



Terms and Conditions – Cloud Support Services

G-Cloud 10

Dated: 22 May 2018

SUPPLIER TERMS AND CONDITIONS

RECITALS:

- (A) The Customer engages T-Impact Limited ("Supplier") to render Consultancy Services (defined below) according to the terms and obligations set forth in this agreement.
- (B) To render the services pursuant to this agreement, T-Impact may engage Sub-Contractors to provide the Services (defined below) to the Customer and will ensure all obligations are transferred to Sub-Contractors.

1. DEFINITIONS

- 1.1 In this Agreement, the following expressions shall have the following meanings unless the context otherwise requires:

"Billable day"	Hours worked between 9:00 am and 6:00 pm or any other schedule to be agreed in advance with the Customer;
"Call-Off Agreement"	means the "Call-Off Agreement" between a Customer and the Supplier as outlined in the Framework Agreement;
"Customer"	means any public sector body engaging T-Impact to render services defined within this Call-Off Agreement;
"Customer Equipment"	means the equipment, communications links, computer programs, apparatus, materials and any other items necessarily required for the performance of the Consultancy Services to be provided at the Assignment Location for use in association with the Consultancy Service;
"Framework Agreement"	means the G-Cloud Services 8 Framework Agreement between Crown Commercial Service and T-Impact;
"Order Form"	outlines the details of the order for each Call-Off Contract;
"Services"	means the provision of the services as more specifically set forth in the attached Order Form;
"Sub-Contractor"	means any sub-contractor nominated by T-Impact and named in the Order Form to perform the Services specified;
"Supplier"	means T-Impact Limited of 99 Milton Park, Abingdon, Oxfordshire OX14 4RY;
"T-Impact Consultants"	means any employee, staff, agent or sub-contractor nominated by T-Impact to perform the Services specified in the Order Form.

- 1.2 The clause headings in this Agreement shall not affect its interpretation.
- 1.3 Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate, unincorporated associations and partnerships.
- 1.4 The Call-Off Agreement attached to this Agreement shall be incorporated in and form part of this Agreement. In the event of any conflict between the terms of this Agreement and an Order Form, the relevant Order Form shall govern.
- 1.5 In this Agreement references to any person include their respective assigns and successors in title.

2. TERM

This Agreement shall commence on the date specified on the Order Form and continues until terminated pursuant to clause 11 below.

3. SERVICES

- 3.1 T-Impact will provide the Services to be agreed in advance with the Customer.
- 3.2 T-Impact shall ensure T-Impact Consultants are available at such times as necessary for the proper performance of the Services and ensure T-Impact Consultants comply with any rules and regulations of the Customer.
- 3.3 The Customer shall have the right to review and reject personnel supplied by T-Impact under this Agreement on written notice. T-Impact reserves the right to replace its personnel at any time.
- 3.4 T-Impact will endeavour to bring to the attention of the Customer's authorised representative any matter which is not adequately specified or defined in the Customer's requirements and any other relevant specifications or documents.

4. CUSTOMER'S RESPONSIBILITY

- 4.1 The Customer shall satisfy itself as to the Consultant's technical skills to fulfil the Services when interviewing the Consultant and/or during the first week of commencement of the assignment. The Customer should notify any complaints concerning the Consultant's performance promptly to the Supplier.
- 4.2 To the extent necessary the Customer will provide, free of charge, the following facilities to authorised personnel of T-Impact throughout the Customer's normal business hours;
 - 4.2.1 relevant access to and use of the Customer's Equipment as required to fulfil the responsibilities defined in the attached Order Form(s);
 - 4.2.2 access to the Customer's employees, the hardware, the software, the software tools and the Assignment Location;
 - 4.2.3 all electric power and other services needed by T-Impact to perform the Consultancy Services.
 - 4.2.4 To the extent T-Impact's personnel need to work on the Customer's premises, office space suitable for this purpose and the provision of all normal office services.

- 4.3 The Customer is responsible for ensuring that the Customer's equipment is properly installed and is sufficient and suitable for its purpose and that any adjustment will be carried out expeditiously.
- 4.4 If it is agreed between T-Impact and the Customer that T-Impact should perform all or part of the Services at a location other than the Assignment Location the Customer shall give T-Impact access to all equipment, documentation, software, tools and facilities that T-Impact reasonably requires to perform that part of the Services at that location.

