Terms and Conditions - G Cloud 15

Alert Cascade

Critical Communication Suite

The following Terms and Conditions apply to each Call-Off Contract issued under the G-Cloud Framework Agreement. The Term and Conditions (this "**Agreement**") are between Alert Cascade Limited (the "**Provider**"), incorporated and registered in England and Wales under company number 09502529 whose registered office is at Allia Future Business Centre, London Road, Peterborough, PE2 8AN, and the entity named in the Call-Off Contract (the "**Customer**"), each a "**Party**" and together the "**Parties**". This Agreement is effective as of the date of signing of the Call-Off Contract.

1. Definitions

"Contacts"	means message receive and reply to alerts send via the Services, who may have access to the Services to manage their own data, but have no other access to the Services;
"Customer Data"	means all data processed by the Provider in the Services or otherwise provided by the Customer to the Provider;
"Customisation"	means bespoke development work carried out by the Provider;
"Documents"	means the recorded webinars, articles, and screenshots, contained within the Provider's online Help and Support Centre, support ticket responses, and the Provider's release notes;
"Due Date"	means 30 days after the date of the invoice, and is the date by which the Customer must make payment to the Provider for any valid invoice;
"Intellectual Property Rights"	means all copyrights, patents, database rights, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secret, know how, rights to confidence and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all rights to renew the same;
"Message Credits"	means the units of credit purchased, ordered, and/or used by the Customer in relation to the Services;
"Multi Agency Account"	means a subscription plan specifically for organisations who need to send alerts to their own staff and multiple external organisations via the Services;
"Outages"	means an instance of unscheduled downtime;
"Primary Agency"	means the lead agency in a Multi Agency Account, who is responsible for procuring the Services;
"Recipient Agencies"	means an agency in a Multi Agency Account whose staff are Contacts that receive alerts from the Primary Agency, and whose Users have limited access to the Services allowing them to maintain only their own Contacts;
"Sender Agencies"	means an agency in a Multi Agency Account whose users have limited access to the Services allowing them to maintain their own Contacts and send alerts to their own Contacts;
"Services"	means the set-up, hosting, and ongoing management of the Software as a Service subscription services as set out in the Call-Off Contract;

"SMS"	means Short Messaging Service, commonly known as texting or text messaging;
"Subscription Fee"	means the fees payable by the Customer to the Provider annually in advance, as set out in the Call-Off Contract;
"Term"	means the Initial Term together with any Renewal Term;
"Users"	means people who can access the Services and carry out data maintenance on behalf of Contacts, account management, and/or message sending activities.

2. Use of the Services

2.1. The Provider shall grant the Customer non-exclusive use of the Services subject to this Agreement and the Call-Off Contract. The Provider shall ensure that the Service shall automatically generate login credentials for the Customer's Users, and shall configure the Services to provide the modules subscribed to within the Call-Off Contract.

2.2. The Customer will attend initial set up and onboarding training at mutually agreeable times within the 30 days of the date of signing unless otherwise expressly provided in the Call-Off Contract.

2.3. Access granted by the Provider to the Customer is subject to Users being staff of the Customer, their affiliates, or an organisation expressly authorised by the Customer to access the Services on their behalf in the relevant Schedule.

2.4. The Customer must not sub-license its rights to access and use the Services and must not permit any unauthorised person to access or use the Services.

2.5. The Customer must not make any alterations to the Service, except as permitted by the Documents.

2.6. The Customer must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.

2.7. For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code, and source code) of the Services at any time.

3. Additional Purchases

3.1. The Customer may from time to time during the Term purchase additional Services, Contact licenses, Message Credits, Sender Agencies, or Recipient Agencies, subject to mutual written agreement of the Parties.

3.2. If such purchases are made part way through the Term, such fees shall be pro-rated from the date of activation by the Provider for the remainder of the Term.

4. Customisations

4.1. The Parties may agree that the Provider shall design, develop, and implement a Customisation or Customisations in accordance with a specification agreed in writing between the Parties.

4.2. All Intellectual Property Rights in the Customisations shall, as between the Parties, be the exclusive property of the Provider.

4.3. From the time and date when a Customisation is first made available by the Provider to the Customer, the Customisation shall form part of the Services, and accordingly from that time and date the Customer's rights to use the Customisation shall be governed by this Agreement.

5. Integrations

5.1. The Services may integrate with third party services with whom the Customer has a contractual relationship, subject to the mutual written agreement of the Parties.

5.2. The Provider may remove, suspend, or limit any third-party integration at any time where they have reasonable cause to believe that the third-party services do not meet industry standard information security requirements. Where reasonably practicable, the Provider will provide the Customer with reasonable notice before doing so, and in any event will provide the Customer with written notice of the removal, suspension, or limitation within 8 hours of implementation.

