



TERMS AND CONDITIONS FOR CLOUD SERVICES



DATED 2019

**LEIDOS INNOVATIONS UK LIMITED
TERMS AND CONDITIONS FOR CLOUD SERVICES**

LEIDOS INNOVATIONS UK LTD.

1 Skypark
8 Elliot Place
Glasgow
G3 8EP

AND

<other Party>
<address>

TERMS AND CONDITIONS

Leidos (as defined below) and the Customer (as defined below) have agreed the terms under which Leidos will provide certain Services (as defined below) to the Customer, the terms governing that arrangement being set out in a Contract consisting of these Terms and Conditions read together with an associated and countersigned Work Order and any attached Appendices.

1 INTERPRETATION

1.1 In these Terms and Conditions and any resulting Contract, the following terms have the following meanings:

"APPENDIX" means an attachment to a validly countersigned Work Order;

"BACKGROUND IPRS" means for each Party IPR owned by that Party before the date of the Call-Off Contract including IPRs contained in any of the Party's know-how, documentation and processes and any IPR created by the Party independently of the Call-Off Contract, or for the Customer, Crown Copyright which is not available to Leidos otherwise than under the Call-Off Contract, but excluding IPRs owned by that Party in Customer software or Supplier software.

"LEIDOS" means Leidos Innovations UK Limited, whose registered number is SC112421 and whose registered office is at 1 Skypark, 8 Elliot Place, Glasgow, G3 8EP;

"LEIDOS PERSONNEL" means the Leidos personnel named in section 5 of the Work Order who will carry out the Services on behalf of Leidos;

"CONFIDENTIAL INFORMATION" in relation to each party, means all information in respect of the business and financing of that party including any ideas, business methods, finances, prices, business, financial, marketing, development or manpower plans, customer lists or details, computer systems and software, know how or other matters connected with the products or services manufactured, marketed, provided or obtained by that party, and information concerning either party's relationships with actual or potential customers and the needs and requirements of such persons;

"CALL-OFF CONTRACT" means the G-Cloud 10 Call-Off Contract.

"CONTRACT" means an agreement consisting of: (a) these Terms and Conditions; (b) a validly countersigned Work Order; and (c) any Appendices and other documentation expressly referred to in either document;

"CUSTOMER" means the Customer named in section 1 of the Work Order;

"FEES" means Leidos' fees for the Services as set out in section 4 of the Work Order;

"FORCE MAJEURE EVENT" means acts of God, fire, explosion, flood, earthquakes, war, riots, acts of terrorism, acts of Government, sabotage, civil commotion or severe weather conditions (save that industrial action taken by the employees, agents or subcontractors of a party or failure of agents or subcontractors of a party claiming that they have suffered such an event or any other circumstance within the reasonable control of such party will not be considered to be a "Force Majeure Event");

"IPR" means all intellectual and industrial property rights including software, patents, know how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

"PROJECT SPECIFIC IPRS" means any intellectual property rights in items created or arising out of the performance by Leidos (or by a third party on behalf of Leidos) specifically for the purposes of the Call-Off Contract including databases, configurations, code, instructions, technical documentation.

"SERVICES" means the services to be provided by Leidos in a for the Customer as set out in more detail in section 3 of the Work Order;

"START DATE" means the date on which the Contract will commence, as given in section 2 of the Work Order or, in the absence of any such entry, the date on which the Work Order relevant to a given Contract is executed by the second of the two parties;

"TERM" means the term of the Contract set out in section 2 of the Work Order;

"TERMS AND CONDITIONS" means these terms and conditions; and

"WORK ORDER" means a document prepared using the template attached to these Terms and Conditions which has been countersigned on behalf of both Leidos and the Customer.

1.2 THROUGHOUT THE CONTRACT:

- 1.2.1 the singular includes the plural and vice versa and references to persons include bodies corporate, unincorporated associations and partnerships;
- 1.2.2 any reference to a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision for the time being in force and all statutory instruments, orders or regulations made under it;
- 1.2.3 general words will not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things; and
- 1.2.4 if there is any conflict between the terms detailed in various elements of the Contract, the arrangements set out in the Work Order will be given primacy. Where there is any conflict between these Terms and Conditions and any of the attached Appendices, these Terms and Conditions will be given primacy.

2 DURATION

- 2.1 The Contract will commence on the Start Date and will continue for the Term unless terminated earlier in accordance with its terms.

