



# Terms and conditions (Supplier Terms)

Professional Services

## Structure of these Supplier Terms

At the end of the General Provisions there is an Annex for NEC MultiCloud which sets out additional product/service specific provisions (which also override the General Provisions if there is any conflict). After the Annex is a Glossary; any capitalised terms within these Supplier Terms which are not defined in the Glossary shall have the meaning set out elsewhere in this Agreement.

## General Provisions

The parties recognise that any Professional Service days set out in this Agreement are an estimate based on the parties' current understanding of their requirements and obligations.

Unless otherwise specified in the Particulars, Professional Services shall be delivered remotely during Working Hours.

Unless otherwise agreed between the parties, where a number of days has been specified, any additional hours worked at the Buyer's request shall be deducted from the remaining number of days and any part days shall be used subject to a minimum usage of half a day.

All Professional Services days purchased as part of a fixed price project or a block booking are non-cancellable and non-refundable.

If the Buyer does not provide the Supplier with the necessary access or information to enable the Supplier to deliver the Professional Services the Supplier reserves the right to terminate the Professional Services element of the Agreement and raise an invoice for any unpaid Charges.

The Buyer shall be deemed to accept any deliverables set out in any Acceptance Certificate issued by the Supplier and such acceptance shall be irrevocable if (i) the deliverables are used in a live environment and/or for any live operations; or (ii) if the Buyer does not provide any written notification to the contrary and has failed to sign the Acceptance Certificate within the time period set out within such Acceptance Certificate.

The Supplier does not grant permission to record Consultancy workshops and relevant training when delivered either in person or remotely to the Buyer. The Supplier's prior written consent is required as well as the consent of the attendees, if the Buyer wishes to record any training or Consultancy workshops.

Subject to the Buyer's reimbursement of non-refundable expenses as provided below, the Supplier will use reasonable endeavours to accommodate rescheduling of Professional Services at the Buyer's request. However, if the Buyer seeks to reschedule or postpone Professional Services within: (a) the period 14 to six Working Days of the booked date for delivery, the Supplier shall be entitled to invoice the Buyer for 50% of the relevant charges; or (b) five Working Days or less of the booked date for delivery, the Supplier shall be entitled to invoice the Buyer for 100% of the relevant Charges. Unless otherwise agreed in writing between the parties, days paid for must be utilised within 12 months of the date of the Buyer's purchase order.

If the Buyer seeks to postpone or reschedule Professional Services at any time where the Supplier has booked travel and/or incurred other reasonable expenses which are non-

refundable, the Buyer will still be liable to pay the cost of such travel and/or other expenses.

Where a block booking for a number of days of Professional Services is made the following shall apply: (a) unless otherwise agreed in writing between the parties such days must be utilised within 12 months of the date of the Buyer's purchase order, any days not utilised within such period will be lost and may not be carried forward; and (b) delivery of Professional Services is subject to reasonable advance request and agreement on the specific delivery dates.

## Buyer obligations

Where professional services are provided in relation to the NEC Damp & Mould reporting solution, a machine learning based decision-support tool is provided which is based on data available at the time of implementation. While every effort will be made to ensure the accuracy and reliability of the report outputs presented, the Buyer should be aware that the model may not reflect all real-world variables or scenarios. It is therefore strongly recommended that the Buyer validates key outputs with additional data sources or expert consultation where deemed appropriate. **It is the Buyer's responsibility to review and evaluate the outputs generated using this tool and apply their own judgment when interpreting the same** and the Buyer accepts and agrees that it is fully responsible for any decisions made based on the Outputs.

## Additional Terms

Regardless of any other provision in the Agreement:

### Specification

if this Agreement contains the Buyer's service description, requirements and/or specification ("**Specification**") and if any provision of that Specification conflicts with these Supplier Terms, then these Supplier Terms will take precedence.

### Buyer Policies and consents

- the Supplier's individual staff involved in providing the Services shall not be required to sign any Buyer provided IT remote access, usage or email policy documents.
- Nor shall the Supplier be required to enter into any separate or additional agreements or arrangements with the Buyer (or any third party that is not a subcontractor or sub-processor of the Supplier) in order to provide the Deliverables, including codes of connection, network/system access or data processing/sharing agreements.

