

G-Cloud 10

Terms and Conditions of Service

TERMS AND CONDITIONS FOR IT SERVICES

1. Application

- 1.1 In addition to the core terms as covered by the Framework Agreement (FW) and the Call-Off Contract (CO) for G Cloud 10 these Terms and Conditions shall apply to the provision of IT Services by the Supplier to the Customer.
- 1.2 In the event of any conflict between these Terms and Conditions and the Terms and Conditions in the Framework Agreement (FW) and the relevant Call-Off Contract (CO) for G Cloud 10 the latter two shall have precedence.

2. Definitions and Interpretation

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Agreement”	means the Contract entered into by the Customer and the Supplier to which these Terms and Conditions apply;
“Business Day”	means, any day (other than Saturday and Sunday) on which ordinary banks are open for [their full range of normal] business in London;
“Commencement Date”	means the commencement date for these Terms and Conditions as set out in the relevant G Cloud 10 Call-Off Contract to these Terms and Conditions;
“Customer”	As defined in the relevant G Cloud 10 Call-Off Contract
“Supplier”	Nine23 Ltd, 4 Benham Road, The Southampton Science Park, Chilworth, Southampton, Hampshire, SO16 7QJ.
“Services”	means the services to be provided by the Supplier for the Customer as set out in the in the relevant G Cloud 10 Call-Off Contract

“Fees”	means any and all sums payable by the Customer to the Supplier arising out of the performance of the Supplier’s obligations under these Terms and Conditions;
“Software”	means any and all programs, applications, instructions or similar that may from time to time be installed on the Customers computer systems; and
“Working Hours”	means the normal working hours of the Supplier which are 09:00 to 17:00 hrs

- 2.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 2.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 2.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 2.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions and the relevant G Cloud 10 Call-Off Contract
 - 2.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or a Clause of the relevant G Cloud 10 Call-Off Contract
 - 2.2.5 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 2.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.4 Words imparting the singular number shall include the plural and vice versa.
- 2.5 References to any gender shall include the other gender.

3. **Supplier’s Obligations**

- 3.1 With effect from the Commencement Date the Supplier shall, in consideration of the Fees being paid in accordance with the terms of payment, provide the Services expressly identified in the Specification of Services Schedule, or otherwise agreed under these Terms and Conditions.
- 3.2 The Supplier will use reasonable care and skill to perform the Services identified in the relevant G Cloud 10 Call-Off Contract or otherwise agreed under these Terms and Conditions.
- 3.3 The Supplier will, subject to Clause 4, use reasonable endeavours to maintain the functionality of any Software which may be installed or otherwise operative

on the Customer's Equipment and undertakes to re-install any Software which may have been corrupted or otherwise made unavailable due to hardware failure and to render such technical assistance as may be reasonable to secure the satisfactory operation of the Software.

- 3.4 Upon receipt of the Customer's request for support or rectification of a defect, the Supplier shall (subject to its then current commitments) normally begin work on such support or defect not later than 24 hours thereafter and shall carry out all Services as specified in the relevant G Cloud 10 Call-Off Contract during Working Hours until all required work is completed to the reasonable satisfaction of the Customer.
- 3.5 The Supplier will not guarantee the performance of any Software which the Supplier has undertaken to re-install under sub-Clause 3.3.
- 3.6 The Supplier shall use all reasonable endeavours to complete its obligations under the relevant G Cloud 10 Call-Off Contract. The Parties agree that time will not be of the essence in the performance of these obligations.

4. Customer's Obligations

- 4.1 The Customer shall:
 - 4.1.1 allow the Supplier access to the Equipment and all relevant Software for investigation purposes;
 - 4.1.2 provide adequate working space and facilities for the Supplier's staff; and
 - 4.1.3 co-operate with them in the diagnosis of any defect or malfunction in the Equipment or Software.
- 4.2 The Customer shall allow the Supplier the use of any Equipment, computer systems, peripherals or other hardware necessary to enable it to provide the Services and shall be responsible for procuring, installing and maintaining all communications media not supplied by the Supplier.
- 4.3 The Customer will not allow any changes or modifications to the Software to be made by any party other than those authorised by the Supplier. If such changes or modifications are carried out without authorisation or appropriate notification, the Supplier reserves the right to review these Terms and Conditions and make adjustments accordingly.
- 4.4 The Customer will make freely available to the Supplier all documentation associated with the Equipment, working documents, original Software installation media, current data backups, Equipment and any other relevant hardware for the efficient maintenance of the Equipment and the Software.
- 4.5 The Customer shall create regular data backups in such a manner as to minimise any potential data loss and to ensure that these are made available to the Supplier as required.
- 4.6 The Customer shall take all reasonable precautions to ensure the safety and health of the Supplier's personnel while such personnel are at the Customer's premises.

