

Terms and conditions

GCloud 15

Supply of Services

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Atomic Multimedia Consultants Limited

Terms & Conditions for the Supply of Services

1. Basis of Contract

1.1 The services are provided under the Crown Commercial Service G Cloud 15 Framework Agreement and are governed by a Call Off Contract entered into between the Buyer and Atomic.

1.2 A contract is formed when the Buyer places a valid Call Off Order under the Framework and Atomic confirms acceptance in writing. The Call Off Contract consists of:

- (a) the Framework Agreement
- (b) the Call Off Order
- (c) these terms and conditions
- (d) any agreed service description and pricing documentation

1.3 If there is any conflict between the documents forming the Call Off Contract, the order of precedence set out in the Framework Agreement shall apply.

1.4 Any quotations or estimates provided by Atomic are indicative only and do not constitute a contractual offer. Pricing becomes binding only when agreed as part of a Call Off Order under the Framework.

2. Supply of Services

2.1 Atomic shall provide the Services in all material respects in accordance with the applicable service description, Statement of Work, Service Levels and any other documents agreed as part of the Call Off Contract.

2.2 Atomic shall use reasonable endeavours to meet any delivery or performance dates agreed in writing. Any such dates are indicative and not guaranteed unless expressly stated otherwise in the Call Off Contract.

2.3 Atomic may propose changes to specifications or service descriptions where required to comply with applicable law or regulatory requirements. Any such change must be agreed in writing by the Buyer before implementation.

2.4 Atomic shall use industry standard tools and practices to prevent the introduction of viruses or malicious code into Deliverables provided under the Call Off Contract. Atomic is not responsible for issues arising from the Buyer's systems or third party systems not under Atomic's control.

2.5 Atomic is not responsible for ensuring compatibility with operating systems browsers or environments not specified in the Call Off Contract. Any additional compatibility requirements shall be treated as a change and managed in accordance with the agreed change control process.

2.6 Atomic warrants that the Services shall be provided with reasonable care and skill and that to the best of its knowledge the Deliverables shall not infringe any UK intellectual property rights of a third party.

2.7 Where software Deliverables are provided Atomic warrants that for thirty days following delivery the Deliverables shall materially conform to the agreed specification or acceptance criteria. Where a Deliverable does not meet this warranty Atomic shall use reasonable endeavours to correct the issue within a reasonable period. This shall be the Buyer's sole remedy for breach of this warranty.

3. Buyer Obligations

3.1 The Buyer shall:

- (a) ensure that the Call Off Order service description and any other agreed documentation are complete and accurate in all material respects
- (b) cooperate reasonably with Atomic in all matters relating to the Services
- (c) provide Atomic and its authorised personnel with reasonable access to systems information and materials required to deliver the Services
- (d) ensure that any data provided for testing purposes does not include personal data unless lawfully permitted and agreed in advance
- (e) provide information and materials reasonably required for the delivery of the Services and ensure they are accurate in all material respects
- (f) comply with any additional responsibilities set out in the Call Off Contract

3.2 Where Atomic's performance of the Services is materially prevented or delayed due to the Buyer's failure to meet its obligations under the Call Off Contract:

- (a) Atomic may suspend delivery of the affected Services until the issue is resolved
- (b) Atomic shall not be responsible for delays or failures caused directly by the Buyer's actions or omissions
- (c) Atomic and the Buyer shall work together in good faith to agree any necessary adjustments to delivery timescales or scope

4. Charges and payment

4.1 Charges for the Services shall be as set out in the applicable pricing documentation published as part of the G-Cloud Framework and agreed in the Call Off Order. Charges are fixed for the duration of the Call Off Contract unless otherwise permitted under the Framework.

4.2 All Charges are exclusive of value added tax which shall be payable by the Buyer at the prevailing rate where applicable.

4.3 Atomic shall invoice the Buyer in accordance with the payment schedule set out in the Call Off Order or where no schedule is specified monthly in arrears for Services provided.

