



Date: [ENTER DATE]

Advania UK Limited
Lowry Mill
Lees Street
Swinton
Manchester
M27 6DB
UK

Attention:

[Full Name]

[Company]

[Address Line 1]

[Address Line 3]

[Address Line 4]

Background

This letter of agreement sets out the terms and conditions (the “**Conditions**”) on which Advania UK Limited (the “**Supplier**”) will provide professional or managed services (the “**Services**”) to [Company Name] (the “**Client**”) pursuant to any agreed service order form(s) (“**Service Order Form(s)**” or “**SOF**”) or statement of work(s) (the “**Statement of Work(s)**” or “**SOW**”) as set out in Schedule One and any service schedule(s) (the “**Schedule(s)**”).

The Conditions, Statement of Work and/or Service Order Form and Schedules together shall form the agreement between the parties (the “**Agreement**”) to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In the event of any conflict or inconsistency between the Conditions, Schedule(s) and the Statement of Work(s) or Service Order Forms (including any changes to the Statement of Work(s) or Service Order Form(s)), the following order of precedence (in decreasing order) shall apply:

- (a) the Statement of Work/Service Order Form;
- (b) Schedules attached to this Agreement; and
- (c) the terms of this Agreement.

The Services as defined in the Statement of Work will be delivered by the Supplier, in consideration for which, the Client undertakes to pay Supplier the Fees (as defined below) as agreed in the Statement of Work(s) or Service Order Form.

Terms and Conditions

1. Provision of Services

1.1. Client and the Supplier agree that:

- 1.1.1. The Supplier shall supply the Services to the Client in accordance with the agreed Statement of Work(s) in all material respects;
- 1.1.2. the Supplier shall use commercially reasonable endeavours to meet any performance timelines specified under Statement of Work but any such timelines shall be estimates only and time shall not be of the essence for the performance of the Services;
- 1.1.3. the Supplier shall provide the Services using reasonable care and skill. In the event the Client obtains third party support, the Supplier shall not be liable for any costs or damages for such third party support;
- 1.1.4. in the event the Client identifies any non-conformity with the Services, it shall promptly notify the Supplier of any such non-conformities and the Supplier shall rectify the non-conformity within a reasonable time frame from the date the Supplier received the complaint;
- 1.1.5. any quotation or proposal is only valid for a period of thirty (30) days from its date of issue unless otherwise agreed by the Supplier in writing and shall only become binding upon the signing of a Statement of Work;
- 1.1.6. either party may request changes to any Statement of Work (in each case, a **"Change Request"**). Any Change Request shall be made in writing (including email) and sent to the Designated Manager (as defined below) or the Supplier's representative, as appropriate and shall set out the change in detail so as to enable the other party to make a proper assessment of such change. Any agreed changes shall continue to be subject to this Agreement. For the avoidance of doubt, neither party shall be required to accept any Change Request made by the other party and shall not be bound by the Change Request unless it has been agreed in writing; and
- 1.1.7. the Supplier shall be under no obligation to provide the Services to the Client in the following circumstances (unless specified under the Statement of Work):
 - (a) unauthorised use of the Services by the Client or use otherwise than in accordance with this Agreement;

- (b) ikproviding the Services outside the hours specified in the Statement of Work unless otherwise agreed between the parties in writing; and
- (c) providing any other services not covered in this Agreement or the Statement of Work;

2. Client Obligations

2.1. The Client shall:

- 2.1.1. co-operate with the Supplier in all matters relating to the Services including, but not limited to, ensuring that remote access is in place, if applicable;
- 2.1.2. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and to ensure that such information is accurate in all material respects;
- 2.1.3. obtain all necessary licenses, permissions, consent and applicable software and systems which may be required before the date on which the Services are to start;
- 2.1.4. appoint a designated manager who manages any escalation ("**Designated Manager**") and who shall be the key person for the Supplier to co-ordinate with;
- 2.1.5. promptly respond to escalation issues and correspond such issues to the Supplier in a timely manner; and
- 2.1.6. sign a client satisfaction certificate after each deliverable has been delivered, certifying that the deliverable has been completed.

2.2. If the Supplier considers that the Client is not, or may not, be complying with any of the Client's obligations, it shall be entitled to rely on this as relieving the Supplier's performance under the Agreement or Statement of Work, if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details of it to the Client in writing.