3 OBLIGATIONS OF LEIDOS

- 3.1 Leidos will provide the Services during the Term in accordance with the terms of this Contract and any plans, specifications or timetables which Leidos agrees with the Customer.
- 3.2 Leidos agrees to provide the Services with reasonable skill and care and in a workmanlike manner in accordance with generally accepted standards within the IT industry.
- 3.3 Leidos will use reasonable endeavours to meet any performance dates agreed with the Customer but any such dates will be estimates only and time will not be of the essence of the Contract. Notwithstanding this, Leidos agrees to advise the Customer of any significant delays or anticipated delays in the provision of the Services including providing information as to the cause of the delay.
- 3.4 Leidos is willing to give consideration to any variations to the Services that the Customer may propose and/or to the provision of any additional services by Leidos from time to time during the Term, subject to the parties agreeing any appropriate variation(s) to the terms of the Contract, including without limitation any requirements for additional personnel, equipment or other resources, and any required or likely variation(s) to the Fees. Such varied and/or additional services (if any) will be deemed to be included in the Services for the purposes of the Contract. No variation or addition to the scope or terms of any Services will be binding on the parties unless and until agreed in writing by both parties.

4 PERSONNEL

- 4.1 Leidos will be solely responsible for the selection and allocation of the Leidos Personnel. Leidos is entitled to replace any of the Leidos Personnel at any time for any reason (including, without limitation, due to illness or injury) and will, where possible, notify the Customer of this in advance. Leidos accepts responsibility for the provision of the Services by the Leidos Personnel.

- 4.2 Leidos will procure that any Leidos Personnel who provide any Services at the Customer's premises will comply with all reasonable health and safety, security and other procedures applicable at such premises and notified to Leidos by the Customer in advance.

5 CUSTOMER OBLIGATIONS

- 5.1 The Customer will:
- 5.1.1 co-operate with Leidos in all matters relating to the Services.
 - 5.1.2 to the extent that any Services are provided at its premises, be responsible (at its own cost) for preparing its premises for the provision of the Services;
 - 5.1.3 to the extent that any Services are provided at its premises, provide in a timely manner such access to its premises and other facilities, as is reasonably requested by Leidos for the provision of the Services; and
 - 5.1.4 provide in a timely manner such information and data in relation to the Services as Leidos may request, and ensure that such information is accurate in all material respects.
- 5.2 The Customer will not, without the prior written consent of Leidos, at any time from the Start Date until twelve (12) months after the expiry of the Term or earlier termination of the Contract, solicit or entice away from Leidos or employ or attempt to employ any person who is, or has been, engaged as an employee of Leidos (including, without limitation, the Leidos Personnel).
- 5.3 Any consent given by Leidos in accordance with paragraph 5.2 will be subject to the Customer paying to Leidos a sum equivalent to 20% of the then current annual remuneration of Leidos' employee or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee.

6 FEES

- 6.1 In consideration of the Services to be provided by Leidos, the Customer will pay the Fees to Leidos at the time and in the manner specified in section 4 of the Work Order.
- 6.2 Invoiced amounts are payable by the Customer within thirty (30) days of receipt of invoice/immediately due and payable by such method as Leidos shall make known to the Customer.
- 6.3 If Customer's action or inaction results in non-receipt of payment by Leidos for the total amount of an invoice within thirty (30) days of the due date of such invoice, interest compounded at the rate of one percent (1%) per month shall thereafter be added to all amounts unpaid and outstanding. If Customer's action or inaction results in non-receipt of payment by Leidos, Leidos shall have the right exercisable in Leidos' sole discretion, in addition to its other rights and remedies, to cease further performance of the Services hereunder.

7 RELATIONSHIP MANAGER

- 7.1 Leidos and the Customer will each appoint a relationship manager to assume overall responsibility for their respective roles and obligations under the Contract. Without limitation, the parties' respective relationship managers will be responsible for:
- 7.1.1 coordinating the provision of the Services;
 - 7.1.2 regular liaison between the parties;
 - 7.1.3 arranging and attending any progress and review meetings which the parties may organise from time to time; and
 - 7.1.4 using all reasonable endeavours to resolve issues arising under the Contract (but they will refer all problems which are outside their ordinary authority to resolve to appropriate members of the parties' respective senior management).
- 7.2 Any replacement of either party's relationship manager will be notified to the other party in writing. Each party reserves the right to request, on reasonable grounds, the replacement of the other party's relationship manager.