5.3. The Customer acknowledges that the Provider has no control over, or responsibility for, any disclosure, modification, deletion, or other use of Customer Data resulting from any integration with third party services.

5.4. The Provider shall not be liable to the Customer in respect of any loss or damage that may be caused by any third-party services or any provider of third-party services.

6. Duration

6.1. The Term of this Agreement shall begin on the commencement date of the Call-Off Contract and shall, subject to the provisions for termination set out in this Agreement, continue for the duration as set forth in the Call-Off Contract (the "Initial Term"), and any mutually agreed extension period (the "Renewal Term").

7. Fees

7.1. The Provider shall invoice the Customer annually in advance for the Services.

7.2. If the Customer exceeds any Contact licenses, Message Credits, Sender Agencies, or Recipient Agencies, or other contractual limitations on usage as specified in the Call-Off Contract, the Provider may invoice the Customer for the overage.

7.3. The Provider shall invoice the Customer for any fees due under clause 7.2 within 14 days of the additional element being provided to the Customer by the Provider.

7.4. All invoices are payable within 30 days.

7.5. If the Customer does not pay any amount properly due to the Provider, the Provider may charge the Customer interest on the overdue amount at the rate permitted by the Late Payment of Commercial Debts (Interest) Act 1998, irrespective of whether such Act applies to this Agreement.

7.6. All sums due under the Call-Off Contract are exclusive of VAT. Validly submitted invoices from the Provider to the Customer shall be subject to VAT unless the Customer provides a valid tax exemption certificate.

8. Outages

8.1. The Provider shall provide initial notice to the Customer by telephone, email, or comparable notification service within 30 minutes of the Provider becoming aware of an event that has caused an Outage. The Provider will provide status reports at 30-minute intervals until either the Outage has been resolved, or the Parties have mutually agreed that continued notification is not required.

9. Warranties and Disclaimers

9.1. The Provider warrants and undertakes to the Customer that the Services will confirm in all material respects with the Call-Off Contract and the terms of this Agreement and will incorporate security features reflecting the requirements of good industry practice.

9.2. The Provider warrants and undertakes to the Customer that the Provider has all requisite registrations under United Kingdom data protection legislation and will maintain such registrations through the Term and will comply with the provisions of all data protection or privacy laws and regulations application to the Call-Off Contract and this Agreement.

9.3. The foregoing represents the only warranties made by the Provider, and the Provider expressly disclaims all other warranties of any kind, whether express, implied, statutory, or otherwise, to the maximum extent permitted by applicable law.

9.4. The Provider does not and cannot control the flow of data to or from its network and other portions of the internet. Such flow depends on the performance of internet services provided or controlled by third parties. At times, acts, or omissions of such third parties can impair or disrupt connections to the internet or portions thereof. The Provider will use commercially reasonable efforts to remedy and avoid such events. However, the Provider cannot guarantee that such events will not occur and accordingly, the Provider disclaims all liability from or related to such events.

9.5. The Provider does not and cannot control delay, unavailability of, or interruption to third party telecommunication networks, including but not limited to failure of network operators to deliver calls, emails, or SMS messages to or from the Services in or to any location, local failures of network operators to deliver calls, emails, or SMS messages to handsets or devices, delays on the internet causing misoperation of the Services. The Provider will use commercially reasonable efforts to remedy and avoid such events. However, the Provider cannot guarantee that such events will not occur and accordingly, the Provider disclaims all liability from or related to such events.

9.6. The Customer warrants and undertakes to the Provider that they will provide all such assistance as the Provider may reasonably require to perform its obligations under the Call-Off Contract and this Agreement in a timely and efficient manner.

9.7. The Customer warrants and undertakes to the Provider that it will use the Service only for lawful purposes and in accordance with the Call-Off Contract and this Agreement, and that they shall comply with all applicable data protection and privacy and all other applicable laws and regulations in connection with the Customer's use of the Services.

9.8. The Customer acknowledges that the Services may not be wholly free from defects, errors, or bugs, and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Services will be wholly free from defects, errors, or bugs. The Provider shall, where possible, remedy any bugs or defects within 30 days of discovery and always subject to a reasonable requirement of keeping any systems up to date.

9.9. The Customer understands, acknowledges, and agrees that the process of transmitting SMS messages involves multiple third-party networks that participate in the transmission process from or to the Services, and as a means of sending messages involves a reasonably likely possibility from time-to-time of delayed, undelivered, or incomplete messages.

9.10. The Customer understands, acknowledges, and agrees that there are third party restrictions on sending and receiving SMS due to each country having its own telephony network and restrictions which may include, but are not limited to, blocking of messages, content filtering, time and day delivery restrictions, and sender identity alterations.

