

G-Cloud 15

Terms and Conditions

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1. The Parties agree that this Call-Off Agreement (“Contract”) shall be deemed to apply to any services begun prior to execution and, upon execution, this Contract shall supersede any letters of intent or instructions to proceed issued in respect thereof, whether given orally or in writing.
 2. Supplier warrants that:
 - 2.1. it will exercise reasonable skill and care in carrying out the G-Cloud Services; and
 - 2.2. it will use sufficiently experienced and qualified personnel
 - 2.3. The G-Cloud Services offered are outside IR35.
 3. Excluding any third party proprietary software, where any software, firmware or microcode forming all or part of any items (without limitation) specified in the Call-Off Agreement for delivery to the Buyer (each such item a “Deliverable”) (together the “Software”) is to be provided pursuant to this Contract, Supplier will deliver the Software and otherwise perform the G-Cloud Services, such that, at the time of delivery of the Software:
 - 3.1. the Software conforms in all material respects with the specification set out in the GCloud Services; and
 - 3.2. any associated documentation, which Supplier agrees in the Contract to provide (including user guides or operating manuals) is written in sufficient detail to enable reasonably competent and trained personnel of the Buyer to understand how the Software operates.
 4. Where any tangible physical goods (including hardware) forming all or part of a Deliverable as well as any media upon which any Deliverable (including software, firmware, microcode) is embedded, delivered on or provided with (together the “Equipment”) is to be provided pursuant to this Contract, Supplier warrants that, at the time of delivery of the Equipment, the Equipment conforms in all material respects with the G-Cloud Services. This warranty shall not apply to any third party proprietary Equipment to be procured by Supplier on behalf of the Buyer pursuant to this Contract. In the case of such third party proprietary Equipment, Supplier shall use its reasonable endeavours to pass on to the Buyer the benefit of any warranty offered by the third party proprietor.
 5. The G-Cloud Services shall not include support or maintenance of any Deliverables, unless such support or maintenance is expressly included. Reasonable efforts will be made by Supplier to meet any time scales set for the performance of the G-Cloud Services. Buyer hereby agrees that the Supplier may engage individuals or organisations on a Sub-Contract or consultancy basis, as Supplier sees fit to assist Supplier in the provision of G-Cloud Services and that such agreement as set out herein shall constitute Buyer’s prior written approval pursuant to Clause CO-16.1.
 6. Notwithstanding any other term of this Contract, the Parties agree that the performance of
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the G-Cloud Services is conditional upon the Buyer's fulfilment of its obligations under this Contract, including but not limited to those set out in section 7 herein. The Buyer acknowledges that any delay or failure by it to provide the same may result in the Supplier being unable to meet any agreed timetable or budget. Supplier shall not be liable for any delays or consequences resulting from non-performance of the G-Cloud Services where the obligations of the Buyer have not been satisfied in accordance herewith, and the Buyer shall compensate the Supplier for any such time or budget impact.

7. The Buyer shall:
 - 7.1. Provide to Supplier at no charge and in a timely manner, all such documents information, materials, facilities, support, services and co-operation relating to the G-Cloud Services including (without limitation) computer programs, data, reports and specifications and other information (together "Buyer Material") as Supplier may reasonably require for the proper performance of the G-Cloud Services and within sufficient time to enable Supplier to perform those G-Cloud Services and the Buyer shall ensure that such are accurate and complete, and Supplier shall be entitled to rely upon such as being accurate and complete without seeking to verify or check it.
 - 7.2. Provide Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to any of the Buyer's premises, office accommodation, equipment, systems, networks, software, data and other facilities as reasonably required by Supplier to facilitate delivery of the G-Cloud services
 - 7.3. Ensure that it does not impede, or seek to control, the Supplier in the delivery of the G-Cloud services such that the G-Cloud services such the G-Cloud Services are inside IR35.
 8. The Buyer warrants that any computer and operating systems and any hardware or software and any information and materials provided by or on behalf of the Buyer to the Supplier or any sub-contractor, agent or any other third party on behalf of the Supplier for use in the performance of the G-Cloud Services, are the property of the Buyer or are legally licensed to the Buyer, and that the Supplier shall have full and proper authority to use same to the extent necessary to perform the G-Cloud Services.
 9. Where a Deliverable materially meets its agreed acceptance criteria the Buyer shall accept such Deliverable. If no acceptance criteria has been agreed, the Buyer shall accept the Deliverable on delivery. The Deliverables shall be deemed accepted where no reasonable objection (which shall be in writing and accompanied by supporting reasons setting out the nature of the non-compliance with the specification or G-Cloud Services as the case may be) is made in respect of such Deliverables within 7 days of delivery (or such other period as may be agreed in writing by the Parties). Should the Deliverables be rejected by the Buyer, the Supplier shall use reasonable endeavours to remedy the material defects in the Deliverables, and resubmit the Deliverables in their final form to the Buyer when they shall be deemed to have been accepted by the Buyer. Risk in a Deliverable shall pass to the Buyer on acceptance and thereafter the Supplier shall have no further liability in relation thereto. Notwithstanding any other provision of this Contract, acceptance of the Deliverables shall be deemed upon any use of those Deliverables in a live or operational environment or manner otherwise consistent with acceptance of such Deliverables.
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10. The Buyer shall pay Supplier for the G-Cloud Services in the amount or at the rates set out in the Order Form together with all reasonable travel and subsistence expenses and any other direct, non-labour charges as may be applicable. Supplier will invoice the Buyer monthly in arrears. All sums payable by the Buyer to Supplier shall be paid, without discount, set-off, counterclaim or other deduction within 30 days from the date of Supplier's invoice. Applicable taxes (including value added tax) shall be payable additionally by the Buyer at the prescribed rate at the time of invoicing.
 11. Where the Buyer's accounting system requires the issuance of purchase orders or other documents, the Buyer shall cause a purchase order (or other document) referencing this Contract to be issued within 7 days of execution of the Contract. However, and for the avoidance of doubt, this Contract shall be sufficient evidence of a binding agreement and the Buyer confirms that same may be relied upon by Supplier in seeking payment notwithstanding the absence of a purchase order from the Buyer.
 12. The Buyer shall notify Supplier in writing within 7 days of receipt of an invoice if the Buyer considers all or part of such invoice incorrect or invalid for any reason and the reasons for disputing payment failing which the Buyer will raise no objection to any such invoice and will make full payment in accordance with it.
 13. Each Party shall retain all intellectual property rights in its pre-existing and proprietary materials including, but not limited, to software, documentation, tool-sets, and data, of whatever nature and in whatever media owned, developed or controlled by it together with any amendments to such intellectual property rights including those which may arise as a result of the performance of the G-Cloud Services ("Background IPR"). Each Party grants to the other a non-exclusive, non-transferable and irrevocable licence to use its Background IPR to the extent required for providing/receiving the G-Cloud Services.
 14. Subject to Clause 13 and payment of the Charges, the Supplier hereby assigns to the Buyer all intellectual property rights embodied in the Deliverables and/or arising as a result of the performance of the Supplier's obligations under this Contract, but which shall not include the Supplier's Background IPR.
 15. Notwithstanding any other provision of the Contract, Supplier shall not be prevented or restricted from:
 - 15.1. using any skills and experience similar to those provided hereunder elsewhere in the course of its business operations; or
 - 15.2. using any know-how gained in performing the G-Cloud Services, provided that Supplier's use of such know-how does not breach Supplier's obligations of confidence to the Buyer hereunder or any intellectual property rights of the Buyer.
 16. Supplier agrees, for a period of 30 days effective from Deliverable acceptance, to resolve, free of charge and within a reasonable period, any material non-conformance by any Software or Equipment with the warranties stated in sections 4 herein as the case may be (a "Defect") found in the Software or Equipment provided that:
 - 16.1. the Software or Equipment (or part thereof) has not been subject to any modification, repair, adjustment or enhancement by the Buyer, or any third party, or combination with any other software or equipment, other than with Supplier's
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written consent (not to be unreasonably withheld or delayed);