5. Price

- 5.1 The Customer agrees to pay the Fees in accordance with Clause 6 and the relevant G Cloud 10 Call-Off Contract.
- 5.2 The Supplier shall be entitled to recover from the Customer his reasonable incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services.
- 5.3 The Customer shall pay the Supplier for any additional services provided by the Supplier that are not specified in the relevant G Cloud 10 Call-Off Contract in accordance with the Supplier's daily rate in effect at the time of the performance or such other rate as may be agreed.
- 5.4 All sums payable by either Party pursuant to these Terms and Conditions are exclusive of any value added or other tax or other taxes on profit, for which that Party shall be additionally liable.

6. Payment

- 6.1 All payments required to be made pursuant to these Terms and Conditions by either Party shall be made within 30 days of the date of the relevant invoice, or earlier in accordance with Government Payment Policy, P2P guidelines and the Prompt Payment Code guidelines, without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.
- 6.2 Payment shall normally be made via CPF, GPC or BACS.
- 6.3 The Supplier shall not suspend the supply of the G-Cloud Services unless the Supplier is entitled to terminate the G-Cloud 9 Call-Off Agreement under Clause for Customer's failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).
- 6.4 In the event of a disputed invoice the Customer shall make payment in respect of any undisputed amount in accordance with the provisions of Clause of the G-Cloud 9 Call-Off Agreement and return the invoice to the Supplier within ten (10) Working Days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The Supplier shall respond within ten (10) Working Days of receipt of the returned invoice stating whether or not the Supplier accepts the Customer's proposed amendments. If it does then the Supplier shall supply with the response a replacement valid invoice.

7. Variation and Amendments

- 7.1 If the Customer wishes to vary any details of the relevant G Cloud 10 Call-Off Contract it must notify the Supplier in writing as soon as is reasonably possible. The Supplier shall use all reasonable endeavours to make any required changes and any additional costs thereby incurred shall be separately invoiced

to the Customer.

- 7.2 If, due to circumstances beyond the Supplier's control, it has to make any change in the arrangements relating to the provision of the Services it shall notify the Customer forthwith. The Supplier shall endeavour to keep such changes to a minimum and shall seek to offer the Customer arrangements as close to the original arrangements as is reasonably possible in the circumstances.

8. **Confidentiality** (in amplification of Clauses of the G-Cloud 10 Framework and Call-Off Contracts)

- 8.1 During the term of the Agreement [and after termination or expiration of the Agreement for any reason for a period of 12 months starting on the date of written confirmation of the service provision], the following obligations shall apply to the Party disclosing Confidential Information ('the Disclosing Party') to the other Party ('the Receiving Party').
- 8.2 Subject to sub-Clause 10.3, the Receiving Party:
- 8.2.1 may not use any Confidential Information for any purpose other than the performance of his obligations under these Terms and Conditions;
- 8.2.2 shall make every effort to prevent the use or disclosure of the Confidential Information.
- 8.3 The obligations of confidence referred to in the provisions of this Clause shall not apply to any Confidential Information that:
- 8.3.1 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;
- 8.3.2 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the other Party to these Terms and Conditions in respect of it and who imposes no obligations of confidence upon the Receiving Party.
- 8.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which he may be entitled.
- 8.5 The obligations of the Parties under the provisions of this clause shall survive the expiry or the termination of the Agreement for whatever reason.]

9. **Sub-Contracting and Assignment**

- 9.1 The Supplier may sub-contract to third parties all or any part of the work to be performed hereunder.
- 9.2 The Customer shall not assign to a third party any or all of its rights or obligations under these Terms and Conditions without the prior written consent

of the Supplier.

10. Waiver

- 10.1 No waiver by the Supplier of any breach of these Terms and Conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of these Terms and Conditions shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which any waiver is given.
- 10.2 No failure or delay on the part of any Party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

11. Severance

If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected thereby.

12. Notices

- 12.1 All notices under these Terms and Conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 12.2 Notices shall be deemed to have been duly given:
- 12.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 12.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
 - 12.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 12.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

Service of any document for the purposes of any legal proceedings concerning or arising out of these Terms and Conditions shall be effected by either Party by causing such document to be delivered to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing from time to time.