

SUPPLIER

LOT 3 TERMS AND CONDITIONS OF SERVICE

1. Introduction

These Supplier Terms are in addition to the terms and conditions of CCS General Terms in association with G Cloud 15 and any individual Call-Off Contract under Lot 3. Any conflict between the terms and conditions of these Supplier Terms, the CCS General Terms and any Call-Off Contract shall be resolved in accordance with the order of precedence under the CCS General Terms. Therefore, in accordance with the Call-Off Contract and the following terms and conditions, The Supplier will provide the Services as detailed in the relevant Order Form and as described in the applicable appendixes Service Descriptions attached thereto.

Unless otherwise defined within Schedule 1 of these Supplier Terms [Definitions], capitalised terms shall take the meaning detailed in the CCS General Terms.

2. Assumptions

The following assumptions apply to the Services throughout the Contract Period.

- a. While performing the Services, if Supplier encounters: (i) any concealed or unknown condition, (ii) a Buyer responsibility contained in the Call-Off Contract which has not been met, or (iii) a delay, including NRC project delays or holds, caused by Buyer, then the scope, schedule and/or fees for the Call-Off Contract may be equitably adjusted as necessary via execution of a Variation Form. If the parties cannot agree to the Variation Form, Supplier shall not be obligated to deliver the affected Services.
- b. The Services may be performed at a Buyer facility or remotely, at Supplier's sole discretion. Buyer acknowledges and agrees that Supplier Services utilize a global support model unless otherwise agreed between the parties.
- c. All project documentation, presentations and communication will be in the English language using standard Supplier templates and formats, which constitute Supplier proprietary and confidential information.
- d. Supplier has the sole discretion to determine the staffing assignments for its Services.
- e. If, in connection with the provision of the Services, Supplier requires access to any Buyer facilities, systems or applications, for purposes of obtaining all applicable user IDs, badges or other forms of identification or authorization for all applicable Supplier associates, Supplier agrees to perform Supplier's standard background screens (information relating to which is available upon request) and to provide the applicable associates' full legal names, work phone numbers and work e-mail addresses. If Buyer requires any additional information, screening, or training Buyer agrees to request such information prior to execution of the Call-Off Contract and acknowledges that such additional information, screening, or training may result in additional charges.
- f. Anything not expressly specified in the Scope of Work in the Call-Off Contract is out of scope. Any request to modify the Scope of Work will be subject to a Variation request.
- g. Unless otherwise stated in the Scope of Work, the Buyer data shall be migrated "as is". If it transpires that additional work is required to prepare Buyer data for migration to the Software, such work may impact the timescales and estimated Charges for Professional Services and additional Charges may apply.

3. Buyer Obligations

In supporting delivery of the Services, Buyer will perform the obligations described below.

- a. Provide any notices and obtain any consent required for Supplier to perform Services.
- b. Provide Supplier with access to any necessary Buyer environments (including third party products) to receive and support the Services.
- c. Make available such subject matter experts as required by Supplier.
- d. Buyer will be deemed to have accepted all Services and documents provided in connection with the Call-Off Contract that materially conform to the specifications set forth thereunder, unless Buyer provides Supplier with written notice describing any failure to conform in reasonable detail promptly, but in any event not later than three (3) business days following Buyer's receipt thereof. In the event of any such failure to conform, Supplier shall have a reasonable period of time, based on the severity and complexity of the non-conformance, to deliver a conforming Service or document.
- e. Ensure that any applicable third-party service providers attend any workshops as reasonably required by Supplier. Buyer will further ensure that any such third-party service providers have signed commercially reasonable non-disclosure agreements governing any information exchanged in connection with such workshops. Supplier will use commercially reasonable efforts to provide Buyer with not less than 5 days' prior notice before any workshop where third party service providers are required to attend.
- f. Ensure that existing Buyer procedural and business process documentation is made available to Supplier in a timely manner prior to the start of the Services.
- g. Notify Supplier promptly, but in no event later than 3 business days, following discovery of any inaccuracies or incomplete information in any project documents provided by or to Buyer, including the Scope of Work under the Call-Off Contract.
- h. Provide a single point of contact to be the primary interface to Supplier (the "**Buyer Contact**"). The Buyer Contact will be empowered to allocate resources and make decisions on behalf of Buyer in a timely fashion and responsible for:
 - i. Specifically identifying and providing Supplier with access to all relevant Buyer-controlled information, resources and locations required in connection the Services.
 - ii. Providing Supplier the contact information (including name and office and mobile phone numbers) for all Buyer team members with whom Supplier will interface.
 - iii. Attending periodic status meetings to discuss progress and any other issues that arise during the Service Term.
- i. Ensure Buyer team members fulfill their obligations and assigned tasks as defined in the Call-Off Contract and as agreed between the parties within the required timelines within the project plan or if no project plan or specific timeline for the applicable Buyer obligation, to do so promptly. Buyer shall be responsible for additional costs and expenses incurred by Supplier due to Buyer delay and, where applicable, such costs as required to reallocate Supplier resources to the project or services.
- j. Manage all necessary communications and change management activities within Buyer organization in connection with the Services, including but not limited to: Corporate communications, Business process changes, procedural or policy changes, and escalation management on behalf of Buyer.

