

## **Digital & Technology Services G-Cloud Terms and Conditions**

### **1.THE CONTRACT**

This Agreement constitutes a contract between the Client and the Consultancy for the Assignment of the Assignment by the Consultancy to the Client, and is deemed to be accepted by the Client by virtue of its request for, interview with, or Engagement of a Consultancy or the passing of any information about the Consultancy or Consultant to any third party following an Introduction.

### **2. TERMS OF BUSINESS FOR G-CLOUD SERVICES**

- i. This Agreement shall be valid unless the details of such variation are agreed between a director of the Consultancy and Client is agreed in writing.
- ii. This Agreement contains the entire agreement between the Consultancy and the Client for the Assignment of the Assignment to the Client, and unless otherwise agreed in writing by a Director of the Consultancy, this Agreement shall prevail over any terms of business or purchase conditions (or similar) put forward by the Client.
- iii. This Agreement shall be valid unless the details of such variation are agreed between a director of the Consultancy and Client is agreed in writing.

### **3. CLIENT RESPONSIBILITIES**

i.The Client shall provide all reasonable assistance to the Consultancy in providing the G-Cloud Services and agrees to nominate in writing an authorised representative (and if the Client should elect to change that authorised representative, it shall advise the Consultancy in writing in a timely fashion of the replacement representative and their starting date) who shall:

(i) be authorised to make binding decisions for the Client with regard to this Agreement, including any change to the Assignment; and

(ii) promptly review all documents, including the draft Deliverables, that are provided by the Consultancy for Client's review so that corrections or changes may be made by the Consultancy; and

(iii) promptly provide the Consultancy with complete and accurate information concerning the Client and its business which may reasonably be required by the Consultancy for the performance of the G-Cloud Services.

ii. Where participation by, or access by the Consultancy to, the Client's own staff is necessary for the performance of the Assignment, the Client agrees that those staff shall be available at the times agreed by the parties. Further, where those staff participate in providing the Assignment, the Client shall ensure that they possess the appropriate skills and experience for the tasks assigned to them.

iii. The Client further agrees:

(i) at the Consultancy's request, to provide the Consultancy staff with such office accommodation, facilities and access to the Client's premises as may be reasonably necessary to perform the Assignment;

(ii) to execute promptly any licences or documents which may be required pursuant to this Agreement; and

(iii) to procure promptly all necessary licences and consents to use software, data and any other material which it makes available to Consultancy in respect of the performance of the Assignment.

(iv) to promptly give electronic access to all services and media required to carry out the tasks assigned

iv. If at any time during the provision of the Assignment, the Client shall notice or suspect that wrong assumptions have been made or wrong directions have been taken by the Consultancy, it shall inform Consultancy in writing.

#### **4. CONFIRMATION OF ASSIGNMENTS**

i. The Consultancy will confirm to the Client written confirmation of the Assignment, including any milestone deliverables, specifying the duration of the Assignment, the cost, with expenses if agreed and any notice period for all parties and the invoice details

#### **5. PRICE AND PAYMENT**

i. The Consultancy shall raise invoices monthly in arrears and as otherwise provided under this Agreement. The Client shall pay each invoice within thirty (30) days of the date of issue.

ii. The Price and all other sums payable under this Agreement are exclusive of VAT and any other taxes or duties (with the exception of any tax based on Consultancy's income), which shall be paid by the Client at the rate and in the manner prescribed by law.

iii. If the Client fails to pay any sum due under this Agreement, interest shall accrue on such sum from the date of the applicable invoice until the date of payment at the rate of three (3) per cent per annum above the base lending rate of Barclays Bank plc from time to time, such interest to accrue on a daily basis and to be compounded quarterly.

iv. If the Client fails to pay any sum due under this Agreement, the Consultancy may also (without prejudice to its other rights and remedies) give the Client not less than fourteen (14) days' written notice that it intends to stop work. If, following that notice, the Consultancy stops work, the Consultancy shall be entitled to recover from the Client the additional costs and expenses incurred in stopping work and/or later resuming work and the Client shall grant a reasonable extension of time for the performance of this Agreement.

v. This Agreement is performed on a time and materials basis and accordingly and for the avoidance of doubt:

(i) any timetable of work and/or delivery dates relating to the whole and each part of the Assignment shall be deemed to be estimates only; and

(ii) the Consultancy gives no undertaking to complete the whole or any part of the G-Cloud Services for a fixed or ascertainable sum and, if such sums are referred to in relation to the Consultancy Services, they shall be deemed to be estimates only.

