Cloud 15

TERMS AND CONDITIONS

Applicability and Precedence

These Terms and Conditions apply to all Services provided by GovernTerms Ltd under the G-Cloud 15 Framework, unless expressly varied by a G-Cloud Call-Off Contract. In the event of any conflict or inconsistency between these Terms and Conditions and the G-Cloud Framework Agreement and/or any G-Cloud Call-Off Contract (including any applicable schedules), the G-Cloud Framework Agreement and the G-Cloud Call-Off Contract shall take precedence.

GovernTerms G Cloud Terms and Conditions

BETWEEN: 1. the Client; and 2. GovernTerms Ltd, a company incorporated in England with registration number 16956084 and registered office 52 Monkswood Hill, England, LS141DR (the "Supplier"). The above named shall collectively be known as "Parties", and each a "Party".

WHEREAS: (A) The Supplier supports contract governance and improvement activities through its online platform, GovernTerms (B) The Parties wish to enter into an arrangement with each other, for the provision of Services (defined below) by the Supplier to the Client, on the terms and conditions of this Agreement.

1. Definitions and Interpretation

1.1 In this Agreement (including the Recitals and the Schedules), except to the extent that the context otherwise requires, the following terms shall have the meanings set forth below:

"Business Day" means a day (other than a Saturday or Sunday) on which banks are generally open in England for the transaction of normal banking business.

"Confidential Information" means the trade secrets, confidential or sensitive information or knowledge and know-how including the confidential financial, trade, customer, product, transaction, system and processing information and data of the relevant Party.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, whether through the ownership of voting securities, by contract, or otherwise and derivative terms thereof (including "Controlling", "Controlled by" and "under common Control with") shall also bear such meaning as aforesaid. For the purpose of this definition, the holding of an interest of more than fifty (50) per cent of the equity share capital of the relevant corporation shall be deemed to be "Control" of the corporation.

"Deliverables" means any specific outputs expressly described as deliverables in a Project Schedule (for training materials, or reports). Deliverables do not include the Supplier's cloud software platform, underlying software, models, workflows, templates or updates**.**

"Event of Force Majeure" means Acts of God, explosions, war or threat of war, terrorism or threat of terrorism, actions of the armed forces or government agencies pursuant to war, terrorism or threats thereof, fire, flood, adverse weather conditions, labour disputes, strikes, lockouts or other industrial actions irrespective of where such events occur, shortage of materials or services, detention or holding of goods by any customs authorities or any national or international airworthiness authority, riots or civil commotion, sabotage, earthquakes and natural disasters, acts, omissions, restrictions, regulations, prohibitions or measures of any governmental, parliamentary or local authority;

"Fees" means the amounts payable by the Client to the Supplier pursuant to the Services, as set out in the relevant Project Schedule signed by the Parties.

"Group" in respect of any undertaking, means that undertaking, any holding company of such undertaking from time to time and any subsidiary of any of the foregoing from time to time and "member of its Group" shall be construed accordingly.

“Intellectual Property Rights” means patents, trademarks, service marks, rights in logos, rights in get-up, trade names, internet domain names, rights in designs, software, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, processes, rights in know-how and other intellectual property rights, in each case whether registered or unregistered, and all rights or forms of protection having equivalent or similar effect anywhere in the world and registered includes registrations and applications for registration.

“Background IP” means the Supplier’s pre-existing intellectual property and all improvements, updates, configurations, templates, workflows, models, algorithms, prompts and know-how used to provide the Service.

“Milestone” means, in respect of a Deliverable or Service, a date for delivery as set out in the relevant Project Schedule.

“Project Commencement Date” shall mean the date upon which a project shall commence, as set out in the relevant Project Schedule.

“Project Schedule” means a document which sets out specific (i) Services and Deliverables; (ii) Milestones (if any); and (iii) the applicable Fees, as agreed from time to time between the Parties. Project Schedule (also referred to as a G-Cloud Call-Off Order Form where applicable)

“Quote” means a written statement detailing the expected cost(s) to the Client for the specific Services or Deliverables as set out therein.

“Services” means the services to be supplied by the Supplier to the Client pursuant to this Agreement and each Project Schedule signed by the Parties.

“Specification” means the written technical description for the Deliverables as set out in the Project Schedule.

“Supplier Rights” means all Intellectual Property Rights accrued, vested in or controlled by the Supplier as at the Project Commencement Date, including for the avoidance of doubt the Intellectual Property Rights in any material licensed to the Supplier by a third party.