5. FEES

- 5.1 The Customer will pay to T-Impact the fees in accordance with the amount(s) invoiced by T-Impact from time to time as specified in the attached Order Form.
 - 5.1.1 fees are inclusive of any travel, subsistence and other out-of-pocket expenses incurred by T-Impact in respect of the provision of Services within the M25.
 - 5.1.2 fees are exclusive of any travel, subsistence and other out-of-pocket expenses incurred by T-Impact in respect of the provision of the Services outside of the M25. All such charges and expenses will be invoiced monthly in arrears at the same time as the Consultancy Charge, unless otherwise stated in a specific Order Form.
 - 5.1.3 fees are exclusive of VAT, facilities and equipment (telephone, workstation, storage & print facilities and/or peripheral devices) which the Customer will provide
- 5.2 The Customer will endeavour to fast track payment of invoices under this agreement in order to minimise payment cycle.
 - 5.2.1 Payment shall become due thirty (30) calendar days after receipt of a correct invoice from T-Impact, submitted in accordance with paragraph 6.2 of the Order Form.
 - 5.2.2 If any sum payable to T-Impact is in arrears for more than 14 days from the due date, T-Impact reserves the right (without prejudice to any other right or remedy) to charge statutory interest on such overdue sum on a daily basis from the original due date until paid in full at a rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).
- 5.3 The T-Impact invoice will contain the particulars required by statute in respect of VAT; and any other particulars prescribed in the Purchase Order Document.
- 5.4 The Customer will notify T-Impact in writing within five (5) days of receipt of an invoice if the Customer considers such invoice to be incorrect or invalid for any reason, failing which the Customer will raise no objection to any such invoice and shall make full payment in accordance with it.
- 5.5 All charges and payments shall be made in British pounds unless otherwise agreed by the parties. The Customer shall have no right to set off any payment due to T-Impact against any amount due and owing by T-Impact to the Customer under this or any other agreement.
- 5.6 T-Impact and T-Impact Consultants will not be entitled to remuneration for holiday pay or sick pay, whether statutory or otherwise in addition to the remuneration specified in the attached Order Form.

5.7 T-Impact agrees that it shall be responsible for any tax liabilities, National Insurance or any similar contributions in respect of the fees paid to it by the Customer and that T-Impact indemnifies the Customer against any and all demands relating to tax liability, interest or otherwise and any and all costs relating to defending against any such demands.

5.8 If required by law where Services are to be rendered, T-Impact shall register for Value Added Tax and/or promptly notify the Department of Social Security of the liability for National Insurance contributions (or the equivalent of any of the above in the relevant jurisdiction).

5.8.1 the T-Impact United Kingdom VAT registration number is 848 2672 92

6. WARRANTIES

6.1 The Customer warrants that it has not relied on any representations made by or on behalf of T-Impact and its sub-contractors, save as expressly incorporated into the Agreement.

6.2 T-Impact warrants to the Customer that it is under no restriction or obligation which would prevent T-Impact from entering this Agreement and/or from carrying out the Services.

6.3 T-Impact warrants that the Services shall be carried out with reasonable care and skill.

7. SUPPLIER STAFF EMPLOYMENT STATUS

The parties hereby acknowledge and agree that it is their intention that T-Impact and any T-Impact Consultants retain independent contractor status and that nothing in this Agreement shall be construed to create any agency, partnership or employer-employee relationship, nor do they wish to imply or create any mutuality of obligation whatsoever as between the parties.

8. CONFIDENTIALITY

8.1 Any and all unpublished information, know-how, technology, business plans, finances or finance plans and any other information relating to the Customer or any of its subsidiaries shall be treated by T-Impact as private and confidential during the term of this Agreement and for a further term of twelve (12) months upon termination of the this Agreement.

8.2 T-Impact further agrees

8.2.1 to observe the secrecy regulations contained in the Telecommunications Act or the Data Protection regulations in the relevant jurisdiction where Services are provided insofar as T-Impact becomes privy to information or knowledge relating thereto.

8.2.2 to properly control any materials or correspondence regardless of media (e.g. documents, film, CDs, computer disks, tapes, removable drives & electronic host storage facilities) prepared by the T-Impact or in T-Impact's custody or control as a result of providing the Services upon the request of the Customer.

8.2.3 T-Impact hereby undertakes that any individual it assigns to supply the Services pursuant to this Agreement shall be bound by the same restrictions.

