



**IAM Technical Support**

**Terms and Conditions**

**Prepared for:**

**GCloud 15 Framework**



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## Terms and Conditions

This Agreement is entered into between ProofID Ltd (registered in England number 6711962) whose registered office is at 8 Exchange Quay, Salford, Manchester, M5 3EJ ("ProofID") and the party identified above as the customer (the "Customer") and is subject to the terms and conditions below (the Schedule and these terms and conditions being referred to as the "Agreement").

### 1. Definitions and Interpretation

#### 1.1 In this Agreement:

*Confidential Information* means any and all secret or confidential information (including without limitation, information which falls into any of the following categories, where the information is reasonably expressed to be confidential or ought reasonably to be known to be confidential: commercial; financial; marketing; technical; information, together with trade secrets and other information in written, electronic or any other form or medium), whether disclosed before, on or after the date of this Agreement;.

*Consultancy Bank Hours* means an annual 'bank' of hours which form part of the Support Services, which may be used on a time and materials basis for the delivery of onsite work, out-of-hours support, fulfilment of Service Requests, non-maintenance changes to the system or other services which do not fall within the scope of the Support Services

*Named Customer Contacts* means up to six individuals, or more if the Customer has purchased additional Named Customer Contacts, appointed by the Customer from time to time who shall serve as ProofID's primary contacts for the ProofID's activities under this agreement. The initial Named Customer Contacts are listed in Schedule 2.

*Customer Data* means any information that is provided by the Customer to ProofID as part of the Customer's use of the Support Services, including any information derived from such information

*Customer Primary Contact* means the member of the Customer Account Team appointed in accordance with clause 4.3. The Customer's Project Manager at the Effective Date is named in Schedule 2.

*Disaster* means any event or circumstance which causes the complete or partial loss or non-availability of the System, or which prevents the normal operation of the System or the performance of any task or function of the System including, without limitation, any fire, flood, earthquake, extreme weather, natural disaster, theft, act of God;

*Hardware* means the hardware and other equipment (if any) to be supported as part of the Support Services as set out in the Schedule;

*Location(s)* means the Customer locations at which the Support Services will be provided as set out in the Schedule;

*Support Services* means the services to be provided to the Customer by ProofID as set out in this Agreement;

*Support Service Fees* means the fees to be paid by the Customer for the Support Services;

*Onboarding Service* mean the due diligence, configuration and related work referred to in clause 2.1 and Schedule 3, to be performed by ProofID to set up the Support Services.

*Request for Support* means a support request logged by the Customer in the manner described in Clause 3.1

*Service Level Agreements* means the service level agreements set out in Schedule 4

*Software* means the software (if any) to be supported as part of the Support Services as set out in the Schedule;

*Supplier Account Team* means the individuals appointed by ProofID from time to time who shall serve as the Customer's primary contacts for the Customer's activities under this agreement. The initial members of the Supplier Account Team are listed in Schedule 2.

*Supplier's Service Delivery Manager* means the member of ProofID's Account Team appointed in accordance with clause 5.7. The Supplier's Service Delivery Manager at the Effective Date is named in Schedule 2.

and

*System* means the servers, applications and configuration forming the Customer's IT system to be supported as part of the Support Services as set out in Schedule 4.

1.2 The headings contained in this Agreement are for convenience of reference only and will not affect its interpretation.

1.3 All fees and charges set out in this Agreement are exclusive of VAT.

### 2. Support Services

2.1 ProofID will supply the Support Services to the Customer for an initial period of a minimum of twelve (12) months or such longer period as specified in Schedule 4 (the "Initial Period"). This Agreement shall automatically renew for further periods of 12 months (each an "Extension Period") unless either party notifies the other party in writing no less than ninety (90) days prior to the expiry of the Initial Period or the relevant Extension Period that it does not wish to renew the Support Services, any such renewal shall be at ProofID's then current rates for the Support Services.

2.2 The Support Services will be provided during the hours of 8.00 a.m. - 6.00 p.m. Monday to Friday excluding Bank Holidays (the "Standard Service") unless, as set out in the Schedule, the Customer purchases the 24x7 Service in which case the Support Services will, to avoid doubt, be provided 24 hours a day, 7 days a week.



2.3 Each time the Customer raises a Request for Support, ProofID will first seek to resolve the problem remotely. If this cannot be achieved, ProofID will provide onsite Support Services at the relevant Location(s) consuming Consultancy Bank Hours on a time and materials basis in minimum blocks of 8 hours.

2.4 The full extent of the Support Services is described in Schedule 4.

2.5 Not used.

2.6 Remedial work rendered necessary by reason of damage to the System caused by accident, carelessness, misuse by the Customer or user or any other reason(s) outside ProofID's control, such as configuration and/or adjustments carried out by unauthorised persons and any viruses, malware or spyware found on the Customer's systems are not included as part of the Support Services.

