



ACADIAN

SMART—

Structured Mortality Analysis & Review Tool

Terms & Conditions

G-Cloud 11

Acadian Limited

Supplier Terms and Conditions

PARTIES

1. **Acadian Limited** incorporated and registered in England and Wales with company number 8127478 whose registered office is at 27 Mortimer Street, London, W1T 3BL, United Kingdom ("**Supplier**"); and
2. Buyer set out in an Order Form ("**Buyer**"),

Buyer and Supplier each being a "Party" and together the "Parties" to these terms of agreement.

BACKGROUND

Buyer wishes to engage the Supplier under the G-Cloud 11 framework, and the Supplier agrees to provide the Software and related services ("**G-Cloud Services**") on these terms.

AGREED TERMS

1 Operation of these terms

- 1.1 The parties acknowledge that these terms constitute the "Supplier Terms" for the purposes of the G-Cloud 11 Call-Off Contract (including the Order Form) between the Parties (the "**Call-Off Contract**").
- 1.2 These terms shall take effect between the Parties on execution of the Call-Off Contract by the Parties.
- 1.3 The definitions and rules of interpretation used in these terms are set out in Schedule 1 of these terms. Unless otherwise defined in these terms, capitalised terms have the meaning given in the Call-Off Contract.

2 Intellectual Property Rights

- 2.1 The Intellectual Property Rights relating to the Services (including as subsisting in the Solution but excluding Buyer Input) are, and shall remain, the property of Supplier and its licensors. Buyer shall have no rights in or to the Services including the Solution except as expressly set out in these terms. Buyer shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that may be necessary to perfect the right, title and interest of Supplier in and to the Intellectual Property Rights in the Services including the Solution.
- 2.2 In consideration of the payment of the Charges, Supplier hereby grants to Buyer for the Term and subject to these terms, the non-exclusive, non-transferable right to access the Solution on the Computer Hardware for the Solution Purposes.
- 2.3 The Intellectual Property rights in Buyer Input are, and shall remain, the property of Buyer or its licensors. Buyer hereby grants to Supplier a non-exclusive, non-transferable right to use Buyer Input in relation to the delivery of the Services. Buyer shall indemnify Supplier against all liabilities, costs, expenses, damages and losses suffered or incurred by Supplier arising out of or in connection with any claim made against Supplier for actual or alleged infringement of a third-party's Intellectual Property Rights arising out of or in connection with use of, access, or otherwise in relation to, Buyer Input.
- 2.4 Buyer shall use reasonable endeavours to prevent any infringement of Supplier's Intellectual Property Rights in the Services including the Solution and shall promptly report to Supplier any such infringement that comes to its attention. In particular, Buyer shall:
- 2.4.1 ensure that each Authorised User, before starting to use the Solution, is made aware that the Solution is proprietary to Supplier and that it may only be used and copied in accordance with these terms;

- 2.4.2 implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Solution; and
- 2.4.3 not permit third parties (other than Authorised Users) to have access to the Solution without the prior written consent of Supplier, who may impose additional Charges and require assurances that such third party executes a written confidentiality agreement before being given access to the Solution.

3 Delivery, support and use of the Solution

- 3.1 Supplier shall provide Buyer with reasonable training and support in relation to the operation of the Solution, as set out in the Service Description.
- 3.2 Supplier shall use reasonable endeavours to correct defects notified to it by Buyer in accordance with the Service Level Agreement.
- 3.3 Supplier shall use reasonable efforts to ensure the accurate migration of any Buyer data, but gives no warranties as to the completeness or accuracy of such migration. Buyer shall be responsible for checking the accuracy and completeness of the migrated data and shall promptly give sufficient details to Supplier of any inaccuracies or omissions in order to permit Supplier to correct them where possible.
- 3.4 Buyer agrees as follows:
 - 3.4.1 that the Solution may be used only by Authorised Users;
 - 3.4.2 that the functioning of the Solution may diminish in the event that Authorised User demand exceeds that for which the Solution running on the Computer Hardware environment is designed;
 - 3.4.3 where access to code related to the Solution is provided, use of the Solution shall be restricted to the object code of the Solution and in particular Buyer have no right (and shall

not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, profile, analyse, adapt or make error corrections to the Solution in whole or in part except to the extent necessary for the purposes of integrating the operation of the Solution with the operation of other software or systems as contemplated for the purposes of the Solution;