1.2 In this Agreement, unless the context otherwise requires:

(a) references to Recitals and Schedules are to be construed as references to the recitals and schedules to this Agreement and references to this Agreement include its Schedules.
(b) words importing the singular include the plural and vice versa, words importing a gender include every gender.
(c) references to a person shall be construed as including references to an individual, firm, issuer, corporation, unincorporated body of persons or any state or any agency thereof.
(d) any reference to a statutory provision shall include such provision and any regulations made in pursuance thereof as from time to time modified or re-enacted; and
(e) headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

1.3 Any Project Schedule which are expressed to be entered into pursuant to this Agreement and which are signed by the Parties shall be part of the Agreement.

1.4 As between this Agreement and any Project Schedule, this Agreement shall prevail in the event of any conflict, except where:

(a) any provision in a Project Schedule is expressly stated to vary or amend this Agreement (in which case the variation in a Project Schedule to this Agreement shall operate only in relation to such Project Schedule); or
(b) this Agreement expressly contemplated in relation to such provision that the Project Schedule may provide otherwise.

2. Term

2.1 This Agreement shall take effect on the Effective Date and shall continue to be in force until terminated in accordance with the provisions of clause 10.

3. Services

3.1 The Supplier agrees to provide Services to the Client in exchange for Fees and in accordance with the terms and conditions of this Agreement.

3.2 The Services, Deliverables, Milestones (if any) and Fees shall be determined as follows:

(a) If the Client desires specific services, it will notify the Supplier in writing, setting out:

(i) a brief description of the desired services.

(ii) the applicable timeframe for delivery of the services and any deliverables.

(b) Within 7 Business Days of receipt of the notice from the Client pursuant to clause 3.2, the Supplier shall send a Quote to the Client, which sets out the proposed fees as well as any other relevant information in respect of the requested services and deliverables.

(c) The Client and the Supplier will negotiate the Quote in good faith and will jointly draft then both sign a corresponding Project Schedule.

3.3 Upon signature of the Project Schedule by both Parties, it shall be incorporated into the Agreement, and the Parties shall be bound by its terms.

4. Intellectual Property

4.1 The Supplier retains all right, title and interest in its Background IP.

4.2 The Client retains all right, title and interest in its data, documents, and information uploaded to or generated from use of the Service (“Client Data”).

4.3 The Supplier grants the Client a non-exclusive, non-transferable, non-sublicensable licence to access and use the Service and any Deliverables solely for the Client’s internal business purposes during the Term.

4.4 The Supplier retains all rights in any anonymised and aggregated data, analytics, benchmarks, or insights derived from use of the Service, provided such data does not identify the Client or any individual.

5. Acceptance of Deliverables

5.1 The Service is provided on a subscription basis and does not require formal acceptance testing.

5.2 Any acceptance testing shall apply only to Deliverables expressly identified in a Project Schedule as subject to acceptance (for example, onboarding documentation, configuration outputs, or training materials).

5.3 Where acceptance testing applies, the Client shall notify the Supplier of any material non-conformity with the applicable Specification within ten (10) Business Days of receipt.

5.4 The Service shall be deemed accepted on first use or on the Service go-live date, whichever occurs first.

6. Fees, Expenses and Payment

6.1 Fees, Expenses and Payment The Supplier shall submit an invoice (quoting the purchase order number as provided by the Client, if applicable) to the Client upon acceptance of the Deliverables in accordance with the provisions of clause 5 or completion of a Service in accordance with the provisions of the relevant Project Schedule (including the meeting of any specified Milestone, where applicable).

6.2 The payment terms in respect of invoices submitted in accordance with this clause 6 shall be net 30 days from the date of the relevant invoice and the amounts payable shall be exclusive of VAT but inclusive of all other taxes, imposts and fees. If VAT is payable, it shall be separately identified on the invoice and shall be payable by the relevant Party subject to receipt of a valid VAT invoice from the other Party.

6.3 The Client shall, within 5 Business Days of receipt, inform the Supplier in writing if the Client, acting reasonably, has a query in respect of an invoice and wishes to withhold payment of it, or a part of it. In the absence of such notice the invoice shall be deemed to have been accepted.

6.4 Any query submitted pursuant to clause 6.3 shall be discussed between the Parties' representatives for a period of 10 Business Days after the invoice due date. If the query is resolved within such period, the amount in question shall be paid immediately and if it is not resolved in such period, it shall be dealt with in accordance with the provisions of clause 13.9.