- k. Unless otherwise explicitly stated to be included as part of the scope under the relevant Call-Off Contract, maintain and operate security, back-up, disaster-recovery, anti-virus, and similar facilities consistent with good industry practice.
- l. Buyer shall use any Software in accordance with the parameters as set out herein and comply with any third party's license terms (if applicable), including any restrictions or obligations mandated by the third party's contract insofar as they are directly or indirectly applicable to the Buyer.

4. Maintenance and Support

The Buyer accepts that Maintenance and Support excludes diagnosis and rectification of any problems resulting from any of the following: (i) lack of training; (ii) modifications to the Software not carried out or directed by Supplier; (iii) the failure by Buyer to implement recommendations, workarounds and solutions to problems previously advised by Supplier; or (iv) deficiencies of Buyer Facilities. If such diagnosis and rectification is required as a result of the above, then additional charges to the Buyer may apply and shall be considered a Change.

5. Flex Cloud Services

This following section applies for the provision of the Supplier's Managed Services with respect to the Buyer's procured public cloud infrastructure provider which the Buyer procures directly from Amazon (AWS) or Microsoft (Azure), where applicable.

- a) **The Buyer acknowledges and agrees that:**
 - i. its use of the public cloud infrastructure is subject to and governed by the then-current license terms, which is a separate agreement between the Buyer and the relevant Public Cloud Provider; and
 - ii. the Public Cloud Provider is not a party to the relevant Call-Off Contract, and such provider shall be entitled to enforce, add, replace, suspend, or amend any element of the services in accordance with the Public Cloud Provider agreement.
- b) **Saving Plans/Reserved Instances.** While the Supplier provides automated purchase recommendations in relation to reserved virtual machine instances (or equivalent current saving plans from the relevant Public Cloud Provider) as part of the Supplier's Envision Advisor® platform and, while some managed services include more in-depth analysis of recommendations, the Buyer is ultimately responsible for determining the most appropriate Public Cloud Azure purchase for their business and workloads.
- c) **Service Level Agreement ("SLA").** The Buyer's sole and exclusive remedy for any Service quality or performance deficiency, failure or claim of any kind in relation to the Public Cloud infrastructure will be as set forth in the relevant Public Cloud Documentation.
- d) **Charges.** The Charges for Managed Services in relation to public cloud infrastructure shall be in accordance with the relevant Call-Off Contract.
- e) **Azure Managed Services**

This section applies to Microsoft Azure Services only:

 - i. where Azure services are purchased directly from Microsoft pursuant to a separate Microsoft enterprise agreement ("**Enterprise Agreement**" or "**EA**"), the Buyer hereby agrees that the Supplier will be registered by the Buyer as their Microsoft Digital Partner of Record ("**DPOR**") and will be registered as the Buyer's exclusive managed services partner through Microsoft's Partner Admin Link program ("**PAL**"). The Buyers adherence to these programs represents Supplier's "**Partner Designation**".