8 STATUS

- 8.1 Leidos' relationship with the Customer will be that of independent contractor and nothing in this Agreement will render the Leidos Personnel employees, workers, agents or partners of the Customer and Leidos will procure that the Leidos Personnel will not (a) hold themselves out as employees, workers, agents or partners of the Customer; (b) contract on behalf of the Customer; or (c) bind the Customer in any way in relation to third parties; unless the Customer specifically authorises the Leidos Personnel to do so.

9 CUSTOMER'S PROPERTY

- 9.1 If the provision of any Services requires use of the Customer's equipment, the Customer will ensure that the Leidos Personnel are given such access to the equipment as is reasonably necessary to facilitate the provision of the Services.
- 9.2 Leidos will keep safe and secure and will take all reasonable care of any equipment belonging to the Customer while in the possession or control of Leidos. Any equipment which belongs to the Customer and which is used by Leidos will remain at the Customer's risk and Leidos will not assume any responsibility or liability for the safety or security of such equipment.

10 INTELLECTUAL PROPERTY

- 10.1 Neither Party shall acquire any right, title, interest in the IPR of the other Party.
- 10.2 Upon request, Leidos shall grant licenses to the Customer for a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to use the Project Specific IPRs and any Background IPRs embedded within the Project Specific IPRs for the Customer's ordinary business activities as set out in terms of the Call-Off Contract. If the Leidos terminates the Contract under paragraphs 11.1 or 11.2, this licence will automatically terminate.

11 TERMINATION

- 11.1 The Customer or Leidos may immediately at any time by notice in writing terminate the Contract (in whole or in part) from the date of such notice if the other:
- 11.1.1 is unable to pay its debts or becomes insolvent;
 - 11.1.2 enters into or proposes to enter into any compromise or arrangement with its creditors, or convenes any meeting of its creditors, commits any act of bankruptcy or is subject to an order or a resolution for its liquidation, administration, winding up or dissolution (other than for the purposes of a solvent amalgamation or reconstruction);
 - 11.1.3 has a liquidator, receiver, administrator, investigator, statutory manager or similar officer appointed over any or all or any substantial part of its assets; or
 - 11.1.4 ceases to carry or threatens to cease to carry on all or substantially all of its business or is deemed to be unable to pay its debts.
- 11.2 The Customer or Leidos may at any time by notice in writing to the other terminate the Contract (in whole or in part) immediately if the other is in:
- 11.2.1 material or persistent breach of the Contract where such breach is incapable of remedy; or
 - 11.2.2 material or persistent breach of the Contract where such breach was capable of remedy and the defaulting party will have failed to remedy such breach within 30 days of receiving written notice of such breach (such request to contain a warning of such party's intention to terminate); where "persistent breach" is interpreted to include a series of related or unrelated breaches of the Contract which, taken together are material.
- 11.3 Either party may terminate the Contract by serving thirty (30) days written notice on the other party at any time.

12 CONSEQUENCES OF TERMINATION

- 12.1 On termination of the Contract for any reason, each party will within thirty (30) days of the termination date return to the other party (or at the other party's request, destroy or erase) any materials incorporating any Confidential Information of that other party.
- 12.2 Any termination of the Contract for any reason, will not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination.
- 12.3 In the event of a breach by the Customer, and within 30 days from Termination, Leidos shall be entitled to claim any reasonable and properly incurred breakage costs. All such losses must be in connection with the Work Order and directly incurred by Leidos.

13 LIABILITIES

- 13.1 The following provisions set out the entire financial liability of Leidos (including any liability for the acts or omissions of its employees (including, without limitation, the Leidos Personnel), agents and sub- contractors) to the Customer in respect of:
 - 13.1.1 any breach of the Contract;
 - 13.1.2 any use made by the Customer of the Services or any part of them; and
 - 13.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 13.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.3 Nothing in the Contract will serve to limit either party's liability in respect of death or personal injury caused by or arising from that party's negligence, or fraud.
- 13.4 Subject to paragraphs 13.2 and 13.3:
 - 13.4.1 Leidos will not be liable to the Customer whether in contract, tort (including negligence) or for breach of statutory duty or in any way for (in each case whether direct or indirect) loss of profit, loss of business, loss of opportunity or of corruption to software or data, loss of anticipated savings, loss of revenue, loss of or damage to goodwill or for any other indirect or consequential losses whatsoever;
 - 13.4.2 Subject to any liabilities which can't be limited by Law, each Party's total aggregate liability in each 12-month period during the Term (whether in contract, tort (including negligence), breach of statutory duty or otherwise) will be limited to 125% of the Management Charge paid or payable in the Year the default happened; or £100,000, whichever is greater. The Parties agree that these clauses 13.1 to 13.4.2 (inclusive) will not limit the Supplier's and Buyers' liability under any Call-Off Contract.