4.4 The Buyer shall pay valid and undisputed invoices within thirty days of receipt in accordance with the Call Off Contract.

4.5 Atomic may charge reasonable and pre-agreed expenses where expressly stated in the Call Off Order and pricing documentation. No additional expenses shall be charged without the Buyer's prior written approval.

4.6 Atomic shall not increase Charges during the term of the Call Off Contract except where expressly permitted under the Framework Agreement.

4.7 If the Buyer disputes an invoice it shall notify Atomic promptly and both parties shall work together in good faith to resolve the dispute. The Buyer shall pay any undisputed amounts in accordance with this clause.

4.8 Where payment is late Atomic may charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

5. Intellectual property rights

5.1 All intellectual property rights in Atomic's pre-existing materials, tools, software, code libraries and know-how used in the provision of the Services shall remain the property of Atomic or its licensors.

5.2 Subject to clause 5.1, all intellectual property rights in Deliverables created specifically for the Buyer as part of the Services shall be owned by Atomic unless otherwise stated in the Call Off Contract.

5.3 Atomic grants the Buyer a non-exclusive, royalty-free, perpetual licence to use the Deliverables for its internal business purposes and for the purposes permitted under the Call Off Contract.

5.4 The Buyer may not sub-licence, assign or transfer the Deliverables except as permitted under the Call Off Contract or where required by law.

5.5 Where Deliverables include third party software, libraries or content, the Buyer's use of those components shall be subject to the relevant third party licence terms. Atomic shall make those licence terms available where applicable.

5.6 The Buyer grants Atomic a non-exclusive, royalty-free licence to use any materials provided by the Buyer solely for the purpose of delivering the Services.

6. Change control

6.1 The Buyer may request changes to the Services or Deliverables by submitting a written change request in accordance with the Call Off Contract.

6.2 Atomic shall assess the requested change and where applicable provide details of any impact on Charges delivery timescales or service scope based on the published pricing and service descriptions.

6.3 A requested change shall only take effect once it has been agreed in writing by both parties and recorded as a variation to the Call Off Contract.

6.4 Any changes must be within the scope of the Services as described in the G-Cloud Framework. Changes that materially alter the nature of the Services may require a new Call Off Contract.

7. Contact with Atomic Personnel

7.1 The Buyer shall communicate with Atomic through the nominated account or service contacts identified in the Call Off Contract for matters relating to the Services.

7.2 Nothing in this agreement prevents the Buyer from employing or engaging any individual who is or was employed or engaged by Atomic provided that no improper inducement or confidential information is used.

7.3 The Buyer shall not seek to disrupt Atomic's delivery of the Services by attempting to interfere with Atomic's internal staffing arrangements.

8. Confidentiality

8.1 Each party shall keep confidential all information received from the other party that is marked as confidential or which by its nature should reasonably be considered confidential including information relating to business operations technology services pricing and intellectual property.

8.2 Each party may disclose the other party's confidential information:

- (a) to its employees officers representatives subcontractors or advisers who need to know such information for the purposes of performing obligations under the Call Off Contract provided that they are bound by confidentiality obligations no less restrictive than those set out in this clause
- (b) where disclosure is required by law regulation court order or any governmental or regulatory authority

8.3 Each party shall use the other party's confidential information solely for the purposes of fulfilling its obligations under the Call Off Contract and for no other purpose.

8.4 Nothing in this clause shall prevent the Buyer from complying with its obligations under the Freedom of Information Act 2000 or other applicable transparency requirements.

9. Limitation of liability

9.1 Nothing in the Call Off Contract limits or excludes liability for:

- (a) death or personal injury caused by negligence
- (b) fraud or fraudulent misrepresentation
- (c) any other liability which cannot lawfully be limited or excluded

9.2 Subject to clause 9.1 Atomic's total liability to the Buyer arising under or in connection with the Call Off Contract whether in contract tort including negligence breach of statutory duty or otherwise shall not exceed the total Charges paid or payable by the Buyer under the Call Off Contract in the twelve month period in which the claim arose.

