

G Cloud 11

Templar Executives Supplier Terms of Business

May 2019



G-CLOUD 11

SUPPLEMENTAL SUPPLIER TERMS – TEMPLAR EXECUTIVES LIMITED

1. RECITAL AND DEFINITIONS

- 1.1. This agreement sets out the ancillary terms applicable to call-off contracts (**Call-Off Contracts**) entered into between Templar Executives Limited (a **Supplier**) and a Buyer under the Crown Commercial Services G-Cloud 11 Framework Agreement (reference: RM1557.11) (the **Framework Agreement**).
- 1.2. Unless otherwise provided in these Supplier Terms:
 - 1.2.1. capitalised words have the meaning given to them in the Framework Agreement and the Call-Off Contracts;
 - 1.2.2. the term “you” refers to the Buyer and the term “we” and “our” refers to the Supplier, each as identified in the Order Form;
 - 1.2.3. references to clause numbers are to clauses in the Call-Off Contract and references to paragraphs are references to paragraphs in these Supplier Terms;
 - 1.2.4. references to the Order Form are references to the relevant Order Form entered into between the Buyer and Supplier as defined in the Call-Off Contracts; and
 - 1.2.5. the term “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 Contracts.
- 1.3. These Supplier Terms explain how, together with the terms set out in the Call-Off Contracts, we will work with you under the Call-Off Contracts and set out the supplemental terms that will apply in relation to the Services provided in addition to the terms of the Call-Off Contracts.
- 1.4. For the avoidance of doubt and at your request, we may agree with you to specifically vary these Supplier Terms for a particular Call-Off Contract, provided our agreement does not materially change the overall effect of these Supplier Terms.
- 1.5. We will set out any agreed amendment in the Order Form.

2. WORKING WITH YOU

- 2.1. The Services we provide are advisory or informative only. 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.
- 2.2. Any commercial decisions you may make as a result of your reliance upon the Services are a matter for you and you are responsible for any resulting actions you elect to take.
- 2.3. You should not rely on any advice that is not in writing, draft or interim.
- 2.4. 3.3 Unless specifically forming part of the Services, or otherwise specifically agreed with you in writing:
 - 2.4.1. if we receive information from you or from other sources in connection with the Services, we may rely upon it without independent verification; and
 - 2.4.2. we will not update the Services or any related Deliverables after completion of the Services we are required to provide.

3. THIRD PARTIES

- 3.1. The Services are provided for your internal use only and are not for the benefit of any third party.
- 3.2. Except as specifically provided under the Call-Off Contracts, 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, inform us straight away.
- 3.3. 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:
 - 3.3.1. the Deliverables are to be held in confidence; and
 - 3.3.2. 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.

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- 4.2. We will remain primarily responsible to you for the performance of the Services in accordance with incorporated Framework clause 8.34.

5. YOUR 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.
- 5.2. 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 Contracts. 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 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 Contracts, without our prior written consent.
- 5.5. If you fail to comply with your responsibilities or fail to meet any of your dependencies under the Call-Off Contracts, 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. CONFIDENTIALITY

- 6.1. To reciprocate the obligation in incorporated Framework clause 8.79, 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.
- 6.2. To reciprocate the obligation in incorporated Framework clause 8.85, 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.
- 6.3. If you request (or the terms of the Call-Off Contracts 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. 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).
- 6.4. To reciprocate the obligation in Call-Off Contract clause 16.2, 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.
- 6.5. To reciprocate Call-Off Contract clause 16.3, 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.
- 6.6. To reciprocate the obligation in Call-Off Contract clause 16.5, 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.
- 6.7. 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. INTELLECTUAL PROPERTY RIGHTS

- 7.1. Subject to the payment of our Charges, we grant you the rights:

- 7.1.1. to use our Intellectual Property Rights as set out in Call-Off Contract clause 11; and