3. Fees and Payment

3.1. In consideration of the performance of the Services:

- 3.1.1. Client shall pay to the Supplier the fees howsoever arising including but not limited to those arising from fraud or fraudulent use, in accordance with any agreed Statement of Work and/or in accordance with Paragraph 2 of Schedule Three of this Agreement (the "**Fees**")

3.1.2. invoices will be raised after each deliverable has been delivered. All invoices shall be payable 30 days from date of invoice unless agreed otherwise in applicable Service Order Form or Statement of work and time for payment shall be of the essence under this Agreement. In the event of any undisputed invoices not being paid by the Client after being given fourteen (14) days' notice of any such delays, the Supplier reserves the right to suspend or terminate the Services; and

(a) where the Services are provided on a time-and-materials basis:

(b) The Supplier's standard hourly or daily rates are calculated on the basis of the rate card set out in the Statement of Work;

(c) The Supplier shall be entitled to charge an overtime rate for time worked outside the hours set out in the Statement of Work; and

(d) The Supplier shall complete the relevant time recording systems to calculate the Fees for each invoice charged on a time and materials basis.

3.2. For the avoidance of doubt, the Supplier may increase any Fees upon thirty (30) day's notice where related to a demonstrable increase in the cost of providing the Services caused by legal or regulatory change.

4. Confidential Information

4.1. A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its Services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents subcontractors or in the case of the Supplier, its affiliates (as defined by section 1162 of the Companies Act 2006) as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Clause 4 shall survive termination of the Agreement.

4.2. The obligations of confidentiality set out in this Clause 44 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of the Agreement; (ii) was in the possession of the receiving party prior to the date of receipt from the disclosing party or was rightfully acquired by the receiving party from sources other than the disclosing party; (iii) is required to be disclosed by

law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving party without use of or reference to the confidential information.

5. Termination

5.1. Unless otherwise specified in the Statement of Work, this Agreement shall come into force on the date signed by both parties ("**Commencement Date**") and shall continue until the later of: (i) until the Project Services have been delivered; or (ii) 12 months after the Commencement Date.

5.2. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other if:

5.2.1. the other party commits a material breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

5.2.2. an insolvency event occurs in relation to the non-terminating party.

5.3. For the purposes of sub-Clause 5.2.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all material respects.

5.4. The Supplier may terminate this Agreement with immediate effect and without notice if the Client is in breach of: the Bribery Act 2010, the Modern Slavery Act 2015, the Competition Act 1998 ("**Competition Laws**") or any sanctions relating to any persons designated on the sanctions lists in the European Union (EU), United Kingdom (UK), United Nations (UN) or also when relevant United States (US) ("**Sanctions**").

5.5. Termination of the Agreement, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination including the provisions of Paragraph 7 of Schedule Three of this Agreement (cancellation) and/or in accordance with any agreed Statement of Work.

6. Liability

6.1. Nothing in this Agreement shall exclude or limit the liability of either Party for:

6.1.1. death and/or personal injury resulting from the negligence of that Party or its directors, officers, employees, contractors or agents;

6.1.2. fraud and/or fraudulent misrepresentation;

- 6.1.3. any other liability which, by law, cannot be excluded or limited.
- 6.2. Neither Party shall be liable to the other Party whether arising in contract, tort (including negligence), misrepresentation or for breach of any duty (including strict liability) for:
 - 6.2.1. loss of business;
 - 6.2.2. loss of goodwill or similar losses;
 - 6.2.3. loss of profits, anticipated savings, revenue or pure economic loss;
 - 6.2.4. wasted expenditure; or
 - 6.2.5. any special, indirect, consequential losses.
- 6.3. Subject to clauses 6.1 and 6.2 or any specific limitation of liability to the contrary contained in the SOW, the maximum aggregate liability of either Party to the other in respect of all direct losses, claims, damages, costs, charges, expenses and liabilities (including reasonable legal fees and disbursements) under or in connection with this Agreement for the entire Term whether in contract, tort (including negligence), misrepresentation, for breach of duty or otherwise, shall be limited to the lesser of 125 per cent (125%) of the Fees paid to the Supplier under all Agreements or £250,000.