9.3 Subject to clause 9.1 neither party shall be liable to the other for any indirect or consequential loss including loss of profit loss of business loss of goodwill or loss of anticipated savings arising under or in connection with the Call Off Contract.

9.4 Atomic shall not exclude or limit liability for breach of the warranties set out in this agreement except as expressly permitted by law.

9.5 This clause shall survive termination or expiry of the Call Off Contract.

10. Anti-bribery and anti-corruption

10.1 Each party shall comply with all applicable laws regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010.

10.2 Each party shall not engage in any activity practice or conduct which would constitute an offence under sections 1 2 or 6 of the Bribery Act 2010.

10.3 Each party shall maintain throughout the term of the Call Off Contract appropriate policies and procedures designed to ensure compliance with the Bribery Act 2010 and shall enforce them where appropriate.

10.4 Each party shall promptly notify the other party of any request or demand for any undue financial or other advantage received in connection with the performance of the Call Off Contract.

10.5 Each party shall ensure that any person associated with it who is involved in the performance of the Services complies with obligations equivalent to those set out in this clause.

11. Termination

11.1 The Buyer may terminate the Call Off Contract for convenience in whole or in part at any time by giving written notice in accordance with the Call Off Contract.

11.2 Either party may terminate the Call Off Contract with immediate effect by giving written notice to the other party if the other party:

- (a) commits a material breach of the Call Off Contract and fails to remedy that breach within a reasonable period after being notified in writing
- (b) becomes insolvent or enters administration liquidation or any arrangement with creditors other than for the purposes of a solvent restructuring

11.3 On termination or expiry of the Call Off Contract:

- (a) the Buyer shall pay Atomic for Services properly provided up to the date of termination
- (b) Atomic shall provide reasonable assistance to support an orderly transition or exit where required in accordance with the Call Off Contract

11.4 Termination shall not affect any rights or liabilities accrued prior to termination.

12. Consequences of termination

12.1 On termination or expiry of the Call Off Contract the Buyer shall pay Atomic for Services properly provided up to the effective date of termination or expiry in accordance with the Call Off Contract.

12.2 Termination or expiry of the Call Off Contract shall not affect any rights obligations or liabilities of either party which have accrued prior to termination or expiry.

12.3 Any provisions of the Call Off Contract which by their nature are intended to continue after termination or expiry shall remain in effect.

13. General

13.1 Interpretation

In these terms and conditions words such as including or include are illustrative only and do not limit the meaning of the preceding words. References to writing include email.

13.2 Force Majeure

Neither party shall be liable for failure or delay in performing its obligations under the Call Off Contract where such failure or delay results from events, circumstances or causes beyond its reasonable control.

13.3 Assignment and Subcontracting

Neither party may assign transfer or otherwise dispose of its rights or obligations under the Call Off Contract except as permitted by the Framework Agreement or with the prior written consent of the other party.

13.4 Entire Agreement

The Call Off Contract constitutes the entire agreement between the parties in relation to its subject matter and supersedes any prior agreements or understandings. Nothing in this clause shall limit or exclude liability for fraud.

13.5 Variation

No variation to the Call Off Contract shall be effective unless agreed in writing in accordance with the Framework Agreement.

13.6 Waiver

A failure or delay by either party to exercise any right shall not constitute a waiver of that or any other right.

13.7 Severance

If any provision of the Call Off Contract is found to be invalid or unenforceable the remaining provisions shall continue in full force and effect.

13.8 Notices

Any notices under the Call Off Contract shall be given in writing in accordance with the notice provisions set out in the Framework Agreement.

13.9 Third Party Rights

No third party shall have any rights under the Contracts Rights of Third Parties Act 1999 to enforce any term of the Call Off Contract.

13.10 Governing Law and Jurisdiction

The Call Off Contract shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.