

G-Cloud 15 – KPMG Supplier Terms

1 Scope and definitions

- 1.1 KPMG LLP has been appointed to the Crown Commercial Service G-Cloud 15 Framework Agreement reference RM1557.15 (the “**Framework**”) which sets out the terms applicable to Call-Off Contracts entered into between a Supplier and a Buyer under that Framework (the “**Call-Off Terms**”).
- 1.2 Unless otherwise provided in these Supplier Terms:
- (i) capitalised words have the meaning given to them in the Framework and Call-Off Terms;
 - (ii) the term “you” and its derivatives refer to the Buyer and the terms “we” and “our” and its derivatives refer to the Supplier, each as identified in the Order Form;
 - (iii) references to clause numbers are to clauses in the Call-Off Terms and references to paragraphs are references to paragraphs in these Supplier Terms;
 - (iv) references to the Order Form are references to the relevant Order Form entered into between the Buyer and Supplier; and
 - (v) the term “the Services” means the Services (including any Additional Services) set out in the applicable Order Form and any other obligations performed by us under the Call-Off Contract.
- 1.3 These Supplier Terms explain how, together with the Call-Off Terms, we will work with you under a Call-Off Contract and set out the supplemental terms that will apply in relation to the Services provided in addition to the Call-Off Terms.
- 1.4 At your request we may agree with you to specifically vary these Supplier Terms for a specific Call-Off Contract, provided such amendment does not materially change the overall effect of these Supplier Terms, and we will set out any agreed amendment in the Order Form.

2 Providing the Services

- 2.1 Notwithstanding our duties and obligations, our role is to provide the Services rather than to make business decisions on your behalf, and you will always remain responsible and accountable for managing your affairs, deciding on what to do after receiving our Services, and implementing any advice or recommendations we provide.
- 2.2 In relation to any due diligence we may have conducted in accordance with clause 2.8.1, you warrant that any information you provided us, and any responses to our enquiries, was accurate and complete in all material respects. If you become aware of any inaccuracies or omissions you will promptly notify us in writing.

3 The way we work

- 3.1 In providing the Services we may provide advice orally, in draft or interim form, but our later written advice or final written report supersedes anything provided earlier and you should not rely on any advice that is draft or interim. If we give you oral advice, and you want to rely on it, let us know and we will provide it in writing. Only the written advice provided in response to such a request should be relied upon.

- 3.2 We cannot predict future events or circumstances, and you should not interpret any advice, opinion, statement of expectation, forecast or recommendation given by us as being a prediction or guarantee of any outcome.
- 3.3 Unless specifically forming part of the Services, or otherwise specifically agreed with you in writing:
- (i) if we receive information from you or from other sources in connection with the Services, we may rely upon it without independent verification; and
 - (ii) we will not update the Services or any Deliverables after we have delivered the final Deliverables.
- 3.4 The Services and any Deliverables are provided for your internal use only (and not for the benefit of any third party) and, except as specifically provided under the Call-Off Terms, they may not be disclosed to any other party without our prior written consent (except as required by Law or by a competent Regulatory Body in which case you shall, if permitted by Law or the Regulatory Body, promptly inform us). However, you may disclose the Deliverables to other government bodies or agencies for support purposes and to your insurers, legal and other professional advisers if seeking advice in relation to the Services, provided that you inform them that: (i) the Deliverables are to be held in confidence; and (ii) to the fullest extent permitted by law, we accept no liability to them in connection with the Services or the Deliverables.

4 Subcontracting

- 4.1 In addition to any Subcontractors expressly identified in the Order Form, we may also use any of the third party subcontractors specifically set out in our Service Description or our Application. We may also rely on the services of other KPMG Persons (defined below) in providing the Services, to which you hereby consent.
- 4.2 In these Supplier Terms “**KPMG Persons**” means KPMG LLP and each and all of its members, employees, and other workers, together with any entity associated with us and each and all of its partners, members, directors, employees and other workers, and “**KPMG Person**” means any one of them.