7. Data Protection.

7.1. For the purposes of this Clause 7, the following definition shall apply:

“Applicable Data Protection Laws” means,

- a) to the extent the UK Data Protection Legislation applies, all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
 - b) to the extent the General Data Protection Regulation ((EU) 2016/679) applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.
- 7.2. In the event that the Supplier will process personal data in performance of the Services, the parties shall comply with the Data Protection Schedule set out in Schedule Two to this Agreement. Both Parties will comply with Applicable Data Protection Laws and the Data Protection Schedule appended to this Agreement. The

Data Protection Schedule is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Laws.

8. Supply of Third Party Hardware and Software

8.1. In the event that the Supplier will provide Third Party Hardware and/or Software, the parties shall comply with the Supply of Third Party Products, Services, Hardware and Software Schedule appended to this Agreement in Schedule 4 .

9. Prevention of Corruption and Anti-Bribery

9.1. The Supplier and Client shall comply with all applicable laws relating to (i) anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; (ii) anti-slavery and anti-human trafficking including the Modern Slavery Act 2015; (iii), competition including but not limited to the Competition Act 1998 (and statutory instruments made thereunder; (iv) any sanctions relating to any persons designated on the sanctions lists in the European Union (EU), United Kingdom (UK), United Nations (UN) or also when relevant United States (US) and (v) UK prevention of fraud legislation.

10. Notices

10.1. Any notice under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in this Agreement, or such other address as may have been notified by that party for such purposes.

10.2. Any notice shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

10.2.1. if delivered personally, on delivery if the notice was delivered during 7.00 a.m. to 19.00 p.m. on all UK business days or otherwise the next business day;

10.2.2. if sent by first class post, two (2) business days after the date of posting.

10.2.3. If sent by email, at the time of transmission. Notice to Supplier should be sent to legal@advania.co.uk.

11. Intellectual Property

11.1. Each party keeps ownership of its own Background Materials unless otherwise agreed in the Statement of Work. For the purpose of this clause 11, the following definitions shall apply in this Agreement:

Background Materials: means all Intellectual Property Rights, know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing business, trade secrets, instructions manuals and procedures (including, but not limited, to software, documentation, and data of whatever nature and in whatever media) owned, developed or controlled by the Supplier which may have been created outside the scope, or independently of, the Statement of Work, the Services and/or this Agreement, and including all updates, modifications, derivatives or future developments thereof;

Intellectual Property Rights or IPR: means any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of either Party, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions;

- 11.2. Subject to clause 11.3 below, on creation by the Supplier and upon the Supplier receiving payment in full, all Intellectual Property Rights in bespoke materials or code created under the Services for the Client ("**Bespoke IPR**") shall vest automatically in the Client. Supplier hereby assigns to the Client its present and future rights and full title and interest in such creations, including but not limited to workflows, widgets, business processes, and customised web coding which are used in order to provide the Services. The Client hereby provides an irrevocable, worldwide, royalty-free licence to the Supplier for the duration of this Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.
- 11.3. Notwithstanding clause 11.2 above, the Supplier and if applicable, its respective licensors shall retain exclusive ownership of (i) all of its Background Materials; and (ii) ideas, concepts, techniques and know-how discovered, created or developed by the Supplier during the performance of the Services that are of general application and that are not based on or derived from the Client's business or confidential information ("**General IP**"). The Supplier grants to the Client and the Client Affiliates a non-exclusive, irrevocable, worldwide, royalty free and non-transferable license to use the Background Materials and General IP in so far as is necessary for the Client's business purposes solely in connection with such deliverables.

12. Governing Law and Jurisdiction



12.1. This Agreement is governed by English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

Please arrange for execution in the space below by an authorised representative and return to the Supplier.

Yours faithfully,

Signed for and on behalf of

Advania UK Limited

Client Name

[Name]
[Title]

[Name]
[Title]



SCHEDULE ONE- SOF'S or SOW's

[add a link to SOF/SOW Microsite folder]



SCHEDULE TWO- Data Protection Clauses

[add the Data Protection Schedule if applicable]



SCHEDULE THREE- Project Services Schedule

[add the Project Services Schedule]



SCHEDULE FOUR- Supply of Third Party Products, Services, Hardware and Software Schedule

[add Schedule Four if applicable]