- 3.4.4 Buyer may grant access rights to Authorised Users on equivalent terms to those set out in these terms (but excluding for the avoidance of doubt the right to grant further sub-licences without Supplier's express written consent) and provided also that Buyer shall remain liable to Supplier for the acts and omissions of Authorised Users as if they were its own acts or omissions; and
 - 3.4.5 Buyer may not access or use the Solution other than as specified in these terms without the prior written consent of Supplier, and Buyer acknowledges that additional Charges may be payable on any change of use approved by Supplier; and
 - 3.4.6 if notified by Supplier in relation to the Solution, Buyer is responsible for putting in place appropriate terms of use with Authorised Users relating to their use of the Solution in a manner that complies with these terms and the Call-Off Contract.
- 3.5 Buyer shall notify Supplier as soon as any of them become aware of any unauthorized use of the Solution by any person.
 - 3.6 Supplier shall have the right to inspect and have access to any premises (and to the computer equipment located there) at, on or from which the Solution (or parts of it) are being kept or accessed, for the purposes of confirming that Buyer is complying with the terms of these terms, provided that Supplier provides reasonable advance notice to Buyer of such inspections, which shall take place at reasonable times.

4 Solution Front-End Software

4.1 In relation to any Solution Front-End Software:

- 4.1.1 Buyer shall be responsible for ensuring that Computer Hardware to which the Solution Front-End Software is to be downloaded is in working order;
- 4.1.2 Buyer may permit Authorised Users to download and use the Solution Front-End Software for the purposes of accessing the Solution in question, provided that Buyer shall remain liable to Supplier for the acts and omissions of such Authorised Users as if they were its own acts or omissions; and
- 4.1.3 use of the Solution Front-End Software shall be restricted to object code form and in particular Buyer have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, profile, analyse, adapt or make error corrections to Solution Front-End Software in whole or in part except to the extent necessary for the purposes of integrating the operation of Solution Front-End Software with the operation of other software or systems as contemplated for the purposes of delivering the Solution.

5 Data Protection

- 5.1 As applicable to the Solution, the Buyer shall be responsible for complying with its obligations as “data controller” as defined in the UK Data Protection Act 2018 including without limitation, putting in place all appropriate privacy policies as regards the collection, use and transfer of all personal data (including any sensitive data) and obtaining any necessary consents as regards all processing of personal data (including any sensitive personal data) transferred by the Buyer to the Supplier.

- 5.2 The Buyer agrees to indemnify and keep indemnified and defend at their own expense the Supplier against all costs, claims, damages or expenses incurred by the Supplier or for which the Supplier may become liable due to any failure by the Buyer or their employees or agents to comply with any of their respective obligations under the UK Data Protection Act 2018.

6 Warranties

- 6.1 The warranties given under these terms and the Call-Off Contract are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to these terms. Except as expressly stated otherwise, Supplier specifically denies any implied or express representation that the Solution will:
- 6.1.1 operate in conjunction with any hardware items or software products other than the Computer Hardware; or
 - 6.1.2 operate uninterrupted or error-free.
- 6.2 Any unauthorised modifications, use, access to or improper installation of a Solution by, or on behalf of, Buyer shall render all Supplier's warranties and obligations under these terms in relation to that Solution null and void.
- 6.3 Buyer acknowledges that Solution relies on underlying technologies, such as browsers, operating systems and servers to deliver its functions, and therefore its operation is also subject also to the availability and capabilities of such underlying technologies (which are beyond the control of Supplier).