8.3 The obligations in this clause 8.3 will not apply to any Confidential Information:

8.3.1 in the recipient party's possession (with full rights of disclosure) before receiving it; or

8.3.2 which is or becomes public knowledge other than by breach of this clause; or

- 8.3.3 is independently developed by the recipient without access to or use of the Confidential Information as evidenced by prior written records; or
- 8.3.4 is lawfully received from a third party (with full right to disclose).

9. COPYRIGHT

- 9.1 The copyright and all other intellectual property rights in all computer programs, documentation and other materials as well as in any idea, method, invention, discovery, design, concept or other work ("the Works") arising from T-Impact and any third party's performance under this agreement (whether conceived or developed individually or jointly with the Customer) shall belong to and be the absolute property of the Customer.
- 9.2 At the request and expense of the Customer, T-Impact will do all such things and sign all documents reasonably necessary to enable the Customer to obtain all such rights in the Works, subject to the payment of all fees and expenses due to T-Impact for Services provided.
- 9.3 The Customer hereby grants to T-Impact a non-transferable, non-exclusive, perpetual licence to use and reproduce for its own internal use only any deliverable provided under the assignment.
- 9.4 Nothing in this Agreement will affect T-Impact's rights in any intellectual property rights that is conceived, created, or developed prior to or independent of any work performed under this agreement nor prevent T-Impact from making use of general experience gained, or techniques developed, as a result of carrying out its obligations under the Agreement.
- 9.5 T-Impact hereby acknowledges and agrees that all work rendered in relation to the Services are unencumbered by copyright or any other rights held by third parties such that the rights of the Customer and/or the Customer are therefore unrestricted; and

10. NON-SOLICITATION AND COMPETITION

- 10.1 For the term of the Services identified in the Order Form and a period of twelve (12) months thereafter, Customer agrees (whether through its officers, agents, employees, consultants or otherwise) that it shall not directly or indirectly solicit or entice away any employee or agent of the Supplier.
- 10.2 For the term of the Services identified in the Order Form, T-Impact agrees (whether through its officers, agents, employees, consultants or otherwise) with the Customer that it shall not directly or indirectly solicit or entice away any employee of the Customer.

11. TERMINATION

- 11.1 The Customer shall be entitled to terminate this Agreement immediately by written notice pursuant to clause 15:
 - 11.1.1 if T-Impact fails, refuses or neglects to comply with any of the terms or conditions hereof and fails to remedy such breach within seven (7) days of notice thereof from the Customer;
 - 11.1.2 if T-Impact Consultants are incapacitated from rendering services hereunder by ill health, injury, unsound mind or other cause continues for a consecutive period of seven (7) days or an aggregate period of fourteen (14) days;

- 11.1.3 if the rendering of the Services is prevented, interrupted or delayed by any cause outside the control of the Customer (including but not limited to fire, flood, epidemic, earthquake, explosion, casualty, accident, riot or civil disturbance, war (declared or undeclared), armed conflict, act of God or public enemy, strike, lock-out, labour conditions or judicial order) continues for a consecutive force majeure period of seven (7) days or an aggregate force majeure period of fourteen (14) days;
 - 11.1.4 if any act or conduct of T-Impact shall prejudice the rendering of project work to the Customer;
 - 11.1.5 if T-Impact Consultants are convicted of a criminal offence which in the opinion of the Customer renders T-Impact unable to render Services or puts the Customer into disrepute or discredit; and
 - 11.1.6 if T-Impact Consultants commit an act of dishonesty, misconduct, wilful neglect of duty.
- 11.2 Termination of this engagement on any of the foregoing grounds shall have the following effect:
- 11.2.1 the Customer may substitute another person for and in the place of T-Impact and may continue the Services or any revised version thereof in any manner that the Customer shall in its sole and complete discretion elect;
 - 11.2.2 the Customer shall pay the remuneration referred to in Clause 4 to the extent such payments are due or payable hereunder as at the date of the event giving rise to termination (or the beginning of any suspension preceding termination) and except where termination arises by reason of the default of T-Impact hereunder the Customer's obligations under Clause 4 shall not be affected;
 - 11.2.3 each party will remain entitled to enforce any claim against the other party or parties arising from any breach hereof that may have occurred before termination; and
 - 11.2.4 the Customer will remain entitled to all rights hereby granted to it.
- 11.3 The Customer and T-Impact shall be entitled at any time in its discretion without specifying any reason to terminate the Agreement with thirty (30) business days written notice in accordance with clause 15.