2.9 ProofID is not obliged to support the System if the Customer is not using the versions or releases of the software as set out in Schedule 4 or is using a copy of the Software which has been illegally obtained, or

2.10 The Customer is not entitled to vary the quantity or type of Support Services supplied by ProofID without the prior written consent of ProofID.

### 3. Service Levels

3.1 To raise a Request for Support, the Customer must log a fault either via telephone or using ProofID's support website as set out in Schedule 5.

3.2 ProofID will respond to a Request for Support and commence provision of support in accordance with the Service Level Agreements set out in Schedule 4.

### 4. Customer Responsibilities

4.1 The Customer will provide ProofID with (i) all necessary co-operation in relation to this agreement; and (ii) all necessary access to such information as may be required by ProofID in order to render the Support Services, including Customer Data, security access information and software interfaces, to the Customer's other business applications;

4.2 The Customer shall provide such personnel assistance, including the Customer Named Contacts and other Customer personnel, as may be reasonably requested by ProofID from time to time. The Customer Named Contacts shall consist of the personnel listed in Schedule 2. The Customer shall use reasonable endeavours to ensure continuity of its personnel assigned to this agreement;

4.3 The Customer shall appoint the Customer Primary Contact, who shall have the authority to contractually bind the Customer on all matters relating to this agreement. The Customer shall use reasonable endeavours to ensure continuity of the Customer Primary Contact;

4.4 The Customer shall comply with all applicable laws and regulations with respect to its activities under this agreement

4.5 The Customer shall carry out all other Customer responsibilities set out in this agreement or in any of the schedules in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by

the parties, ProofID may adjust any timetable or delivery schedule set out in this agreement as reasonably necessary

4.6 The Customer is solely responsible for the protection and back-up of all of its data.

### 5. ProofID's Responsibilities

5.1 ProofID warrants that the Support Services will be performed with all reasonable skill and care and that it will be provided substantially in accordance with the Support Service Specification and the terms and conditions of this agreement.

5.2 The warranty in clause 5.1 shall not apply to the extent of any non-conformance that is caused by use of the Support Services contrary to ProofID's instructions.

5.3 If the Support Services do not conform with the warranty in clause 5.1, ProofID will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty in clause 5.1.

5.4 Notwithstanding the foregoing, ProofID does not warrant that the Customer's use of the Support Services will be uninterrupted or error-free.

5.5 This agreement shall not prevent ProofID from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services that are similar to those provided under this agreement.

5.6 The Supplier Account Team shall consist of the personnel listed in Schedule 2. ProofID shall use reasonable endeavours to ensure continuity of its personnel assigned to this agreement.

5.7 ProofID shall appoint the Supplier Service Delivery Manager, who shall have the authority to contractually bind the Supplier on all matters relating to this agreement. ProofID shall use reasonable endeavours to ensure continuity of the Supplier Service Delivery Manager, but has the right to replace him from time to time where reasonably necessary in the interests of ProofID's business.

5.8 ProofID shall perform the Onboarding Services in accordance with the timetable set out in Part 1 of Schedule 3. ProofID shall use reasonable endeavours to meet the performance dates set out in Schedule 3, but any such dates shall be estimates only, and time shall not be of the essence in this agreement.

### 6. Fees

6.1 The Customer will pay the Support Service Fees in accordance with this Agreement and as set out in Schedule 1, together with VAT at the applicable rate.

6.2 ProofID will invoice the Customer at the intervals specified in Schedule 1 and, except where otherwise agreed in writing, payment will be made by the Customer without deduction, withholding or set off.



6.3 All invoices issued by ProofID in accordance with this Agreement will be due and payable by the Customer in accordance with the payment terms set out in Schedule 1 or where no such payment terms are set out in the schedule within (30) days of the date of the invoice. To avoid doubt, for any invoice which remains unpaid after such time that payment becomes overdue, until each invoice is paid in full ProofID is under no obligation to provide the Support Services.

6.5 If ProofID supplies any item of Hardware or Software, then title in that item will not transfer to the Customer until that item has been paid for in full.

## 7. Confidentiality

7.1 This Agreement will be kept confidential by the parties and neither party will use nor disclose the other party's Confidential Information for any purpose other than performing its obligations pursuant to this Agreement. Where such Confidential Information is disclosed by a party to its employees, agents or contractors, it will be subject to confidentiality obligations equivalent to those set out in this Agreement. Each party will procure that all such employees, contractors and agents comply with such obligations.