5 Buyer's responsibilities

- 5.1 You shall provide (and procure that your personnel and any of your other suppliers provide), in a timely manner, such cooperation, information, documents and access to personnel, premises, systems and facilities, as set out in the Order Form or as we reasonably need to provide the Services or we request in order to obtain all necessary licences and permissions. We shall endeavour to set out such requirements in the Order Form, but you acknowledge that such details may not be exhaustive.
- 5.2 In order to enable us to provide the Services, you shall inform us of any changed circumstances or information that may have an impact on our Services and ensure that the personnel with whom we deal have the required skills and information. You shall enter into any notifications, registrations and disclosures required of you by Law.
- 5.3 We may rely on any instructions, requests or information supplied, orally or in writing, by any person whom we reasonably believe to be authorised by you to communicate with us for the purposes of the Call-Off Contract. We may at your request send documents to an electronic storage facility hosted or controlled by you or at your direction, in which event you shall be responsible for security and confidentiality at such facility.
- 5.4 You shall not, directly or indirectly, solicit the employment of any Supplier Staff involved in performing the Services, during performance or for a period of 3 months following their completion or following termination of the Call-Off Contract, without our prior written consent. This prohibition shall not

prevent you at any time from running recruitment advertising campaigns nor from offering employment to any Supplier Staff who may respond to any such campaign.

- 5.5 In these Supplier Terms "**Beneficiaries**" means any person identified in the Order Form or Call-Off Terms as a beneficiary of the Services or of any Deliverable other than you, and on whose behalf or for whose benefit you enter into the Call-Off Contract or in respect of whom we subsequently agree, at your request, to accept responsibility or liability towards in respect of the Deliverables or the Services (and Beneficiary shall be interpreted accordingly). You agree to the provisions of the Call-Off Contract on your own behalf and as agent for any other Beneficiaries.
- 5.6 If you fail to comply with your responsibilities or fail to meet any of your dependencies under the Call-Off Contract, this may have an impact on our delivery of the Service (such as on timescales, our ability to comply with the terms of the Call-Off Contract, or to increase our costs) and we shall be relieved from our obligations or any delivery timetable/date to the extent impacted by your failure. We may also recover from you any additional costs we incur as a direct result of your failure, provided we use reasonable endeavours to mitigate the impact of any failure to the extent we are reasonably able to.

6 Buyer policies

- 6.1 We appreciate that you may have your own internal policies and procedures applicable to the Services ("**Buyer Policies**") with which you would like us to follow in providing the Services (which may include staff vetting, security and environmental requirements). However, in order to enable us to ensure we can comply with any Buyer Policies in providing the Services (and for the Charges), we require written copies of them in advance of entering into the Call-Off Contract (other than the specific policies listed in the Call-Off Terms).
- 6.2 If you ask us to comply with any additional or amended Buyer Policies after the date of the Call-Off Contract we will use our reasonable endeavours to comply with them in all material respects, however we will discuss with you if we are unable to comply with any additional or amended Buyer Policies in providing the Services or if we are unable to do so for the Charges.

7 Confidentiality

- 7.1 We are a regulated business and comply with the confidentiality standards of the Institute of Chartered Accountants in England and Wales and will comply with the specific confidentiality obligations set out in the Call-Off Terms. Notwithstanding this, we may share information relating to you, our relationship with you, and the Services (including Confidential Information) with other KPMG Persons, and that information may be accessed by other parties who facilitate or support our business, but we will ensure that such parties are bound by confidentiality obligations protecting your Confidential Information and we are still responsible for ensuring such confidentiality if Confidential Information is shared with or accessed by such parties.
- 7.2 You must take all necessary precautions to ensure that any of our Confidential Information is only disclosed to such of your personnel to the extent that it is strictly necessary for them to know the Confidential Information and you must ensure that they comply with the confidentiality obligations under the Call-Off Contract.
- 7.3 You will immediately tell us about any security breach of our Confidential Information and will keep a record of those breaches. You will take the necessary steps to recover this information. You will co-operate with us in any investigation into the breach that we consider is necessary.
- 7.4 If you request (or the Call-Off Terms require) that we destroy or procure the return of your Confidential Information or any data we will take commercially reasonable steps to delete the same from our computer and communications systems and devices. However, we may retain a copy of such

Confidential Information or data as required by Law or our record retention policy (which we have implemented to enable us to comply with Law and the requirements of our Regulatory Body).

