, affairs and finances of the Buyer for the time being confidential to the Buyer and trade secrets including, without limitation, technical data and know-how relating to the business of the Buyer or any of its or their business contacts.

10.2. MS Consulting Partners shall procure that the Consultancy Personnel shall keep all Confidential Information secret and confidential and not to disclose or use the same, save for in accordance with the provision of the Services.

10.3. All Confidential Information given by the Buyer to MS Consulting Partners, or otherwise obtained or developed by MS Consulting Partners relating to the Buyer, shall be kept secret and confidential by MS Consulting Partners throughout the Term and following its termination or expiry and shall not be used or disclosed other than for the purposes of the proper performance of these Terms of Business or with the prior written consent of the Buyer.

10.4. The obligations of confidentiality in this clause 10 shall not extend to any matter which MS Consulting Partners or the Buyer can show:

10.4.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under these Terms of Business;

10.4.2 was independently disclosed to it by a third party entitled to disclose the same; or

10.4.3 is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

11 . I N T E L L E C T U A L P R O P E R T Y R I G H T S

MS Consulting Partners warrants to the Buyer that all existing and future Intellectual Property Rights in any works or inventions that the Consultancy Personnel may create during the course of the Terms of Business shall be assigned to the Buyer and that it will obtain on request a written irrevocable waiver of all the Consultancy Personnel statutory moral rights in any such works, to the fullest extent permissible by law.

12 . T E R M I N A T I O N

12.1. The Buyer may, without prejudice to its other rights or remedies, terminate the Engagement with immediate effect by written notice to MS Consulting Partners if one or more of the following events occurs:

12.1.1. MS Consulting Partners commits a material breach of these Terms of Business which is incapable of remedy or is capable of remedy but has not been remedied within thirty (30) days of receipt of a written notice specifying both the material breach and the Buyer's intention to terminate these Terms of Business if the material breach is not remedied;

12.1.2. MS Consulting Partners:

12.1.2.1 enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them; or

12.1.2.2 passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction); or

12.1.2.3 has a winding-up order or bankruptcy order made against it; or

12.1.2.4 has appointed to it an administrator or administrative receiver.

12.2. MS Consulting Partners may terminate the Engagement upon giving written notice to the Buyer if:

12.2.1 the Buyer is in wilful or persistent breach of its obligations under these Terms of Business and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from MS Consulting Partners to do so; or

12.2.2 the Buyer fails to pay any amount which is due to MS Consulting Partners in full and on the date that the payment falls due; or

12.2.3 the Buyer is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or

12.2.4 an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Buyer; or

12.2.5 an order is made for the winding up of the Buyer, or where the Buyer passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under these Terms of Business).

12.3. Either party may terminate the Engagement by providing a minimum of five work days' notice or such shorter period as may be agreed between the parties.

13 . C O N S E Q U E N C E S O F T E R M I N A T I O N

13.1. Termination or expiry of the Engagement, however caused, shall be without prejudice to any obligations or rights of either of the parties which may have accrued before termination or expiry and shall not affect any provision of these Terms of Business which is expressly or by implication intended to come into effect on, or to continue in effect after, such termination or expiry.

13.2. Upon the termination or expiry of the Engagement:

13.2.1. each party shall promptly return any property of the other which it has in its possession or control;

13.2.2. MS Consulting Partners shall, for no charge, co-operate with any transfer of the provision of the Services from MS Consulting Partners to a third party.

14 . F O R C E M A J E U R E

Neither the Buyer nor MS Consulting Partners shall be liable for any breaches of its obligations under these Terms of Business resulting from causes beyond its reasonable control including but not limited to Acts of God, enemy, fire, flood, explosion or other catastrophe.

15 . E N T I R E T E R M S O F B U S I N E S S

15.1. These Terms of Business together with the G-Cloud Framework Agreement, G-Cloud Call Off Terms and G-Cloud Order Form constitute the entire understanding between the parties concerning the subject matter hereof.

15.2. Each of the parties acknowledges and agrees that in entering into these Terms of Business, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in these Terms of Business. The only remedy available to any party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of these Terms of Business.

15.3. If any of the provisions of these Terms of Business are found to be in conflict with the G-Cloud Order Form, G-Cloud Framework Agreement or G-Cloud Call Off Terms, such provision or part of it shall be severed from the remaining provisions, which shall continue to be valid.

15.4. Nothing in this clause 15 shall operate to exclude any liability for fraud.

16 . M I S C E L L A N E O U S

16.1. MS Consulting Partners shall not assign, transfer or otherwise deal with any of its rights or obligations under these Terms of Business or sub-contract the performance of any of its obligations under these Terms of Business without the prior written consent of the Buyer, such consent not to be unreasonably withheld or delayed, save that MS Consulting Partners may engage any of the Consultancy Personnel from third party organisations.

16.2. No variation or alteration of these terms shall be valid unless approved by MS Consulting Partners and the Buyer in writing except where changes to the Services are necessary to comply with applicable safety and other statutory requirements, in which case MS Consulting Partners may make such necessary changes without prior notification to the Buyer.

16.3. Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at its registered office for the time being. Any such notice shall be deemed served when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

17 . R I G H T S O F T H I R D P A R T I E S

The Contracts (Rights of Third Parties) Act 1999 shall not apply to any work conducted under these Terms of Business and no person other than the Buyer and MS Consulting Partners shall have any rights under it. These Terms of Business may be varied, amended or modified or this agreement may be suspended, cancelled or terminated by agreement in writing between the parties or this agreement may be rescinded, in each case, without the consent of any third party.

18 . L A W A N D J U R I S D I C T I O N

18.1. These Terms of Business and any dispute or claim arising out of or in connection with any Engagement under them shall be governed by and construed in accordance with the law of England and Wales.

18.2. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with these Terms of Business.