9.11. The Customer understands, acknowledges, and agrees that SMS is not suitable to be used as the sole means of message communication in an emergency or time critical situation.

9.12. The Customer acknowledges that they are solely liable for the accuracy, completeness and appropriateness of the content transmitted by the Customer.

9.13. The Customer acknowledges that the Provider is not liable for any changes to Customer Data or errors in system configuration caused by the Customer's actions at the Service's administration website.

9.14. In the event of any breach of the foregoing representations or warranties, in addition to any other remedies available at law or in equity, the Provider will have the right to suspend any Services if deemed reasonably necessary by the Provider to protect the proper interests of the Provider or its other customers. The Provider shall use their best efforts to provide the Customer with prior notice of any such suspension. If practicable, the Provider at its sole discretion may allow the Customer to cure such breach, and in such case once the Customer has cured the breach the Provider will promptly restore the Services.

10. Limitation of Liability

10.1. All warranties, conditions, and other terms, implied by statute or common law, are to the fullest extent permissible by law excluded from this Agreement.

10.2. The Provider does not exclude liability for death or personal injury caused by negligence of the Provider, its officers, employees, contractors or agents, fraud or fraudulent misrepresentation, or any other liability which cannot be excluded by law.

10.3. Subject to clause 10.2, neither Party shall be liable for any indirect or consequential damages.

10.4. For all other losses, the total liability of the Provider, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or the Call-Off Contract, shall in no circumstances exceed in aggregate a sum equal to 200% of the Subscription Fee payable by the Customer during the contract year during which the liability arises.

10.5. The Provider shall not be liable for any loss or damage of whatsoever nature suffered by the Customer arising out of or in connection with any act, omission, misrepresentation, or error made by or on behalf of the Customer or arising from any cause beyond the Provider's reasonable control.

11. Intellectual Property Rights

11.1. Without prejudice to the Customer's rights in its own materials, the Parties hereby agree that the Customer shall not acquire any Intellectual Property Rights whatsoever in respect of the software, documentation, and other materials used by the Provider in the provision of the Services.

11.2. The Customer hereby grants the Provider a non-exclusive, royalty-free worldwide license during the Term to use, copy, reproduce, and manipulate data provided by the Customer for the purpose of providing the Services, and a non-exclusive, royalty free, worldwide license during the Term to display the Customer's trade marks for the purposes of providing the Services.

11.3. The Parties shall defend, indemnify, and hold harmless the other Party against claims, actions, proceedings, losses, damages, expenses, and costs (including court costs and reasonable legal fees) arising out of the Customer's use of the Services provided that the Parties provide each other with prompt notice of any such claim, and all reasonable co-operation in defence and settlement of such claim.

11.4. In no event shall the Provider be liable to the Customer to the extent that the alleged infringement is based on a modification of the Services by anyone other than the Provider, the Customer's use of the Services in a manner contrary to the written instructions given to the Customer by the Provider, or the Customer's use of the Services after notice of the alleged or actual infringement from the Provider or any appropriate authority.

12. Termination

12.1. Either Party may terminate this Agreement if a Party commits a material breach of any term of this Agreement, and which, in the case of the breach being capable of being remedies, shall not have been remedied within 30 days of a written request by the other Party to remedy the same.

12.2. The Provider may terminate this Agreement if the Customer fails to pay any monies within 30 days of the Due Date of a valid invoice. If this Agreement is terminated by the Provider due to nonpayment, the Customer shall pay the Provider a sum by way of agreed and liquidated damages being equal to 50% for each month or part month between the date of such termination and the earliest date on which this Agreement could have expired.

12.3. The Provider may at their sole discretion suspend the Customer's access to Service upon written notice to the Customer in lieu of terminating this Agreement for nonpayment.

13. Customer Data

13.1. The Customer shall retain all ownership rights in all contact data and other electronic data that the Customer transmits to or otherwise uses in the Services. The Customer represents that it has the right to authorise, and hereby does authorise, the Provider to store and process Customer Data subject to the terms of this Agreement.

14. Force Majeure

14.1. Neither Party shall be responsible for any breach of its obligations under this Agreement resulting from circumstances beyond the reasonable control of the Party in default including but not limited to acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, regional technology interruptions, or denial of service attacks.

15. Marketing

15.1. The Customer consents to the Provider referencing the Customer's name in the Provider's marketing materials.

16. General

16.1. This Agreement, including the Call-Off Contract constitutes the entire agreement between the Parties and supersedes all other agreements and understandings between the Parties with respect to the subject matter hereof, whether written or oral. This Agreement shall not be modified except as is mutually agreed in writing and signed by both Parties.