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- 7.1.2. 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.
- 7.2. The licences granted in Call-Off Contract clause 11 shall be revoked if our Charges are not paid in accordance with the terms of the Call-Off Contracts.
- 7.3. For the purpose of the Call-Off Contract, our Background 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 Background IPRs shall be interpreted accordingly.
- 7.4. For the avoidance of doubt, you will get a licence to use all such Background IPRs in accordance with Call-Off Contract clauses 11.2 and 11.3 provided that where we are using third party IPRs or Background IPR which is subject to security or commercial restrictions, meaning that we cannot allow the Buyer full use of the Project Specific IPRs or allow the Buyer to publish such IPR as open source, the Buyer shall accept such restriction upon written notification by the Supplier.
- 7.5. Subject to paragraph 7.4 above, under Call-Off Contract clauses 11.3 and 11.4 the right to publish IPR as open source shall only apply:
 - 7.5.1. to Project Specific IPR (excluding any software, which is subject to Call-Off Contract clause 15) for your ordinary business purposes;
 - 7.5.2. if you give us prior written notice of your intention to publish the Project Specific IPR as open source and we agree (in writing) to the open source licence terms you intend to use; and
 - 7.5.3. you notify us in writing of any third party with whom you intend to share the Project Specific IPR so that we are aware of who has access to the Project Specific IPR and we consent to their use of the Project Specific IPR (which we may withhold if such sharing would prejudice our ability to comply with applicable auditor independence requirements or applicable Law).
- 7.6. In accordance with Call-Off Contract clause 11.4, if we wish to include any third party's IPRs 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.
- 7.7. You agree that you cannot, unless specifically set out in the Order Form, publish any third party IPRs or our Background IPRs as open source. You will still have the other rights to use them in accordance with Call-Off Contract clause 11.
- 7.8. We do not accept a duty of care to others who may see or use any Project Specific IPRs outside of the scope of this Call-Off Contract and our Services to you.
- 7.9. You may not use our name, logo or trademarks without our prior written consent (including any consent which may be stated in the Order Form).
- 7.10. You hereby grant us, or shall procure the grant of, a non-exclusive, worldwide, royalty free, non-transferable, non-sublicensable 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.

8. IPR INDEMNITY

- 8.1. We shall indemnify you against any claim of infringement or alleged infringement of a third Party's IPRs in accordance with clause Call-Off Contract 11.5 (subject to Call-Off Contract clauses 11.7 and 24) provided you comply with paragraph 8.2 below.
- 8.2. If a claim arises or is threatened against you, or you have reason to suspect that a claim may arise or be threatened, for which we indemnify you under Call-Off Contract clause 11.5:
 - 8.2.1. you shall notify us promptly in writing;
 - 8.2.2. we may assume conduct of the claim;
 - 8.2.3. you shall not compromise or settle the claim without our prior written consent; and
 - 8.2.4. you shall provide us with such information and assistance, at our cost, as we reasonably require.
- 8.3. To reciprocate the indemnity we give to you under Call-Off Contract clause 11.5, you will, on written demand, fully indemnify us for all Losses which we incur at any time from any claim of infringement or alleged infringement of a third party's IPRs because of:
 - 8.3.1. the rights you have granted to us under the Call-Off Contract;

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- 8.3.2. your use of the Services or any Deliverables or our IPRs in breach of the Call-Off Contract; or
- 8.3.3. our use, in accordance with the terms of the Call-Off Contract, of any materials, information or data you have provided us.
- 8.4. If a claim arises or is threatened against us, or we have reason to suspect that a claim may arise or be threatened, for which you indemnify us under paragraph 10.3:
 - 8.4.1. we shall notify you promptly in writing;
 - 8.4.2. you may assume conduct of the claim;
 - 8.4.3. we shall not compromise or settle the claim without your prior written consent; and
 - 8.4.4. we shall provide you with such information and assistance, at your cost, as you reasonably require.
- 8.5. In addition to the circumstances set out in Call-Off Contract clause 11.7, the indemnity in clause Call-Off Contract 11.5 and paragraph 8.3 above shall also not apply to the extent that:
 - 8.5.1. the claim arises due to compliance by the party giving the indemnity with a documented specification or instructions provided by the other party;
 - 8.5.2. 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;
 - 8.5.3. the claim results from or is in connection with any alteration or modification of the infringing items by the party being indemnified; or
 - 8.5.4. 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.

9. PROTECTION OF PERSONAL DATA

- 9.1. 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.
- 9.2. 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).
- 9.3. You and us shall answer the other's reasonable enquiries in respect of our obligations under Call-Off Contract clause 12 and this paragraph 9 to monitor the other's compliance and to fulfil their respective obligations under the terms of the Call-Off Contract.
- 9.4. In accordance with Call-Off Contract clause 12.3, you hereby consent to the Processing of Buyer Personal Data by our Subcontractors for the provision of the Services.
- 9.5. To reciprocate the indemnity we give to you under Call-Off Contract clause 10.1, you will during and after the Term keep us fully indemnified against all Losses arising from any breach of your obligations.
- 9.6. 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, to provide information or to produce documents relating in any way to the Services, you shall pay our reasonable 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).

10. LIABILITY

- 10.1. 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.
- 10.2. 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.

11. INSURANCE

- 11.1. If you require any additional policies under Call-Off Contract clause 9.3, you must inform us of these requirements in writing and we will agree to such requirements where they are consistent with the requirements under the Call-Off Contract.
- 11.2. 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. You accept that failure to do so shall not be a Default under the Call-Off Terms.

12. ASSIGNMENTS AND TRANSFERS

- 12.1. Under Framework clause 8.35 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.

13. EXIT PLAN

- 13.1. Unless otherwise specifically agreed in the exit plan described at Call-Off Contract clause 21, we will provide the services and assistance set out in the exit plan, and in accordance with clause 22.1 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.
- 13.2. 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.