12. FORCE MAJEURE

- 12.1 Neither party will be liable for any delay in performing or failure to perform any of its obligations under the Agreement caused by events beyond its reasonable control ('Force Majeure Event').
- 12.2 The party claiming the Force Majeure Event will promptly notify the other in writing within 5 days of occurrence of the reasons for the delay or stoppage (and likely duration) and will take all reasonable steps to overcome the delay or stoppage.
- 12.3 If the party claiming the Force Majeure Event has complied with clause 12.2 its performance under the Agreement will be suspended for the period that the Force Majeure Event continues and the party will have an appropriate extension of time for performance, subject to the following:
- 12.4 any costs arising from the delay or stoppage will be borne by the party incurring those costs;

- 12.5 either party may, if the delay or stoppage continues for more than 30 continuous days, terminate the Agreement with immediate effect on giving written notice to the other and neither party will be liable to the other for such termination; and
- 12.6 the party claiming the Force Majeure Event will take all reasonable steps to bring that event to a close or to find a solution by which the Agreement may be performed despite the Force Majeure Event.

13. LIMITATION OF LIABILITY

- 13.1 The Customer and T-Impact agree that the express obligations and warranties made by T-Impact and the Customer are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to anything supplied or Services provided under or in connection with the Agreement.
- 13.2 Both parties accept liability for death or personal injury arising from its own negligence in the course of their engagement under the Agreement.
- 13.3 Save as provided within clause 8, T-Impact's total liability (whether in contract, tort, including negligence, or otherwise) under or in connection with the Agreement and any other agreement with the Customer relating to the Services or based on any claim for indemnity or contribution shall not exceed 100% of the Consultancy Charge in aggregate. Save as provided within clause 10.2, the Customer's total liability (whether in contract, tort, including negligence, or otherwise) under or in connection with the Agreement and any other agreement with T-Impact relating to the Services or based on any claim for indemnity or contribution shall not exceed 100% of the Consultancy Charge in aggregate.
- 13.4 Neither T-Impact or Customer shall be liable (whether in contract, tort (including negligence) or otherwise) for any loss of profits or of contracts, loss of business or of revenues, loss of goodwill or reputation, or for any indirect, incidental, punitive or consequential loss, damage, cost or expense whatsoever.
- 13.5 The Customer agrees that except as expressly provided in clause 12 and this clause 13 T-Impact will not be under any liability of any kind whatever and however caused, arising directly or indirectly in connection with the Agreement. The Customer acknowledges and agrees the allocation of risk contained in this clause 13 is reflected in the Consultancy Charge.

14. ASSIGNMENT

- 14.1 The parties acknowledge that the Customer has the right to assign the Customer's obligations under the Framework Agreement, including the Services contained in this Agreement, to companies related to the Customer provided that T-Impact gives its written consent which shall not be unreasonably withheld. The Customer acknowledges that T-Impact may assign this Agreement with thirty days prior written notice to the Customer.

15. NOTICES

- 15.1 All notices shall be in writing and will be deemed to have been received:
- 15.1.1 upon delivery if hand delivered;
 - 15.1.2 forty eighty (48) hours after mailing if sent by first class post; and
 - 15.1.3 immediately upon transmission provided a transmission receipt is sent by first class post or hand delivered by the end of the next business day if sent by fax.

- 15.2 All notices to the Supplier shall be sent to the Account Manager as detailed in the Order Form
- 15.3 All notices to the Customer shall be sent to the Principal Contact as detailed in the Order Form

16. PRIOR AGREEMENTS

- 16.1 The terms of this Agreement shall take effect as of the date of this Agreement and shall supersede any other arrangements or agreements, whether written or oral, express or implied.
- 16.2 Only this Agreement in the English Language shall be binding on the parties and any foreign language version of this agreement, which may exist, shall be disregarded for all purposes. The Customer acknowledges that no reliance is placed on any representation made prior to but not embodied in this Agreement. The printed terms of any purchase order or other correspondence and documents of the Customer issued in connection with this Agreement will not apply unless expressly accepted in writing by T-Impact.
- 16.3 Except as otherwise permitted by this Agreement, no variation or alteration of its terms will be effective unless it is in writing and signed by persons authorised on behalf of both parties.

17. COUNTERPARTS AND SEVERABILITY

This Agreement may be executed in any number of counterparts by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

If any part of these Terms and Conditions are found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of these Terms and Conditions which will continue to be valid and enforceable to the fullest extent permitted by law.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of England and each party hereto irrevocably submits to the jurisdiction of the English courts.