6.5 Where expressly agreed in a Project Schedule or G-Cloud Call-Off Order Form, the Client shall pay the Supplier a savings share fee calculated as a percentage of Verified Savings achieved during the applicable measurement period, net of the subscription Fees paid for that period. Verified Savings shall mean savings evidenced by the Client's finance or procurement records and agreed in writing by both Parties acting reasonably. The Supplier shall issue an annual invoice for the savings share, supported by a calculation summary. The savings share shall be subject to any caps or limits specified in the applicable Project Schedule or Order Form. The Supplier does not guarantee that savings will be achieved, and all outputs are provided for decision-support purposes only. No savings share shall be payable unless expressly agreed in a G-Cloud Call-Off Contract or Project Schedule signed by both Parties.

7. Confidentially

7.1 Each Party will treat as confidential all Confidential Information obtained from the other under this Agreement. The Parties agree that they will not without the prior written consent of the other disclose Confidential Information to any person or use the same except for 3 the purposes of complying with their respective obligations pursuant to this Agreement.

7.2 Clause 7.1 does not prohibit disclosure of Confidential Information to:

(a) the receiving Party's own personnel (including employees, agents and permitted contractors) who need to know of the Confidential Information provided that such personnel are first made aware of the confidential nature of the Confidential Information and the receiving Party's obligations in relation to it and themselves agree in writing to treat the Confidential Information confidentially; or

(b) the receiving Party's auditors, professional advisers, any person or organisation having a statutory or regulatory right to request and receive that information, including without limitation a relevant tax authority.

7.3 Clause 7.1 does not apply to information which the receiving Party can show by reference to documentary or other evidence:

(a) was rightfully in its possession before the start of discussions between the Parties relating to this Agreement; or

(b) is already public knowledge or becomes so at a future date (save for as a result of breach of clause 7.1); or

(c) is received from a third party who is not under an obligation of confidentiality in relation to the information; or

(d) is developed independently without access to, or use of or knowledge of, the Confidential Information. 7.4 The obligations of confidentiality under this clause 7 shall survive the termination of this Agreement until such time as the Confidential Information enters the public domain other than through the fault of the recipient Party.

8. Representations and Warranties

8.1 Each of the Parties hereby represents, warrants and undertakes to each other that:

(a) it has the power, has taken all necessary action to allow it, and has all governmental and regulatory authorisations, licenses, approvals and registrations necessary for it to enter into and perform this Agreement and to permit the payments contemplated by this Agreement.

(b) neither the entry into or performance by it off, nor any payment contemplated by, this Agreement does or will conflict with any court order or agreement to which it is a party or with its constitutional documents; and

(c) in fulfilling its obligations pursuant to this Agreement, it will use a degree of skill and care and diligence reasonably to be expected of a competent business in its industry.

8.2 The Supplier hereby represents, warrants and undertakes that:

(a) it shall provide the Services and the Deliverables with reasonable care and skill and in accordance with best industry practice; and

(b) the use by the Client of the Client's customers of the Deliverables shall not breach a third party's Intellectual Property Rights or other proprietary rights.

9. Liability

9.1 Nothing in this Agreement shall exclude or limit a Party's liability for:

(a) fraud or fraudulent misrepresentation.

(b) death or personal injury caused by its negligence (as defined in section 1 of the Unfair Contract Terms Act 1977).

(c) any breach of the undertakings implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(d) any other liability which it is not permitted to exclude or limit.

9.2 Subject to clause 9.1, each Party's liability in respect of breach of contract or breach of duty, tort or fault or negligence or otherwise whatsoever and/or howsoever arising out of or in connection with this Agreement or any Project Schedule shall be limited to £100,000.

9.3 Neither Party shall be liable to the other Party or be deemed to be in breach of its obligations under any provision in this Agreement, to the extent that such breach is a result of:

(a) any delay or failure by the other Party in performing its obligations under this Agreement; or

(b) following the other Party's reasonable instructions.

9.4 Notwithstanding any other provision in this Agreement, in no event shall either Party be liable to the other Party for:

(a) any lost revenue, lost profits, business, opportunity or anticipated savings, loss of goodwill or injury to reputation, loss of data and/or loss of use of any data, replacement goods, loss of technology rights or services; or

(b) incidental, punitive, indirect or consequential damages arising from or related to the performance of its obligations under this Agreement, even if advised of the possibility of such damages, whether under contract, tort (including negligence), strict liability or otherwise.

10. Termination and Termination Consequences

10.1 Without limiting any other remedy available to it, either Party (the "Terminating Party") may terminate this Agreement or any Project Schedule with immediate effect by giving written notice to the other Party (the "Non-terminating Party") at any time.