- 16.2. the Software or Equipment is being used in accordance with any documentation (including user guides) by trained personnel and for the purposes for which it was designed or specified;
 - 16.3. the Defect is not attributable to any failure by the Buyer to implement recommendations in respect of, or solutions to Defects previously advised by Supplier;
 - 16.4. unless otherwise specified in this Contract, this warranty shall not apply to any third party proprietary Equipment procured by Supplier on behalf of the Buyer pursuant to this Contract.
17. The Buyer's exclusive remedy and Supplier's entire liability for breach of any of the warranties in sections 2, 4 and 16 herein shall be to remedy as set out herein or to re-perform the G-Cloud Services, or if a remedy in accordance with the provisions herein, or if reperformance is impossible, in accordance with the provisions of Contract Clause CO-11. Any claim for breach of any warranty above must be made in writing and notified to Supplier within 90 days of performance of the G-Cloud Services in issue.
18. Supplier shall be under no liability to the Buyer whatsoever for any loss, damage, costs, expenses, delay, consequences, or claims for compensation to the extent that any such losses, damages, costs, expenses, delay, consequences, or claims arise from:
- 18.1. any negligence by the Buyer, its agents, employees, Buyers or consultants, or
 - 18.2. any failure by the Buyer, its agents, employees, Buyers or consultants to meet any dependencies upon which the performance of the G-Cloud Services by Supplier is premised; or
 - 18.3. any failure by the Buyer to comply with its obligations under this Contract; or
 - 18.4. any misuse by the Buyer, its agents, employees, Buyers or consultants of any Deliverables.
19. Notwithstanding any other term of the Contract, in the event that any obligation of the Supplier specified in the Contract is delayed, or affected, as a result of the events set out in sections 18.1 to 18.4 herein ("Buyer Cause"), then both parties shall use reasonable endeavours to mitigate the impact of the Buyer Cause to the performance of the Contract and the Buyer shall reimburse the costs the Supplier incurs arising from such Buyer Cause.
20. Neither the Supplier nor any Sub-Contractor shall have any liability for any employees, staff, contractors, consultants, agents, officers and workers of the Buyer ("Buyer Personnel") or former Buyer Personnel or any other person whatsoever on the commencement of the G-Cloud Services or this Contract or during their continuance, and the Buyer shall indemnify the Supplier and any Subcontractor against all losses, costs, awards, liabilities, expenses, claims or demands made or brought against the Supplier by any Buyer Personnel or former Buyer Personnel or any other person whatsoever or any claim submitted on their behalf by a trade union or employee representative or otherwise on the grounds that their employment and/or any liabilities in connection with that employment or its termination or cessation
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(including as a result of its termination by the Supplier or a Subcontractor) have, on commencement of the G-Cloud Services or this Contract or at any time during their continuance, transferred from the Buyer to the Supplier or a Subcontractor pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 or otherwise.

21. All conditions or warranties, not expressly set out within the Contract, whether written or oral, express or implied by statute, at common law or otherwise including any warranties or conditions of satisfaction, quality or fitness for purpose are excluded to the fullest extent permitted by law.
22. The Buyer may terminate without cause on 30 Working Days written notice. The Supplier may terminate without cause on 45 Working Days written notice.