- 7.5 You will use software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software and to prevent it spreading or otherwise having an adverse effect on our systems or those of our Subcontractors.
- 7.6 If Malicious Software is introduced by you or your third parties (or your or their systems) into our systems you will help us to mitigate any losses and will, as requested, help us to restore our systems as soon as possible.
- 7.7 You will immediately notify us of any breach of security of our Confidential Information and you will, where the breach occurred because of your default, recover our Confidential Information however it may be recorded.
- 7.8 You and us agree that the other may make any notifications, registrations and disclosures required by Law or considered advisable to comply with Law and this may include disclosures or registrations relating to money laundering, tax requirements, and criminal or regulatory investigations.
- 7.9 We may use information we obtain in performing the Services on an anonymised and/or aggregated basis so that no Personal Data or Confidential Information is disclosed, for benchmarking, analytics, quality assurance or other purposes related to our business.

8 Conflicts of Interest

- 8.1 We may be delivering services to, or be approached to deliver services to, another party or parties with interests which conflict with yours (a **"Conflicting Party"**). We therefore have policies and procedures in place (as required by our Regulatory Body) to identify and manage potential conflicts between the interests of our clients. Where there is a risk of a conflict we may establish **"Barriers"** as safeguards designed to facilitate the protection of each client's interests, which may include (for example) separate teams, their geographical and operational separation and/or access controls over data, computer servers and electronic mail systems.
- 8.2 You accept that Supplier Staff are free to deliver services to Conflicting Parties, but where the interests of any Conflicting Party directly conflict with yours in relation to the subject matter of the Services, then the Supplier Staff shall not deliver services to the Conflicting Party and only other KPMG Persons may deliver services to the Conflicting Party where appropriate Barriers are in place. Where this process is followed and such Barriers are in place you agree that this will be sufficient to manage such conflict of interest.
- 8.3 The Supplier Staff who are engaged in the provision of the Services to you shall not be expected or assumed to have knowledge of any information known to other KPMG Persons not engaged on the Services.

9 Intellectual Property Rights

- 9.1 Subject to the payment of our Charges, we grant you the rights:
 - (i) to use our Intellectual Property Rights as set out in clause 10; and
 - (ii) to use during the Term (on a non-exclusive non-transferable basis), any of our other Intellectual Property Rights which we provide or make available to you in providing the Services, solely to the extent you need to use the same to receive the benefit of the Services during the Term.

The licences granted in clause 10 and paragraph 9.1(ii) shall be revoked if our Charges are not paid in accordance with the Call-Off Terms.

- 9.2 For the purpose of the Call-Off Contract, our Existing IPRs include any IPRs licensed to us before the date of the Call-Off Contract and any IPRs that are a development of or an enhancement and/or modification to any IPRs owned by or licensed to us before the date of the Call-Off Contract (howsoever arising, including as a consequence of the Services), and the definition of Existing IPRs shall be interpreted accordingly. You will get a licence to use all such Existing IPRs in accordance with the relevant Order Form and/or Schedule 1.
- 9.3 [paragraph not used]
- 9.4 If we wish to include any third party's IPRs (excluding any IPRs of a KPMG Person) as part of the Services, then we shall identify such third party IPRs and the third party's licence terms which would apply to your use of such third party's IPRs (either as direct licensee or a sub-licensee) prior to the inclusion of that third party's IPRs in relation to the Services, and you agree to comply with (and will procure that any third party who you permit (as allowed under the Call-Off Contract) to access such third party's IPRs complies with) the third party licence terms in respect of the relevant third party's IPRs.
- 9.5 [clause not used]
- 9.6 [clause not used]
- 9.7 Although you may use and exploit the New IPRs (and any of our Existing IPRs and third party IPRs) in accordance with the terms of the Call-Off Terms and these Supplier Terms, we will have prepared the New IPR with the intent that they are used and relied upon by you and only for the purposes of the Services or as otherwise stated in the Order Form or our Service Description. Accordingly, we do not accept a duty of care to others who may see or use any New IPRs outside of the scope of this Call-Off Contract and our Services to you (and you shall not inform or infer to any third party that we do).
- 9.8 No use may be made of our name, logo or trade-marks without our prior written consent (including any consent which may be stated in the Order Form).
- 9.9 You hereby grant us, or shall procure the grant of, a non-exclusive, worldwide, royalty free, non-transferable, non-sublicensable (other than in accordance with this paragraph 9.8), licence to use your IPRs (or those licensed to you and made available by you to us to provide the Services) solely to the extent necessary and for as long as is necessary in order for us to provide the Services. This licence shall be subject to such limitations as you may notify to us in writing from time to time. We may sub-license our rights to use your IPR to our Subcontractors solely to the extent necessary and for as long as is necessary in order for such Subcontractors to provide their services to us in connection with the Services.