(a) if the Non-terminating Party is in material or persistent breach of any of the provisions of this Agreement or any Project Schedule, which, if remediable, is not remedied within 30 Business Days or such alternative period as may be agreed between the Parties, following the receipt of such written notice: or

(b) if the Non-terminating Party is unable to pay its debts (within the meaning of section 123(1) of the Insolvency Act 1986) or an order is made or a resolution passed for its liquidation, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer is appointed over it or all or any substantial part of its assets or takes formal steps towards making any kind of composition, compromise or arrangement involving it and any of its creditors, or anything analogous to the foregoing shall occur in any jurisdiction;

(c) pursuant to clause 11.3 (b).

10.2 The Client may terminate this Agreement and any Project Schedule for convenience and without cause, upon 30 Business Days' written notice to the Supplier and subject to:

(a) full payment of all invoiced and unpaid Fees in accordance with the relevant Project Schedule.

(b) full payment of all Fees in accordance with the relevant Project Schedule which are not invoiced, in respect of any work in progress; and

(c) full payment of all other expenses and costs incurred by the Supplier in respect of any ongoing Services, which the Supplier is legally obliged to pay where agreed in advance by the Client.

11. Force Majeure

11.1 Neither Party shall be liable for any delay in performing its obligations under this Agreement to the extent that such is directly caused by an Event of Force Majeure provided that:

(a) any delay by a sub-contractor or supplier of the Party who is delayed will not relieve that Party from liability for delay except where the delay is beyond the reasonable control of the sub-contractor or supplier concerned; and

(b) strikes or industrial action on behalf of the delayed Party's employees or its appointed sub-contractors will not relieve that Party from liability for delay.

11.2 Subject to the delayed Party:

(a) immediately telling the other Party in writing of the reasons for the delay and the likely duration of the delay; and

(b) using reasonable endeavours to perform its obligations under this Agreement.

the performance of the delayed Party's obligations will be suspended during the period that such circumstances described in clause 11.1 persist and that Party will be granted an extension of time for performance equal to the period of the delay.

11.3 Save where the delay is caused by the act or failure to act of the other Party (in which event the rights, remedies and liabilities of the Parties will be those conferred by the other terms of this Agreement and by law):

(a) any costs arising from that delay will be borne by the Party incurring the same; and

(b) either Party may, if that delay continues for more than five weeks, terminate this Agreement immediately on giving written notice to the other.

12. Assignment and Subcontracting

12.1 This Agreement may not be assigned by either Party without the other Party's prior written consent. Such consent shall not be unreasonably withheld.

12.2 Without prejudice to the provisions of clause 12.1:

(a) the Supplier may at any time subcontract the provision of the Services, including without limitation to any company within the Supplier's Group. The Supplier shall be liable to the Client for the acts and omissions of all sub-contractors appointed by the Supplier in relation to the Services; and

(b) each Party may at any time assign this Agreement and any Project Schedule to any other company within its Group, subject to prior notification to the other Party.

13. Miscellaneous

13.1 Any notice given under this Agreement shall be in writing and may be delivered by hand, pre-paid first-class post, or email to the addresses notified by the Parties.

Notices sent by email shall be deemed received on the Business Day of transmission, provided that no delivery failure notification is received by the sender.

13.2 Any amendment or variation to this Agreement shall be made only by express written agreement between the Parties.

13.3 The failure of either Party to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time(s) thereafter, as a waiver of another or constitute a continuing waiver.

13.4 Without prejudice to the rights of either Party in respect of actions relating to fraudulent misrepresentation, this Agreement and any documents referred to herein constitute the entire understanding between the Parties with respect to the subject matter thereof and supersedes all prior agreements, negotiations and discussions between the Parties relating thereto.

13.5 The Parties agree that monetary damages may not be a sufficient remedy for the damage which may accrue to a Party by reason of failure by any other Party to perform certain of its obligations hereunder. Any Party shall therefore be entitled to seek injunctive relief, including specific performance, to enforce such obligations.

13.6 The unenforceability of any single provision of this Agreement shall not affect any other provision hereof. Where such a provision is held to be unenforceable, the Parties shall use their best endeavours to negotiate and agree upon an enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the unenforceable provision.

13.7 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

13.8 Nothing in this Agreement or any Project Schedule shall be deemed to constitute a partnership between the Parties nor, save as expressly set out herein, constitute either Party the agent of the other Party.

13.9 This Agreement shall be governed by and construed in accordance with English law and each Party irrevocably submits to the exclusive jurisdiction of the English courts over any claim, dispute or matter arising under or in connection with this Agreement or its enforceability.

13.10 Nothing in this Agreement prevents the Client from complying with its statutory obligations including under the Freedom of Information Act 2000, Environmental Information Regulations 2004, or applicable transparency requirements. The Client will, where reasonably practicable, consult the Supplier before disclosing Supplier confidential information.

13.11 Service availability targets and maintenance arrangements may be set out in the applicable G-Cloud Call-Off Contract.