7.2 The obligations of confidentiality in Clause 7.1 will not extend to any disclosure of Confidential Information which either party can show:

- (a) is necessary for the proper performance of its obligations under this Agreement;
- (b) has been carried out with the prior consent of the other party;
- (c) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement;
- (d) was in its records prior to the start of the Support Services (other than from the disclosing party);
- (e) was independently disclosed to it by a third party entitled to disclose the same without any duty of confidentiality; or
- (f) is required to be disclosed under any applicable law, stock exchange requirement, or by order of a court or governmental body or authority of competent jurisdiction

## 8. Non-Solicitation

8.1 Neither party shall, for the duration of this Agreement, and for a period of six (6) months after its termination, solicit or attempt to solicit services from any employee of the other party who has been involved in the performance of any obligations under this Agreement. In the event that notwithstanding this Clause such recruitment takes place, the recruiting party expressly agrees to pay the other a sum equal to whichever is the greater of twelve (12) months' existing gross salary or the salary offered by the new employer to the relevant member of staff as a genuine pre-estimate of the loss that the other party has suffered.

## 9. Liability

9.1 This clause 9 sets out the entire financial liability of ProofID (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

- (a) any breach of this agreement;
- (b) any use made by the Customer of the Support Services; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

9.2 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Support Services, and for conclusions drawn from such use. ProofID shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to ProofID by the Customer in connection with the Support Services, or any actions taken by ProofID at the Customer's direction; and
- (b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

9.3 Nothing in this agreement excludes or limits the liability of ProofID for:

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

9.4 The Service Level Arrangements state the Customer's full and exclusive right and remedy, and ProofID's only obligation and liability, in respect of the performance and availability of the Support Services, or their non-performance and non-availability.

9.5 Subject to clause 9.3 and clause 9.4:

- (a) ProofID shall not be liable whether in contract, tort (including for breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, or pure economic loss, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and
- (b) ProofID's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid for the Support Services during the 12 months preceding the date on which the claim arose.

## 10. Termination



10.1 Either party may terminate this Agreement immediately upon notice in writing to the other party in the event that the other party becomes insolvent or commits a breach of its obligations under this Agreement and either (a) such breach is material and cannot be remedied; or (b) such breach is material and possible to remedy and that other Party fails to remedy such breach within thirty (30) days of having been required in writing to remedy such breach.

10.2 The termination of this Agreement shall be without prejudice to the rights and remedies of either party which have accrued up to the date of termination.

10.3 The provisions of Clauses 7, 8, 9, 10.2 to 10.4 and 11 shall survive termination of this Agreement, as shall all other provisions which are expressed to or intended to survive termination, and all such provisions shall thus continue in full force and effect.

10.4 Upon termination of this Agreement, each party shall within a reasonable period of time return to the other party all of the other party's property (including without limitation Confidential Information) in its possession at the date of termination.

10.5 In the event that this Agreement is terminated by ProofID due to a breach by the Customer then, without prejudice to any other rights or remedies ProofID may have, the Customer shall pay to ProofID, without set off, a sum equal to the payments due for the unexpired portion of any leasing agreement entered into by ProofID on behalf of the Customer in respect of the Software.

## **11. General Provisions**

11.1 The Customer shall not assign, transfer or otherwise dispose of any of its rights or responsibilities under this Agreement without the prior written consent of ProofID.

11.2 If ProofID is prevented from complying with its obligations due to any event beyond its reasonable control then it shall not be in breach of this Agreement or otherwise liable by reason of any delay in performance or non-performance of any of its obligations due to such events.

11.3 Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties to this Agreement.

11.4 No variation of this Agreement shall be effective unless it is in writing and is signed by an authorised representative of each party.

11.5 If at any time any part of this Agreement becomes void or unenforceable under any applicable law it shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue unaffected.

11.6 No provision of the Agreement shall be waived unless agreed to be waived by both parties in writing (except where there is a prescribed time limit in which to exercise a right or remedy, in which case the elapsing of the time limit will constitute a waiver of the respective right or remedy). If any provision is waived, then that waiver shall operate for that instance only and not future instances, unless agreed otherwise by both parties in writing.

11.7 This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement (the "Subject Matter") and supersedes and replaces all other written and oral communications between the parties relating to the Subject Matter. Except for the express provisions in this Agreement (and any express provisions contained in any documentation which is expressly incorporated), all other warranties, conditions, terms, representations, statements, undertakings and obligations whether express or implied by statute, common law, custom, usage or otherwise are hereby excluded to the maximum extent permitted by law. The parties hereby confirm that they have not relied upon any representations, communications or other matters which have not been expressly stated in this Agreement, whether as an inducement to enter into this Agreement or otherwise. Notwithstanding any provision to the contrary, nothing in this Agreement limits or excludes either party's liability for fraudulent misrepresentations.

11.8 All notices must be in writing, signed, sent by recorded delivery and addressed to whichever of ProofID and the Customer is receiving the notice at their address as set out above.

11.9 This Agreement and any dispute or claim arising in connection with it shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts to which the parties irrevocably submit