10 IPR Indemnity

- 10.1 The indemnity in clause 10.5 shall not apply to the extent that:
- (i) the claim arises due to compliance by the party giving the indemnity with a documented specification or instructions provided by the other party;
 - (ii) the party being indemnified has caused or contributed to the events which gave rise to the claim under the indemnity by acting in breach of the licences or other terms of the Call-Off Contract;
 - (iii) the claim results from or is in connection with any alteration or modification of the infringing items by the party being indemnified; or

- (iv) the claim results from the combination, operation or use of any infringing items with any data, equipment, product, system or intellectual property not supplied by or made known to the indemnifying party.

11 Protection of Personal Data

- 11.1 We will comply with the obligations in clause 17, however you will be responsible for ensuring that you (and the relevant data controller) comply with your (or the relevant data controller's) obligations under the Data Protection Legislation, including in relation to you instructing us to Process any Personal Data as part of the Services.
- 11.2 Unless specifically stated to be part of the Services, we are not responsible for where any data is hosted or transferred under your hosted environment or cloud service (which you should specify with your hosting or cloud service provider), or where you direct us to transfer or disclose data to a third party (such as one of your other third party suppliers or a separate government body).
- 11.3 You and us shall answer the other's reasonable enquiries to enable them, in respect of their obligations under clause 17 and this paragraph 11, to monitor the other's compliance and to fulfil their respective obligations under the Call-Off Terms.
- 11.4 You acknowledge we outsource some of our information systems support to other KPMG Persons and to reputable international providers (our "**Infrastructure Providers**"). We do this in accordance with our rigorous controls and requirements, and we have agreements with them as required by Data Protection Legislation (including data export agreements, because some of our systems may be managed at times from outside the European Economic Area).
- 11.5 You hereby consent to the Processing of Buyer Personal Data by our Subcontractors for the provision of the Services, and by our Infrastructure Providers, provided we ensure that they comply with the Data Protection Legislation and we remain liable to you for compliance with the Call-Off Terms and we oblige them to take equivalent measures when Processing Personal Data to those you require from us under the Call-Off Terms. We can provide further details on our arrangements with such Subcontractors and Infrastructure Providers in relation to any Processing activities that they provide as part of the Services to you.

12 [not used]

13 Our compliance with law and regulation

- 13.1 The Law and our Regulatory Bodies require us to comply with professional standards, including but not limited to standards requiring independence from our audit clients, ethical behaviour, objectivity, impartiality, strict rules of client confidentiality and 'know your client' checks. Accordingly, we may terminate the Call-Off Contract immediately if: (i) there is a change of Law, rule, regulation or professional standard, or circumstances arise that would cause the relationship between you and us to violate such Law, rule, regulation or professional standard or would prejudice any KPMG Person's ability to comply with applicable auditor independence requirements; or (ii) we believe a conflict of interest cannot be managed but in such a case we shall consult you before we do so. Should such a circumstance arise, we will discuss with you how the Services might be varied so that they can be continued or, if appropriate, arrangements by which our Call-Off Contract can be terminated and handed over to a successor service provider chosen by you.
- 13.2 In relation to the performance of our obligations under the Call-Off Contract, the defined terms "Regulatory Body" and "Regulatory Bodies" shall include any organisation or body that has regulatory or professional oversight over our business.