## **6. TIMESHEETS**

- i. At the end of each week of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than 1 week) the Client shall authorise the Consultancy's timesheet verifying both the number of days worked and the quality of the Assignment or part thereof, undertaken by the Consultancy during that week.
- ii. Failure to authorise the Consultancy's hours and time spent does not affect the Client's obligation to pay the charges invoiced from the Consultancy.

## **7. COMPLETION OF THE ASSIGNMENT**

- i. The Deliverables shall be submitted to the Client in draft form for the Client's review.
- ii. As the Assignment is to be provided on a time and materials basis under the Client's Project Management time shall not be of the essence for the Assignment and the Consultancy shall not be held liable for any delay in delivery.
- iii. In the event that the Consultancy is delayed in the performance of the G-Cloud Services by the Client or for any reason outside the Consultancy's direct control the impact of such delay shall be assessed via the procedure for changes to the Assignment detailed in clause 3 and shall be agreed and approved by the Client.
- iv. If the Client makes no review comments to Consultancy within fourteen (14) days, the Consultancy will be entitled to issue the Deliverables in final form at the end of that period. Where the Client makes comments in such timescale, following discussion of the same, the Consultancy shall incorporate any agreed changes to the draft Deliverables and shall then reissue them in final form to the Client.
- v. Upon issue of the Deliverables in final form, they shall be deemed to have been accepted by the Client.
- vi. Consultancy shall have no obligation to update the Deliverable issued in final form unless pursuant to a change request agreed under the 'Changes to the Assignment' Clause

## **8. CHANGES TO THE ASSIGNMENT**

- i. At any time before Completion, either party may request that a change is made to the Assignment. Each party shall have the right to reject the requested change but shall not exercise that right unreasonably. Change requests shall be made in writing
- ii. The Consultancy shall inform the Client if the evaluation of any requested change would, in its reasonable opinion, involve additional work or time and/or would adversely affect the deployment of staff and other resources engaged in performing the Assignment. In this event, the Consultancy shall carry out that evaluation following the Client's written approval (and shall not be obliged to do so without that approval) and the Consultancy reserves the right to charge for that evaluation on a time and materials basis at the Fee Rates.



iii. if the parties agree to make a change to the Assignment, the details of that change shall be specified and confirmed in writing by the parties. The Consultancy shall not be obliged to implement that change until it has been so confirmed and any revision to the Price and any timetable of work and/or delivery dates has been agreed in writing. If the parties do not agree to make a change to the Assignment, the Consultancy shall continue to provide the Assignment as previously agreed.

## **9. TERMINATION OF THE ASSIGNMENT**

- i. Either party may terminate the Assignment by giving to the other party in writing the period of notice specified in the Assignment Details Form
- ii. Notwithstanding the provisions of this clause the Client may terminate the Assignment forthwith by notice in writing to the Consultancy where:
- iii. the Consultancy has acted in breach of any statutory or other reasonable rules and regulations applicable to it while providing the Assignment; or
- iv. the Consultancy is in willful or persistent breach of its obligations; or
- v. the Client reasonably believes and is able to evidence that the Consultancy has not observed any condition of confidentiality applicable to the Consultancy from time to time; or
- vi. the Client reasonably considers and is able to evidence that the Consultancy's provision of the Assignment is unsatisfactory.
- vii. The Consultancy may terminate an Assignment forthwith by notice in writing if:
- viii. the Client fails to pay any amount which is due to the Consultancy in full and on the date that the payment falls due; or
- ix. the Client is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or
- x. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client; or
- xi. an order is made for the winding up of the Client, or where the Client passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement).