### Exclusions

- except to the extent not permitted by law, the Supplier shall have no liability under or in connection with this Agreement (whether in contract, tort (including negligence), under an indemnity, statute or otherwise), to the extent that any losses, damage or defects arise as a result of (but not limited to):
  - ➔ the late arrival or non-arrival of Buyer Data or other material from the Buyer;

- errors or omissions in any information, data, instructions or scripts (including where the same is in the correct format) provided to the Supplier by the Buyer in connection with this Agreement;
- any actions taken by the Supplier at the Buyer's direction;
- failure to detect errors in any work performed by the Supplier which the Buyer has undertaken to check;
- the act and/or omission of a third party (including a subcontractor and/or sub-processor but excluding any Group Company) unless and to the extent only that the third party is liable to the Supplier for such act/omission; or
- any other act or omission of the Buyer (or third parties appointed by or under its control) including but not limited to failure of communication links.

### Transfer of employees

the Buyer warrants, represents and undertakes to the Supplier that there will be no relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ("**TUPE**") of employees from the Buyer (or any supplier, contractor or other service provider to the Buyer) to the Supplier (or any third-party supplier/subcontractor to the Supplier). Regardless of any other provision of this Agreement, the Buyer agrees to indemnify the Supplier against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Supplier in connection with or as a result of:

- a claim by any person who transfers or alleges that they have transferred to the Supplier (or any third-party supplier/subcontractor to the Supplier) as a result of entering into this Agreement; and/or
- any failure by the Buyer to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE.

### Intellectual Property Rights

- the provisions in this Intellectual Property section shall not apply to any software provided by the Supplier.
- the Buyer acknowledges that the Supplier and/or their respective licensors own Intellectual Property Rights in any specifications, data, databases, documentation, and other materials provided to the Buyer as part of the Services. Except as expressly stated in these Supplier Terms, the Supplier does not grant the Buyer any rights to, or in, the Intellectual Property Rights in respect of the above materials.
- the Supplier grants the Buyer a non-transferable, non-exclusive right during the term of this Agreement to use the materials supplied by the Supplier under the Services for its own internal business purposes. Where the Agreement expressly states that Buyer is procuring the Deliverables on behalf of or for the benefit of a specified third party end customer, the licence granted in this paragraph applies to that end customer and allows them to use the materials for that end customer's own internal business purposes.
- all Intellectual Property Rights in the Buyer Data and any other materials provided to the Supplier by the Buyer for the Supplier to provide the Services will remain vested in the Buyer. The Buyer grants the Supplier a perpetual, royalty free, non-exclusive licence to use (and copy) the Buyer Data to perform this Agreement and to comply with any requests made to the Supplier under statute.

## Certifications and Accreditations

The Supplier's certifications and accreditations are as set out at [Certificates and Registrations - NEC Software Solutions](#), as updated by the Supplier from time to time.

## Third Party Deliverables

- in the event that a third party suspends or terminates (or gives notice to suspend or terminate) the provision of any Deliverable(s) to the Supplier for any reason, then the Supplier shall be entitled to suspend or terminate the provision of such Deliverable(s) to the Buyer under this Agreement.

## Offshore Resource

- in some circumstances we may use resources provided by one or more of our Group Companies, including those of our Group Company NEC Software Solutions India PVT Limited. This may involve sharing your data (including Personal Data) with them, processing, or transferring your data outside the UK. Whenever we use the resources of our Group Companies, and/or process or transfer your data out of the UK, the terms of our Agreement with you, including applicable legislation, as well as our internal policies, procedures and processes shall apply. At all times we retain responsibility for ensuring compliance by our Group Companies with our obligations. By entering into this Agreement, you consent to the use of our Group Companies' resources (including NEC Software Solutions India PVT Limited) to provide the Deliverables, and/or to process your data (including Personal Data).

## Sub-processors

- in addition to the specific authorisation above, the Buyer also grants to the Supplier general authorisation to engage Sub-processor(s) as third-party Processors of Personal Data under this Agreement. A list of the Supplier's Sub-processors that the Supplier directly engages for the specific Deliverables as a Sub-processor from time to time is available at **[www.necsws.com/subprocessors](http://www.necsws.com/subprocessors)**. Any changes to the list of the Supplier's Sub-processors will be updated via this link.

## Annex: NEC MultiCloud

Where NEC MultiCloud is to be provided the provisions set out in this Annex shall apply. If there is any conflict between the provisions set out in this Annex, and any other provisions set out in these Supplier Terms, this Annex shall apply.