7 Limitation of liability

- 7.1 Except as expressly provided in these terms or the Call-Off Contract and to the fullest extent permitted by applicable law:
- 7.1.1 Buyer acknowledges that the Solution is intended to be a background, information, efficiency, communication or

assistance tool for use by Buyer and the Authorised Users for the Solution Purposes only and is not intended to be a substitute for medical advice, training, analysis, diagnosis or treatment. As between Buyer and Supplier, Buyer and not Supplier shall be solely responsible for any opinions, recommendations, interpretations or other conclusions made, drawn or actions taken by Buyer, any Authorised User, or any other third party based (wholly or in part) on the results obtained from, or otherwise relating to, the access to and use of the Solution;

- 7.1.2 Buyer acknowledges that the uses made of the Solution by Buyer and its Authorised Users are outside Supplier's control and, accordingly, Supplier is not liable for any consequences whatsoever resulting from the provision or receipt of (or the failure to provide or receive) content, data or information between Authorised Users using the Solution, including but not limited to the receipt of (or failure to receive) medical or other advice, guidance or information;
- 7.1.3 Supplier takes no liability whatsoever for ensuring that the Solution meets or complies with any applicable regulatory regime in any jurisdiction (including but not limited to any requirements relating to medical devices or diagnostic tools) and Buyer agrees that they shall be entirely responsible for ensuring the implementation and operation of the Solution is compliant with applicable regulatory requirements and agrees to indemnify Supplier in respect of any all liabilities, costs, expenses, damages and losses suffered or incurred by Supplier in that regard; and
- 7.1.4 Supplier shall have no liability in relation to the accuracy or suitability of information, processes or instructions provided to Supplier for use in relation to the Solution, or for any damage caused by errors or omissions in any such information, processes or instructions provided to Supplier.

- 7.2 Buyer shall be liable for the acts and omissions of Authorised Users in accessing Solutions, as if those acts and omissions were its own.

8 Consequences of ending a Call-Off Contract

- 8.1 At the end of the Call-Off Contract Term and subject to any exit plan in operation:
- 8.1.1 Buyer's rights granted by Supplier in relation the Solution shall terminate immediately;
 - 8.1.2 Buyer shall immediately pay any outstanding unpaid invoices and interest due to Supplier and Supplier shall submit invoices for any period of access to the Solution that it has granted, but for which no invoice has been submitted, and Buyer shall pay these invoices immediately on receipt;
 - 8.1.3 Buyer shall as soon as reasonably practicable either return to Supplier or, at Supplier's option, destroy all material copies of the Solution (or parts of it including any Solution Front-End Software), and shall ensure that any copies of the Solution on hard disks or other storage means associated with any computer equipment owned or controlled by Buyer are permanently deleted;
 - 8.1.4 each Party shall as soon as reasonably practicable return, destroy or permanently erase (as directed in writing by the relevant Party) any documents, handbooks, other information or data provided to it by the other Party containing, reflecting, incorporating or based on Confidential Information belonging to the other Party;
 - 8.1.5 each Party return the other Party's equipment and materials, failing which, the other Parties may enter the relevant premises and take possession of them; and
- 8.2 Any provision of these terms of the Call-Off Contract which expressly or by implication is intended to come into or continue in

force on or after termination of these terms, including clause 2.1, shall remain in full force and effect.

- 8.3 Termination of these terms shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

SCHEDULE 1

Definitions and Interpretation

The definitions and rules of interpretation used in these terms are set out below.

1. Definitions

Authorised Users:	the individual employees and agents of Buyer (or other individuals or categories of users) who are authorised to access the Solution in accordance with these terms, as may be specified in the applicable Service Description.
Buyer Input:	data and information provided by or on behalf of Buyer to Supplier in relation to the Solution, including but not limited to data and information relating to processes and methods forming the subject of the Solution, medical data, communications and including as set out in the applicable Service Description.
Computer Hardware:	the applicable computers and other equipment to be used by Buyer in conjunction with Solution, as may be specified the Service Description.
Solution:	a software-enabled solution delivered by Supplier as part of the Services, as set out in the Services Description.

Solution Front-End Software:	the client interface downloadable to Computer Hardware to enable access to the Solution by that Computer Hardware.
Solution Purposes:	the specified purposes for which the Solution is to be used by Buyer (including its Authorised Users), including as set out in the Service Description.

2. INTERPRETATION

- a) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- b) Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- c) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- d) A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- e) Except where a contrary intention appears, a reference to a clause, schedule or annex is a reference to a clause of, or schedule or annex to, these terms.
- f) Clause and schedule headings do not affect the interpretation of these terms.
- g) Writing or written includes e-mail, except where expressly provided to the contrary.
- h) The schedule to these terms, together with any documents referred to (including the Call-Off Contract), form an integral part of these

terms and any reference to these terms means these terms together with the schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the Parties.

- i) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).