## **10. LIABILITY**

- i. In the performance of the Assignment under this Agreement, the Consultancy may give advice to the Client. The Consultancy shall exercise reasonable skill and care in providing the Assignment and in giving such advice. The Consultancy shall not be responsible for the accuracy of its advice based on information supplied by the Client or third parties or advice based on inaccurate or incomplete information provided by the Client. Responsibility and liability for decisions taken on the basis of the Report or advice given by The Consultancy shall remain with the Client and The Consultancy expressly excludes any liability for any reliance upon or implementation of the Report by the Client itself or via a third party
- ii. The Consultancy's aggregate liability arising out of or in connection with this Agreement, however arising, including, but not limited to, all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the Assignment, or late or purported late Assignment or non-Assignment or non-performance of the G-Cloud Services by the Consultancy, shall not exceed 125% of the Price.
- iii. Without prejudice to previous clause, any liability which The Consultancy may have to the Client arising out of or in connection with this Agreement for any loss or damage shall (so far as permitted by law) be limited to such an amount as is finally determined to be just and equitable, having regard to the extent of responsibility for or contribution to the loss or damage of each of the Consultancy,

the Client (including the Client's directors, officers, employees or agents) and any other person (irrespective of

- iv. This Agreement has been negotiated in good faith by the parties and each clause of this Agreement has been separately negotiated and specifically agreed upon for inclusion by the parties. Each and every limit and exclusion in this clause is independent and severable from the other and if any be held unlawful or unenforceable it shall be struck out and the remainder shall remain in effect.
- v. The Client shall advise the Consultancy of any special health and safety matters about which the Consultancy is required to inform the Consultant and about any requirements imposed by law or by any professional body, which must be satisfied if the Consultant is to fill the Assignment. The Client will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Consultant.
- vi. The Client shall indemnify and keep indemnified the Consultancy against any Losses incurred by the Consultancy arising out of any Assignment or arising out of any non-compliance with, and/or as a result of, any breach of this Agreement by the Client.

## **11. PROGRESS REPORTS AND MEETINGS**

- i. When specified in the Assignment, the Consultancy shall provide the Client with status reports until Completion. Further, the parties shall conduct progress meetings at the request of either party, until Completion. Status reports and progress meetings (if applicable) shall occur monthly unless otherwise agreed in writing.
- ii. Consultancy and the Client agree that the Assignment to be provided under this Agreement shall be provided on a time and material basis by Consultancy under the Client's Project Management.

## **12. CONFIDENTIALITY AND PUBLICITY**

- i. Subject to the licenses granted under this Agreement, each party undertakes to hold in confidence for the other party, to use only for the purposes of this Agreement and not to print, publicise or otherwise disclose to any third party, the other's Confidential Information.
- ii. Notwithstanding the previous clause, nothing in this Agreement shall stop the Consultancy from disclosing or using in the course of its business any technical knowledge, skill or expertise of a generic nature acquired by The Consultancy in the performance of this Agreement.
- iii. The Consultancy may refer to the Client in the Consultancy's publicity material as being a Client, but shall not, without the Client's permission, publicise the Consultancy's work under this Agreement. The Client undertakes not to publicise work undertaken by the Consultancy through the use of the Consultancy's name without the prior written consent of the Consultancy.
- iv. The Client shall not directly or indirectly disclose the Deliverable or any part thereof to any third party unless and until it has obtained the Consultancy's prior written authorisation to do so. The Client shall indemnify and keep indemnified the Consultancy from and against any claim, demand, proceedings, loss, damage, cost, reasonable expenses (including but not limited to legal fees and disbursements) of whatever nature it incurs or suffers arising out of or in connection with breach of this clause.