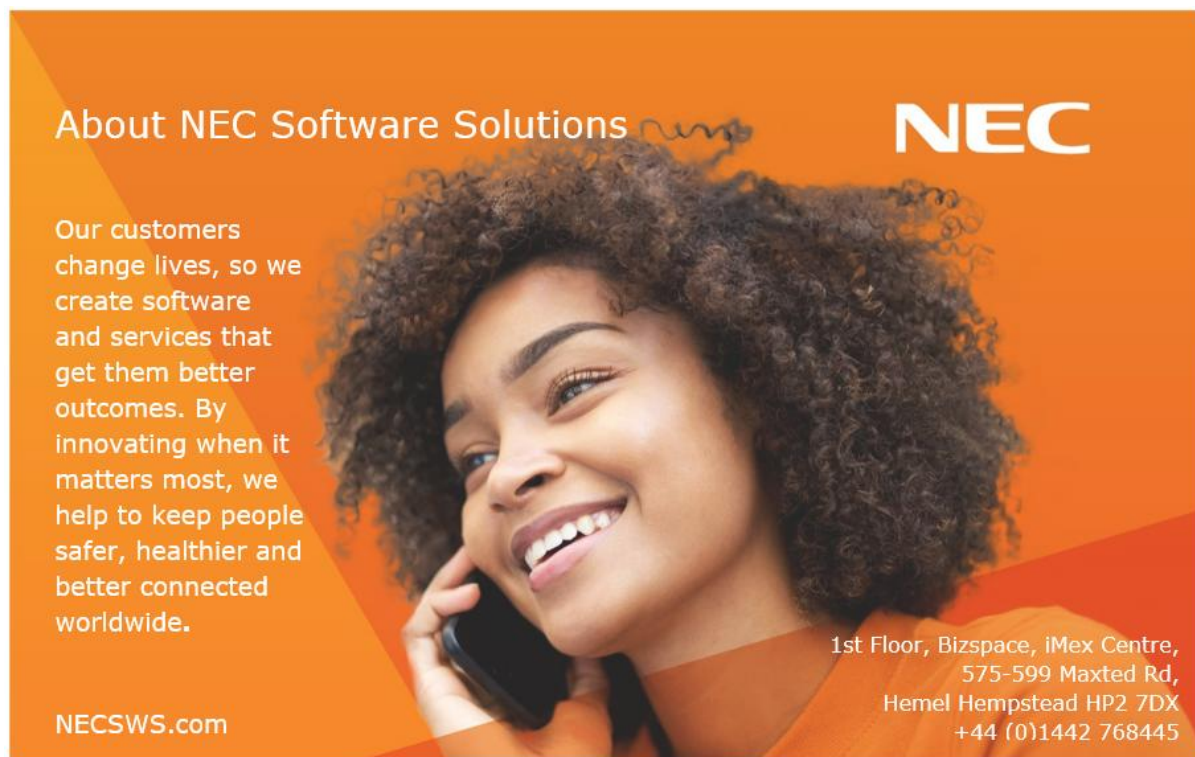
NEC MultiCloud services are provided on the terms set out in the G-Cloud Service Definition on the Platform, which are hereby incorporated into the Agreement by reference.

## Glossary

In addition to the terms defined elsewhere in this Agreement, in these Supplier Terms the following terms shall (regardless of any other provision in this Agreement) have the meaning set out below:

|                                              |                                                                                                                                                                                                                                                                        |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Agreement"</b>                           | means the Call-Off Contract.                                                                                                                                                                                                                                           |
| <b>"Buyer Data"</b>                          | Shall mean copies of such data delivered or made available to the Supplier for processing for the purposes of this Agreement                                                                                                                                           |
| <b>"Deliverable(s)"</b>                      | means the deliverables to be provided by the Supplier to the Buyer as itemised in the Particulars and described in these Supplier Terms (inclusive of the applicable Annex).                                                                                           |
| <b>"Group Company"</b>                       | means the Supplier together with Garden Private Holdings Limited and each and any subsidiary undertaking from time to time of Garden Private Holdings Limited. A "subsidiary undertaking" shall have the meaning as set out in section 1162 of the Companies Act 2006. |
| <b>"Particulars"</b>                         | means the Order Form.                                                                                                                                                                                                                                                  |
| <b>"Professional Services" or "Services"</b> | means the services described in this Schedule.                                                                                                                                                                                                                         |
| <b>"Working Days"</b>                        | means Monday to Friday inclusive, excluding bank holidays and public holidays in England.                                                                                                                                                                              |
| <b>"Working Hours"</b>                       | means the hours of 09.00 to 17.30 inclusive in local UK time on Working Days.                                                                                                                                                                                          |

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