- ii. If the Buyer is not able or willing to complete the Supplier's Partner Designation process, the Supplier reserves the right to increase the Buyer's charges to the extent necessary to recover all rebates or incentives the Supplier would have otherwise received from Microsoft for the Supplier Partner Designation.

6. Pre-Existing and Supplier Owned IP

To the extent any Deliverables under the Call-Off Contract utilise Ensono Stacks components then the Buyer shall have the right to use, copy and modify such MIT License in accordance with Schedule 2 (MIT Licence) herein.

7. Supply of Software.

- a) The Buyer accepts that where Software is supplied with either a Perpetual License or Subscription License, the license shall begin on the earlier of:
 - i. when the Software is first made available to the Buyer for Acceptance Tests; or
 - ii. live use.
- b) Except as permitted by law, the Buyer shall not:
 - i. reverse engineer or decompile any Software;
 - ii. modify Software except as directed by Supplier during Professional Services or Maintenance & Support; or
 - iii. re-sell any Deliverable(s) (as defined herein).
- c) For the avoidance of doubt termination of the Call-Off Contract will not affect the continuation of any Perpetual License for which the Perpetual License Fees have been paid by Buyer. If Software fails to perform substantially in accordance with the documentation published by Supplier, Supplier shall have no liability if it remedies the non-performance within 30 days following written notice from the Buyer.

8. Buyer Supplied Software

- a) Where the Buyer procures software for use with the Managed Services, whether its own or Third Party Software:
 - i. the Buyer shall provide (at its own cost) the Supplier sufficient licences in order to provide the Managed Services and provide the Supplier copies of the licence terms prior to the provision of such; and
 - ii. the Supplier shall not be liable to the Buyer where and to the extent that the licence terms prevent or hinder the Supplier from providing the Services.

9. Third Party Solutions.

This Section applies where the Services under the Call-Off Contract includes: (i) Third Party Software; (ii) Maintenance & Support for Third Party Software; and/or (iii) Supplier performs Consulting Services that result in a recommendation to use Third Party Software or hosting; and/or (iv) Supplier performs Consulting Services that result in a recommendation to use services identified as services from a third party; each referred to as a "Third Party Solution". If Supplier recommends a Third Party Solution, Supplier's duty in relation to such recommendation is limited to: (i) using reasonable care and skill combined with Supplier's knowledge of the Buyer's requirements to select a third party solution that, after reasonable diligence, appears to meet such requirements without unusual or atypical risk; (ii) assisting the Buyer to specify appropriate requirements when procuring the Third Party Solution; and Supplier will not be deemed to be negligent or in breach of this Agreement if the Third Party Solution nevertheless transpires to be defective or unsuitable. Unless otherwise specified in the Call-Off Contract, the Buyer shall be responsible for contracting with the relevant third party to procure the Third Party Solution on terms consistent with the Buyer's requirements and any advice from Supplier. If a Third Party Solution is included and states the Deliverable(s) are to be supplied by Supplier, Supplier shall procure the Third Party Solution direct and use reasonable commercial efforts to apply the Third Party Solution and other benefits of the contract in the interests of the Buyer, however the Buyer acknowledges that Supplier is not obligated to negotiate special terms in relation to the contract.

10. Data Protection

In the event that the Services requires, or the Buyer issues Supplier an instruction to process any Personal Data, the terms and conditions in the link below will apply: <https://www.Supplier.com/file/data-processing-agreement-r1.9pdf>

11. Security

- a) Where the Buyer has opted to procure security services (if available) as part of the scope, then any associated SLAs may be included, but only where explicitly stated in the relevant Call-Off Contract.
- b) Regardless of the procurement of any 'distributed denial of service' ("DDoS") mitigation service, given the ever-evolving nature and unpredictability of such attacks (or similar denial of service methods), in the event that such a DDoS attack represents a significant threat to the Supplier's shared infrastructure and in such circumstances the SLA related to such Services shall be suspended for the duration of such DDoS attacks.