### **13. TITLE AND INTELLECTUAL PROPERTY RIGHTS**

- i. Subject to the provisions of the following clauses and unless otherwise agreed by the Parties in the Special Terms, the Intellectual Property Rights and title thereto in the Deliverables or in any original document, material, idea, data or other information developed or provided by the Consultancy in performing the G-Cloud Services shall belong to the Consultancy.
- ii. The Consultancy hereby grants to the Client a non-exclusive, personal, royalty-free licence to use, reproduce and modify for the Client's own business purposes those items described in Clause 9.1 that are submitted by the Consultancy to the Client in providing the Assignment, subject to the Client's continuing compliance with its obligations under this Agreement and to full payment of the Price. The Client shall ensure that all copies of those items bear a clear and prominent notice that The Consultancy or the relevant third party owns the Intellectual Property Rights.
- iii. To the extent that the Deliverable or any document, material, idea, data or other information submitted or disclosed by The Consultancy to the Client in performing the G-Cloud Services constitutes a pre-existing proprietary item of the Consultancy or a third party, the Intellectual Property Rights therein shall remain with the Consultancy or the third party, as appropriate. The Client's rights to use such items will either be set out in a separate licence or, in the absence of such a licence, are as set out in the previous clause, the Consultancy's financial liability for any separately licensed item shall not exceed that specified under this Agreement.
- iv. Unless otherwise agreed by the Parties in the Special Terms the Client shall retain its Intellectual Property Rights and any amendments thereto made by the Consultancy in any documentation, data, software programs or other material which constitute pre-existing proprietary items of the Client and which are submitted by the Client to the Consultancy for the provision of the G-Cloud Services.

### **14. STAFF**

- i. Each party's staff shall comply with any applicable rules and regulations relating to the other party's premises when working at those premises. For the avoidance of doubt, the Consultancy's staff shall at all times remain under the direction and control of the Consultancy.
- ii. If the Consultancy agrees to the Client's written request that a member of the Consultancy's staff should cease to be engaged in providing the Consultancy Services, that staff member will be removed by the Consultancy within a reasonable period. The Client shall provide reasons for its request and the Consultancy's consent to the removal will not be unreasonably withheld. If available, the Consultancy will provide a suitably qualified replacement. The Client shall bear all costs and effects of delays incurred by the Consultancy that are associated with the removal and/or replacement of the member of staff and the impact of such change on the provision of the Assignment, except where the Client's reason for the requested removal demonstrates the Consultancy staff member's misconduct, incompetence or negligence
- iii. Holidays taken by the Consultancy staff shall be those normally applicable to such staff. Authorisation for taking such holidays shall not be required from the Client but The Consultancy will consult with the Client to co-ordinate holidays where appropriate.
- iv. If the Consultancy deems it necessary to replace any member of the Consultancy staff, the Consultancy shall endeavour to give reasonable written notice of this and to maintain continuity of

effort. The Consultancy shall bear the cost of training replacement staff unless the replacement is necessitated by an event outside the Consultancy's reasonable control.

v. Neither party shall, from the Effective Date of this Agreement until six (6) months after Completion or termination of this Agreement, whichever is the sooner, without the other party's prior agreement in writing, directly or indirectly:

- (i) employ or engage on any other basis or offer such employment or engagement to any Employee of the other party; or
- (ii) endeavour to entice away or solicit from the other party any Employee for the purposes of employment or engagement of such person

vi. Pursuant to this clause "Employee" shall mean any employee of or other person provided by either party who has been materially involved in the provision of the Assignment.

vii. Each party agrees that if it employs, engages or solicits any Employee contrary to this clause, the party in default shall be liable to pay to the other party liquidated damages equal to that person's gross income (direct or indirect) in the preceding twelve (12) months, (which the parties agree to be a reasonable estimate of the costs of hiring and training a replacement for any such Employee).

viii. The Client acknowledges and represents that the Transfer of Undertakings (Protection of Employment) Regulations 2006, as the same may be amended or varied ("Transfer Regulations"), do not apply to any use of, or provision of, the G-Cloud Services pursuant to this Agreement. If it is subsequently determined by a court or other tribunal of competent jurisdiction that the Transfer Regulations do apply to the G-Cloud Services and/or the manner in which they are performed by the Consultancy pursuant to this Agreement and/or any employee or former employee of the Client or any Authorised User, the Client shall indemnify and hold harmless the Consultancy against any costs, claims, liabilities, damages, expenses and/or fines incurred by the Consultancy in respect of redundancy, unfair dismissal, wrongful dismissal, breach of the Transfer Regulations or other claims relating to such employees, former employees and/or third parties. Each party agrees, at the other party's request, to provide reasonable assistance to comply with legal obligations and to help the other party to mitigate its liability in relation to this clause.