- 13.3 If we are required by any court or Regulatory Body in any proceedings or forum in which we are not a party or participant but you are, or if we are required by a parliamentary select committee or body, to provide information or to produce documents relating in any way to the Services, you shall pay our costs incurred in preparing for and responding to any such requirement at our standard rates applicable at the time of responding, together with outlays including legal expenses, and VAT thereon (where appropriate).

14 Liability

- 14.1 Where the Call-Off Contract and/or Services are for the benefit of you and one or more Beneficiary, the limitations on our liability under clause 14 shall be in the aggregate and will be apportioned amongst you and the Beneficiaries. Neither you nor a Beneficiary shall dispute or challenge the validity or operation of this paragraph on the grounds that no apportionment has been agreed or that the agreed share of the limitation amount apportioned to any Beneficiary is unreasonably low.
- 14.2 You agree that (subject to the agreed caps on liability) we shall, to the extent the same can be recovered under Law, only be responsible for regulatory losses or fines arising directly from our breach of any Laws as they apply to us.
- 14.3 You shall not (and you shall procure that no Beneficiary shall) bring any claim against any KPMG Person except the contracting entity to the Call-Off Contract in respect of loss or damage suffered by you arising out of or in connection with the Call-Off Contract or the Services. This paragraph is enforceable by any KPMG Person. This restriction shall not operate to limit or exclude the liability of the KPMG contracting party for the acts or omissions of anyone involved in delivering the Services.
- 14.4 If other persons are liable to you for any Losses for which we are also liable, then our liability to you is limited to the sum we ought reasonably to pay having regard to our responsibility for those Losses, on the basis that we will not be liable for Losses that may be attributable to the other persons (whether or not they have limited or excluded their liability). Those other persons will be deemed to have paid to you sums appropriate to their responsibility for such Losses.
- 14.5 All warranties and undertakings under the Call-Off Contract are limited to those set out in the Call-Off Contract and any implied terms, conditions, undertakings or warranties whether arising through custom, statute or otherwise are excluded to the fullest extent permitted by the Law.

15 Insurance

- 15.1 We have agreed to maintain the insurance policies to the amounts set out in the Order Form and in accordance with the Call-Off Terms. If you require any additional policies under clause 16 and Joint Schedule 3, you must inform us of these requirements in writing before we enter into the Call-Off Contract, and we will set out such requirements in the Order Form.
- 15.2 Under clause 1.3 of Joint Schedule 3, we will only include an "indemnity to principles" clause for your benefit if this is specifically agreed in the Order Form (as we will need to agree any such provision with our insurers on a case by case basis).
- 15.3 If you do have additional insurance requirements you should discuss these with us, however we are unable to guarantee that we will be able to take out any additional insurance that we did not agree in the Order Form, and you accept that failure to do so shall not be a Default under the Call-Off Terms.

16 Assignments and transfers

- 16.1 Under clause 26.3 you may assign, novate or otherwise dispose of your rights and obligations under the Call-Off Contract in certain circumstances. However, in order to enable us to comply with our regulatory

requirements to ensure we know who we are providing services to (or are otherwise contracting with), you must inform us in advance of any proposed transfer and we may object to such transfer, acting reasonably, if such transfer would cause you or us to be in breach of Law, the requirements of our Regulatory Body, or cause a conflict of interest or our independence to be impaired.

- 16.2 KPMG Persons (who are not the KPMG contracting entity) may rely upon any rights or protections given them under the Call-Off Contract.

17 Exit Plan

- 17.1 In accordance with Call-Off Schedule 10 (where applicable) we will have supplied an exit plan for the migration away from the Services provided by us. The details of this exit plan may be further refined and agreed with you before the date of the Call-Off Contract or in accordance with any process set out in the Order Form.
- 17.2 Unless otherwise specifically agreed in the exit plan, we will provide the services and assistance set out in the exit plan and will make any data (including Buyer Data and Buyer Personal Data) available to you, however you or your Replacement Supplier (or other third party engaged by you for any migration services) will be responsible for your overall migration and exit strategy and migration to the Replacement Supplier.
- 17.3 Unless otherwise agreed with you in writing (including in the exit plan) we will charge you for any exit assistance we provide. We can agree these costs (or the charging basis) with you in the exit plan, and in the absence of these being agreed in advance can provide you with an estimate as and when such assistance is required.