12. Disclaimer of Warranties

THE SERVICES AND ANY RELATED EQUIPMENT, SOFTWARE AND OTHER MATERIALS PROVIDED BY SUPPLIER IN CONNECTION WITH THE SERVICES ARE PROVIDED WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. Non-Solicitation

The Parties agree that they shall not, without the prior written consent of the other party, for the duration of the Agreement or the period of twelve (12) months following the date of expiry or termination of the Call-Off Contract ("**Termination Date**"), either directly or indirectly solicit, engage, attempt to employ or entice away from the other party, any employee, consultant or sub-contractor with whom the parties had contact during the twelve (12) months prior to the Termination Date. Such prohibition shall not extend to an employee of either party who responds to a general advertisement of available positions at the other party.

14. Compliance with Laws

Each party agrees that it will comply with all laws and regulations applicable to the use (in the case of Buyer) and provision (in the case of Supplier) of the Services.

Schedule 1

Definitions

“Consulting Services” means consultancy and advisory services to be provided to Buyer about the subject matter specified in the Call-Off Contract, where the output of such services shall be advice and related documentary reports.

“Developed Software” means the work product of Software Development (which may be supplied as an addition to Supplier Software or Third Party Software).

“Maintenance and Support” means annual recurring services to maintain Software (where applicable) and provide support to Buyer’s users who experience defects or difficulties in use of the Software, on the basis that (unless otherwise specified in the Call-Off Contract) the Buyer provides 1st line Support and Maintenance and Support includes 2nd Line Support and 3rd Line Support as follows:

- a. **“1st Line Support”**: a facility to: (i) receive requests for technical assistance from end users; (ii) ascertain whether the requests relate to the supported Software; (iii) resolve the requests where practicable and (iv) escalate to 2nd Line Support only those unresolved requests that appear to be within the scope of Maintenance and Support and not caused by the Buyer’s environment or infrastructure.
- b. **“2nd Line Support”**: resolution of requests escalated from 1st Line Support using personnel appropriately trained insofar as the requests can be resolved: (i) in the case of Software owned or developed by Supplier, without access or changes to the source code or knowledge confined to personnel familiar with the source code; and (ii) in the case of Software owned or developed by a third party vendor, without access to the code, knowledge and specialist skills of the Software vendor.
- c. **“3rd Line Support”**: resolution of requests escalated from 2nd Line Support.

“Managed Services” means the provision of the Supplier’s managed services with respect to the Buyer’s technical platforms (including procured public cloud infrastructure directly from the provider).

“On-Prem Software” means computer software under a license that is installed, and run-on computer facilities provided by the Buyer.

“Public Cloud Documentation” means the document set (including SLAs) available in the links below which unless as otherwise stated in the relevant Call-Off Contract shall apply for the applicable Public Cloud infrastructure service(s):

AWS Infrastructure:

Documentation	Document Link
AWS Enterprise Support Services	https://aws.amazon.com/premiumsupport/ .
SLAs	https://aws.amazon.com/legal/service-level-agreements/

Azure Infrastructure:

Documentation	Document Link
SLAs	https://azure.microsoft.com/en-us/support/legal/sla/ .

“Public Cloud Provider” means public cloud infrastructure services being provided by the following Third Party direct to the Buyer:

- Amazon Web Services “AWS” provided by Amazon Web Services EMEA SARL and/or
- Microsoft Azure “MS Azure” provided by Microsoft Ireland Operations Limited.

“Service Descriptions” means the product-specific technical descriptions of the Services, which are attached to Order Form and identified in the Digital Platform Item entry.

“Software” means On-Prem Software, Software-as-a-Service, Supplier Software, Developed Software, or Third Party Software.

“Software Development” means services for developing, customizing, and configuring Software to meet requirements as set out in the Call-Off Contract, where the principal output of such service is the developed, customized, configured Software.

“Software-as-a-Service” means computer software that is installed, and run-on computer facilities provided by or on behalf of Supplier or a third-party vendor and supplied to the Buyer only in the form of a web-based service without (and with no need of) a license.

“Supplier Software” means software licensed by Supplier and made generally available to Supplier’s other Buyers.

“Third Party Software” means software licensed by a third-party vendor (including software for which Supplier is permitted to grant a sub-license but on terms mandated by the third-party vendor).

Schedule 2 Use of MIT Licence

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