## **15. GENERAL PROVISIONS**

i. Neither party shall be liable for any delay or failure to perform its obligations caused by any industrial dispute or by circumstances beyond its reasonable control. In such event the party unable to meet its obligations shall promptly notify the other in writing of the circumstances and the time for performance of this Agreement shall be automatically extended by a reasonable period. If the circumstances still exist 100 days after such notification, either party may terminate this Agreement with immediate effect on giving written notice to the other. In the event of termination for this reason, the Client shall pay The Consultancy a reasonable sum for the Assignment which shall include the costs and expenses relating to equipment, materials or services obtained or ordered in connection with providing the Assignment which cannot reasonably be defrayed elsewhere.

ii. All notices required to be given in writing under this Agreement shall be effectively given if given in writing (referencing the Agreement Number shown at the head of this Agreement) and sent to the address of the recipient set out in this Agreement or to such other address as it may have properly notified from time to time. Any notice may be delivered personally or by first class post or by fax (with a confirmatory postal copy) and shall be deemed to have been served if by hand when delivered, if by

first class post three (3) working days after posting to a UK address or eight (8) working days to an international address and if by fax, the following working day.

iii. Neither party shall assign or otherwise transfer this Agreement or any of its rights and obligations under it without the prior written consent of the other. The Consultancy may however sub-contract all or part of this Agreement without the Client's consent.

iv. Nothing in this Agreement confers or purports to confer on any third party any benefit or right to enforce any term of this Agreement. The parties agree that the provisions of the Contracts (Rights of Third Parties) Act 1999 (as amended or modified from time to time) shall not grant any right or benefit to any third party.

## **16. DISPUTES AND LAW**

i. The parties shall attempt to resolve any dispute relating to this Agreement through negotiations between senior executives of the parties who have authority to settle the dispute.

ii. Subject to clause 14.3, if the matter is not resolved through negotiation, the parties may, at their election, attempt in good faith to resolve the dispute through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution in London.

iii. If the matter has not been resolved by an ADR procedure within thirty (30) days of the initiation of that procedure, or if either party does not wish to participate in an ADR procedure, the dispute may be referred by either party to the English courts and the parties submit to their non-exclusive jurisdiction for that purpose.

iv. Any dispute resolution or legal proceedings arising from this Agreement must be commenced within 6 months from the earlier of:

(i) the date when the party bringing the proceedings first becomes aware of the facts which give rise to the liability or alleged liability; or

(ii) the date when that party ought reasonably to have become aware of the facts which give rise to the liability or alleged liability.

## **17. THIS AGREEMENT**

i. Supersedes any prior agreements, proposals, representations and undertakings between the parties in relation to its subject matter; and together with the Overlay Terms and Conditions constitutes the entire agreement between the parties relating to its subject matter.

ii. Each party hereby confirms that, in entering into this Agreement it has not relied upon and shall have no remedy in respect of any representations or warranties outside of this Agreement (other than any representations or warranties made by the Consultancy in the Overlay Terms and Conditions) and the only remedy available to it for breach of warranties shall be for breach of contract under the terms of this Agreement or the Overlay Terms and Conditions.

iii. If any part of this Agreement is held unlawful or unenforceable the offending section or part shall be struck out and the remainder of this Agreement shall remain in effect.

iv. No delay, neglect or forbearance by either party in enforcing its rights under this Agreement shall be a waiver of, or prejudice, those rights.

v. No purported variation of this Agreement shall take effect unless made in writing and signed by an authorised representative of each party