14 CONFIDENTIALITY

- 14.1 In the event either party determines that it is necessary to provide confidential, proprietary, or trade secret information to the other party in connection with this Agreement, such disclosure will be made only after advance written notice to the other party, and the parties have executed a mutually satisfactory Non-Disclosure Agreement. Nothing in this Agreement or in the Non-Disclosure Agreement referred to in this section shall be deemed to restrict or prohibit Leidos from providing to others services and deliverables the same as or similar to the Services and Deliverables. In providing any such similar services or deliverables to any third party, Leidos shall keep confidential any Customer confidential, proprietary or trade secret information which is subject to the Non-Disclosure Agreement executed pursuant to this section, in accordance with the requirements of such agreement.

15 NOTICES

- 15.1 All notices shall be given in writing and sent to the other party at its registered address, or to any subsequently notified address, and be delivered by hand or recorded delivery post (but not by email). Any notice delivered or sent as the case may be by:
- 15.1.1 hand shall be deemed to have been served at the time of delivery;
- 15.1.2 post shall be deemed to have been served two working days after the signing of the acceptance of the recorded delivery, provided that where in the case of delivery by hand such delivery occurs either after 4.00 pm on a working day or on a day other than a working day service will be deemed to have occurred at 10.00 am on the following working day (such times being local time at the address of the recipient).
- 15.2 Where a notice is not delivered in accordance with this paragraph 15 it shall be invalid.

16 WAIVER

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Contract.

17 RIGHTS CUMULATIVE

The provisions of the Contract, and the rights and remedies of the parties under the Contract, are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity.

18 ASSIGNMENT AND SUB-CONTRACTING

Neither party may sell, assign, transfer, or otherwise convey any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Leidos may without violation of this paragraph engage the services of independent contractors to assist in the performance of its duties hereunder.

19 PUBLICITY

- 19.1 Subject to paragraph 19.2, Leidos may disclose that it is undertaking work for the Customer and use the Customer's name and logo in marketing activities and materials (including, without limitation, using the Customer's name and logo on Leidos' website:
- 19.2 Leidos will only disclose the general nature of the relationship between it and the Customer and any details which have properly entered the public domain. Leidos will not disclose any other details about the Customer or the relationship between the parties without consulting the Customer first.

20 GENERAL

- 20.1 Neither party shall be liable for delay or failure to perform any of its obligations under the Contract where caused by a Force Majeure Event, provided that nothing in this paragraph 20.1 shall excuse the Customer from any payment obligations under the Contract.
- 20.2 No failure or delay by either party in exercising any right or remedy (in whole or in part) under the Contract shall operate as a waiver of those rights or remedies.
- 20.3 No amendment to the Contract will be effective unless it is agreed in writing and signed by the authorised representatives of both parties.
- 20.4 The Contract and any documents expressed or referred to in them contains the entire agreement between the parties regarding its subject matter and supersedes all prior communications, representations, warranties, stipulations, undertakings and agreements between the parties. Nothing in this paragraph 20.4 will exclude any liability which one party would otherwise have to the other party in respect of any statement made fraudulently.

20.5 This Contract is governed by the law of England and Wales, and the parties submit to the exclusive jurisdiction of the English Courts.

21 GDPR AND DATA PROTECTION

21.1 Both Parties shall comply with Data Protection Legislation and GDPR Laws.

WORK ORDER

1	Customer	<insert> the company registration number of which is <insert> and the registered office of which is <insert>.
2	Start Date Term	Start Date: <insert> Term: <insert>
3	Services	<insert>
4	Fees	<insert>
5	Leidos Personnel	<insert>
6	Additional Provisions	<insert>
7	Appendices To Work Order	<insert>

In consideration of the mutual obligations assumed under this Contract, Leidos and Customer agree to the Terms and Conditions, this Work Order and any relevant Appendices attached hereto and incorporated by reference and represent that this Agreement is executed by duly authorized representatives as of the dates below.

AGREED BY:
<CUSTOMER>

By:
Name:
Title:
Date:

LEIDOS INNOVATIONS UK LIMITED

By:
Name:
Title:
Date: