



Inspire Cloud Terms V1.0

1. ABOUT THESE TERMS AND US

These terms and conditions (“**Terms**”) are between (1) the company set out in and referred to as the “**Supplier**” in the Statement of Work (“**Supplier**” or “**we**”) and (2) the business entity identified in any Statement of Work (“**SOW**”) that refers to these Terms (“**Client**” or “**you**”).

2. OUR CONTRACT

- 2.1 These Terms apply to any orders with the Supplier and to any proposals or quotations made by Supplier. Please read these Terms carefully.
- 2.2 If you want to accept a proposal or quotation for Services (as defined below), you should send a purchase order or your written acceptance referring to the relevant proposal or quotation in accordance with our terms. This will form an order to provide the Services (defined below) set out in the SOW (“**Order**”).
- 2.3 We will accept an Order once you have signed a relevant SOW, which will reflect the proposal and include the timescales for the Services, and any other relevant information. The signed SOW and any future SOW’s, together with these Terms will form a legally binding contract between us (“**Contract**”). These Terms operate as a framework, as such there may be multiple Contracts (set out in multiple SOW’s) in place at any one time between Supplier and you. These Terms shall refer to “the Contract”, but this shall be deemed to include all Contracts where applicable.
- 2.4 If an SOW conflicts with an Order or these Terms, then the terms of the SOW will prevail.
- 2.5 These Terms apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate (whether in a purchase order or otherwise), or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation or proposal provided by Supplier does not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue, “**Business Day**” being a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- 2.7 Any capitalised terms are as defined in these Terms or the relevant SOW.

3. DURATION OF ANY CONTRACT

- 3.1 A Contract will start on the date an SOW is signed by you and Supplier, where this is on different dates, it shall be the last signature date (“**Commencement Date**”). Supplier shall provide the services and any Deliverables (defined below) detailed in the SOW (“**Services**”) from the date(s) stated in the SOW or for the period of time stated in the SOW. The Contract will continue until completion of the Services in each SOW, unless the Contract or these Terms are terminated beforehand in accordance with clause 12.

4. THE SERVICES

- 4.1 Subject to the Client’s compliance with its obligations, Supplier shall use all reasonable endeavours to provide the Services, and if specified, any deliverables (“**Deliverables**”) in accordance with the timescales (“**Timescales**”), each as set out in an SOW.
- 4.2 Supplier shall provide the Services using such reasonable care and skill as is reasonably expected in the software consultancy and support industry.
- 4.3 The Services shall be provided to the Client on a non-exclusive basis.
- 4.4 The Client acknowledges that the Supplier provides services similar to the Services to multiple customers and that nothing in these Terms shall prevent the Supplier from adapting or using the Deliverables for other customers provided that it does not breach its obligations under clause 16 (Confidentiality) or breach any of the Client’s Intellectual Property Rights by doing so.

5. THE CLIENT’S OBLIGATIONS

- 5.1 The Client shall:
- 5.1.1 ensure that all materials, Client Data, approvals, feedback and comments and other items or obligations of the Client (collectively “**Input Materials**”) required for the performance of the Services or as stated in the SOW, are complete, accurate and provided by the Timescales set out in the SOW;
 - 5.1.2 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client’s IT systems, premises, office accommodation and other facilities or locations as reasonably required by the Supplier in accordance with the SOW;
 - 5.1.3 provide the Supplier with such other information and materials as Supplier may reasonably require to provide the Services, and ensure that such information is complete and accurate in all material respects;
 - 5.1.4 provide prompt written acceptance of any Acceptance Tests (as defined in the SOW) carried out in accordance with the SOW reasonably, in good faith and in any event no

less than 48 hours after the tests are completed satisfactorily, unless otherwise stated in the SOW, and in the event of failure of any Acceptance Tests provide all reasonable feedback to enable Supplier to make changes to the Deliverables;

- 5.1.5 not unreasonably withhold or delay acceptance of any requests for approval by Supplier, or of any Acceptance Tests that comply with the terms of an SOW;
 - 5.1.6 co-operate with Supplier in all matters relating to the Services as set out in the SOW;
 - 5.1.7 obtain and maintain all necessary licences, permissions and consents in relation to the Input Materials which may be required for the Services before the date on which the Services are to start;
 - 5.1.8 comply with all applicable laws, including health and safety, data protection and intellectual property laws and with any additional obligations as set out in the SOW.
- 5.2 If Supplier's performance of any of the Services or its obligations under the Contract is prevented or delayed by any act or omission of the Client, the Client's failure to provide the Input Materials or failure by the Client to perform any relevant obligation ("**Client Default**"), then without limiting or affecting any other remedy available to it, Supplier:
- 5.2.1 may suspend performance of the Services until the Client remedies the Client Default; and once remedied, may reschedule the affected Services or obligations as soon as reasonably practicable giving due regard to Supplier's other clients and obligations in which case any Timescales will be adjusted accordingly;
 - 5.2.2 may increase the Charges in the event the suspension at 5.2.1 is prolonged, repeated or reasonably results in additional costs or fees for the Supplier;
 - 5.2.3 may elect to rely on the Client Default at any time to terminate the affected Contract and relieve it from any future performance of any of its obligations under that Contract;
 - 5.2.4 will not be liable to repay any Charges or for any costs, damages or losses sustained or incurred by the Client arising directly or indirectly from Supplier's suspension, termination, failure or delay to perform any of its obligations caused as an indirect or direct result of the Client Default or the exercise of the rights and remedies as set out in this clause 5.2; and/or
 - 5.2.5 may charge the balance of any Charges that would have been due, but for the Client Default for immediate payment.
- 5.3 The Client shall promptly reimburse Supplier on written demand for any costs, charges or losses sustained or reasonably incurred by Supplier (or third parties appointed by Supplier) arising directly or indirectly from any Client Default, including cancellation fees and fees and costs due to third party suppliers, freelancer and subcontractors.

6. PROCESS FOR CHANGE & CONTROL OF CHANGES

- 6.1 Either party may propose changes to the scope or execution of the Services. Any proposed changes must be agreed in a Change Order which has been signed by both parties. A “**Change Order**” means a document setting out the proposed changes and the effect that those changes will have on: (a) the Services and/or Deliverables; (b) the Charges; (c) the Timescales; and (d) any of the other terms of the relevant SOW.
- 6.2 If Supplier wishes to make a change to the Services, it shall provide a draft Change Order to the Client. If the Client wishes to make a change to the Services: (a) it shall notify Supplier and provide as much detail as Supplier reasonably requires regarding the proposed changes, including the timing of the proposed change; and (b) Supplier shall, as soon as reasonably practicable, provide a draft Change Order to the Client.
- 6.3 If the parties agree and sign a Change Order, then that Change Order amends the relevant SOW. If the parties are unable to agree a Change Order, either party may refer the disagreement to be dealt with by the project managers listed in the SOW.
- 6.4 Supplier may charge for the time incurred preparing and negotiating any Change Orders requested by the Client, on a time and materials basis at Supplier's daily rates specified in the SOW, or at Supplier’s current standard rate card.

7. CHARGES

- 7.1 The charges for the Services shall be as set out in the SOW (“**Charges**”). The Client shall pay the Charges in accordance with the Payment Terms in the SOW (“**Payment Terms**”).
- 7.2 Where the Charges include daily fee rates for each individual, these are calculated on the basis of an eight-hour day from 9.30 am to 5.30 pm worked on Business Days.
- 7.3 Supplier shall be entitled to charge an overtime rate for any other time worked by individuals whom it engages on the Services outside the hours referred to in clause 7.2.
- 7.4 Supplier shall be entitled to charge the Client for any reasonable travel and related expenses, (including hotel costs, subsistence and any associated expenses) and for the cost of services provided by third parties which are required by Supplier for the performance of the Services, and for the cost of any Third Party Materials, OSS and associated support. These shall be stated in an SOW or agreed with the Client in advance if they are not included in the Charges.
- 7.5 Supplier may increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Average Earnings Index in the preceding 12-month period and the first such increase will take effect on the first anniversary of the Commencement Date and will be based on the latest available figure for the percentage increase in the Average Earnings Index.
- 7.6 The Client shall pay each invoice submitted by Supplier:

- 7.6.1 unless otherwise stated in the Payment Terms of a SOW, within 30 days of the date of the invoice; and
- 7.6.2 in full and in cleared funds to a bank account nominated in writing by Supplier.
- 7.7 Time for payment shall be of the essence.
- 7.8 All amounts payable by the Client under the Contract are exclusive of value added tax (“VAT”) chargeable from time to time.
- 7.9 If the Client fails to make a payment due to Supplier by the due date, then, without limiting Supplier’s remedies, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest will accrue each day at 4% a year above the Bank of England’s base rate from time to time, or such higher rate as prescribed by applicable law.
- 7.10 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than as required by law).

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Client and its licensors shall retain all Intellectual Property Rights in and to the Input Materials. “**Intellectual Property Rights**” means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.
- 8.2 The Client grants to Supplier a non-exclusive, sub-licensable, royalty-free, perpetual, worldwide licence to copy, modify, make available and otherwise make full and unrestricted use the Input Materials for the purpose of carrying out the Services.
- 8.3 All Intellectual Property Rights in the Deliverables shall remain the property of Supplier or, in the case of Third Party Materials and OSS, the relevant licensor. Supplier will grant the Client a nonexclusive, non-transferable, non-sub-licensable, royalty-free, perpetual, worldwide licence to use the Deliverables for its internal business purposes only. The Client will not have the right to resell, or creative derivative works based on, the Deliverables or any Intellectual Property Rights in the Deliverables.
- 8.4 “**Third Party Materials**” mean any content, images, data, materials, software, graphics, plug-in’s, document and information, in any form, owned by a third party and stated in an SOW, which are to be used by Supplier in connection with the Services or included by Supplier in the Deliverables.

- 8.5 “**OSS**” means open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>), including but not limited to the open-source software stated in an SOW.
- 8.6 If any Third Party Materials or OSS are included in the Deliverables, then the Client’s rights to use those Deliverables will be subject to the terms provided by the relevant licensors (“**Third Parties**”). If expressly stated in a SOW, the Supplier shall notify the Client of all Third Party Materials and the applicable licence terms. The Client undertakes, warrants and agrees that it will: (i) shall sign and return any relevant licence to Supplier; and/or (ii) enter into such relevant licence agreements relating to Third Party Materials directly with the relevant Third Party, which may be done by using the relevant Third Party Materials in the case of a click-through licence, and will at all times comply with such terms.
- 8.7 The Client warrants and shall ensure that: (a) the use of the Input Materials by Supplier, its agents, subcontractors or consultants of the Input Materials will not infringe the rights, including any Intellectual Property Rights, of any third party; and (b) it shall comply with the terms of any licences of Third Party Materials and OSS; (c) the Input Materials shall comply with all applicable laws and shall not contain any illegal, defamatory, obscene, infringing material and/or viruses.
- 8.8 The Client shall keep Supplier indemnified in full against all costs, expenses, damages and losses, including reasonable legal and other professional fees and expenses awarded against or incurred or paid by Supplier in connection with any third party claim brought against Supplier, its agents, subcontractors or consultants arising out of, or in connection with any breach of the warranties given by the Client in clauses 8.6 and 8.7.
- 8.9 Supplier shall keep the Client indemnified in full against all costs, expenses, damages and losses, including reasonable legal and other professional fees and expenses awarded against or incurred or paid by Client in connection with any third party claim brought against the Client arising out of, or in connection with an allegation that the use of the Deliverables in accordance with the Contract and any applicable SOW, infringes a third party’s Intellectual Property Rights.

9. DATA PROTECTION AND DATA PROCESSING

- 9.1 The following capitalised terms shall apply: “**Client Data**” means any Personal Data provided by the Client or accessed by Supplier in the course of performing the Services; “**Appropriate Technical and Organisational Measures**”, “**Data Controller**”, “**Data Processor**”, “**Data Subject**”, “**Personal Data**”, “**Personal Data Breach**”, “**Processing**” shall each be as defined in the Data Protection Legislation; “**Data Protection Legislation**” means the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (*SI 2000/2699*), the Electronic Communications Data Protection Directive (*2002/58/EC*), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2003/2426*), and all applicable laws and regulations relating to the Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or other relevant supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction

(whether mandatory or not); and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (EU) 2016/679 and any other directly applicable European Union regulation relating to privacy.

- 9.2 The parties do not anticipate that Supplier will host or store any Client Data on behalf of the Client. The parties record their intention that if Supplier processes any Client Data on behalf of the Client under these Terms then the Client will be the Data Controller and Supplier will be a Data Processor. This will be recorded in the relevant SOW and the data processing terms set out in the SOW will apply.
- 9.3 The Client will own all rights in the Client Data. The Client hereby grants a perpetual, non-exclusive, worldwide, non-transferable right to Supplier to use the Client Data with the right to grant sublicences to third parties in each case for the purposes of providing the Services.
- 9.4 The Client hereby indemnifies Supplier and any Supplier sub Data Processors for any losses, costs or damages caused by a breach of this clause 9, payable on demand.
- 9.5 In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy shall be for Supplier to use reasonable endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by or on behalf of Supplier. Supplier will not be responsible for any loss, destruction, alteration or disclosure of Client Data.

10. WARRANTY

- 10.1 Supplier warrants that for a period of 30 days from acceptance of the Deliverables in accordance with the relevant SOW (the "**Warranty Period**") the Deliverables (excluding any Third Party Materials or OSS) will perform materially in accordance with the specifications set out in the SOW.
- 10.2 If the Deliverables do not perform materially in accordance with the specifications set out in the SOW during the Warranty Period (an "**Error**"), Supplier will use reasonable commercial endeavours to correct the Error provided that the Client promptly notifies Supplier of the issue and gives Supplier sufficient information to allow Supplier to recreate the Error. This will be the Client's sole and exclusive remedy for any breach of clause 10.1.
- 10.3 Support during the Warranty Period does not include defects or errors:
 - 10.3.1 arising from or caused by the Input Materials;
 - 10.3.2 the provision of upgrades, software patches or security patches that are available from suppliers of Third Party Materials or OSS;
 - 10.3.3 arising from a failure or defect in the Client's systems;
 - 10.3.4 which are not capable of being re-created by Supplier;
 - 10.3.5 which arise from or in relation to any changes, amendments or otherwise to the Deliverables which have not been carried out by Supplier;

- 10.3.6 which arise from or in relation to any use of the Deliverables other than in accordance with the Contract; and
 - 10.3.7 the Client has not fully completed any training that Supplier has offered in relation to the Deliverables.
- 10.4 If the Client requires any support to be provided in connection with the Deliverables after expiry of the Warranty Period or for defects or errors which are not covered under the warranty, then Supplier shall be entitled to charge its time on a time and materials basis.

11. LIMITATION OF LIABILITY

- 11.1 Nothing in the Terms and any Contract shall limit or exclude Supplier's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 11.1.2 fraud or fraudulent misrepresentation;
 - 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 11.2 Subject to clause 11.1, Supplier shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, for breach or non performance caused by any Third Party Materials or Open Source Software, for loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of damage to goodwill; or any indirect or consequential loss.
- 11.3 Subject to clause 11.2, Supplier's total liability to the Client under these Terms and all Contract(s), whether in contract, tort (including negligence), breach of statutory duty, indemnity or otherwise shall not exceed the Charges paid under the respective Contract under which such claim relates (excluding any third party costs included in such Charges) in the 12 months prior to any such claim.
- 11.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.5 This clause 11 shall survive termination of the Contract.

12. TERMINATION

- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Terms and any Contract by giving the other party one month's written notice, save that this shall not apply to any subsisting SOW which shall continue until completion of the Services therein. There shall be no right to cancel or terminate a SOW after the Commencement Date.

- 12.2 Without affecting any other right or remedy available to it, either party may terminate the Terms and any Contract with immediate effect by giving written notice to the other party if:
- 12.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - 12.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 12.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 12.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion, the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.3 Without affecting any other right or remedy available to it, Supplier may: (a) terminate the Contract with immediate effect by giving written notice to the Client, if the Client fails to pay any amount due under the Contract on the due date for payment and/or fails to deliver the Input Materials in accordance with the SOW, despite being given the opportunity to rectify such failure or delay; (b) pause the Services, without any liability to the Client, for a period of up to 10 Business Days for genuine business reasons.
- 12.4 Supplier may terminate the Contract by giving no less than 30 days' written notice to the Client if:
- 12.4.1 a Third Party ceases to provide any of the Third Party Materials; or
 - 12.4.2 the Supplier's agreement with a Third Party is terminated for any reason.

13. CONSEQUENCES OF TERMINATION

- 13.1 On termination of the Contract by Supplier the Client shall immediately pay to Supplier all of Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt.
- 13.2 Termination or expiry of the Contract will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract will remain in full force and effect.

14. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control including without limitation labour shortages or illness of key personnel. This clause shall not apply to any obligation to pay the Charges under these Terms.

15. ASSIGNMENT AND OTHER DEALINGS

The Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Supplier.

16. CONFIDENTIALITY

16.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business affairs, customers, or suppliers of the other party and the terms of the Contract, except as permitted in the Contract.

16.2 Each party may disclose the other party's confidential information:

16.2.1 to its employees, officers, representatives, suppliers, subcontractors, freelancers or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16; and

16.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

17. ENTIRE AGREEMENT

17.1 The Contract constitutes the entire agreement between the parties and supersedes all previous agreements, promises, representations and understandings between them, relating to its subject matter.

17.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

17.3 Nothing in this clause shall limit or exclude any liability for fraud.

18. VARIATION

18.1 Except as set out in these Terms, no variation of the Contract will be effective unless it is in writing and signed by the parties.

19. WAIVER

19.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing. A failure to exercise or delay by a party in exercising any right or remedy provided under the Contract or by law will not constitute a waiver.

20. SEVERANCE

20.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted.

21. NOTICES

21.1 Any notice or other communication given to a party under or in connection with the Contract will be in writing and will be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the latest email address of the respective managers or personnel specified in the SOW.

21.2 Any notice or other communication will be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by prepaid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 12:00 (Midday) on the next Business Day after transmission.

21.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

22. NON SOLICITATION

22.1 The Client shall not, without the prior written consent of Supplier, at any time solicit or entice away from Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant, freelancer or subcontractor of Supplier in the provision of such Services.

22.2 Any consent given by Supplier in accordance with clause 22.1 shall be subject to the Client paying to Supplier a sum equivalent to 200% of the then current annual remuneration of Supplier's employee, consultant or subcontractor.

23. THIRD PARTY RIGHTS

23.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

24. GOVERNING LAW

These Terms are governed by the laws of England.

25. JURISDICTION

The courts of England have exclusive jurisdiction to settle any dispute or claim (including noncontractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.