



Agilent International Limited

Terms and Conditions

Agilent International Limited

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G-Cloud – Agilent International Limited – Terms and Conditions

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1. Price

1.1. Agilient International Limited will charge the Client according to the fee rates specified in the Statement of Work as amended herein.

1.2. The fee rates specified and all other sums payable hereunder are exclusive of Value Added Tax and all taxes or duties which may be levied or based upon such fee rates or sums or upon the services, or any part thereof. Value Added Tax and all such taxes or duties (with the exception of any tax levied or based upon the income of Agilient International Limited) shall be paid by the Client as additional charges hereunder.

1.3. Unless otherwise agreed in writing, the fee rates specified do not include travel, hotel or subsistence expenses or the cost of materials and external services incurred in providing the Professional Services.

1.4. No fees shall be charged for hours, which are not spent on performing the Professional Services due to statutory and annual holidays, sickness or temporary absence for any other reason.

1.5. The fee rates specified are fixed for the period stated in the Statement of Work or, if no period is stated, for six months following the date upon which Agilient International Limited starts to perform the Professional Services. Agilient International Limited reserves the right to revise these fee rates at the applicable time or at any later date on submission of thirty days' notice to the Client. If such changes in fees are not acceptable to the Client, the Client shall be entitled to terminate the Contract in accordance with Clause 11.

2. Payment

2.1 At the end of each month for the duration of this Contract Agilient International Limited shall submit an invoice in respect of the charges arising during such month. Payment of each invoice shall be made by the Client within thirty days of the date of issue.

2.2. If the Client fails to pay any sum due under this Contract, interest shall be charged thereon from the date of issue of the applicable invoice until the date payment be made at the rate of two per cent per annum over the Base Rate of Barclays Bank PLC from time to time in force.

2.3. If the Client fails to pay any sum due under this Contract, Agilient International Limited may, without prejudice to any other remedy, after giving the Client fourteen days' notice of its intention so to do, withdraw the provision of the Professional Services or any part thereof until the payment be made; in which case the price shall be increased by the amount of the proven, receipted costs and expenses of Agilient International Limited occasioned by such withdrawal and the subsequent resumption of work and the Client shall grant a reasonable extension for the performance of this Contract.

3. Staff

3.1. Each party agrees that when its staff are present on the premises of the other party they shall comply with such rules and regulations as are notified to them for the conduct of staff on those premises.

3.2. This Sub Clause 3.2 concerns Agilent International Limited staff engaged in the Professional Services.

a. Agilent International Limited staff shall at all times remain under the direction and control of Agilent International Limited. Although Agilent International Limited staff are to remain under Agilent International Limited's direction and control, Agilent International Limited recognises that the Professional Services may require Agilent International Limited to perform work in relation to a Client managed activity and that, in this event, the Client shall be responsible for, and shall supervise and manage, such activity.

b. The length of the normal working day of Agilent International Limited staff shall be the same as that of the Client's staff of equivalent rank.

c. Holidays taken by Agilent International Limited staff shall be those normally applicable to such staff. Authorisation for taking such holidays shall not be required from the Client but Agilent International Limited shall consult with the Client to coordinate holidays where appropriate.

d. If the Client requests that any member of Agilent International Limited staff should cease to perform the Professional Services, it shall notify Agilent International Limited in writing and state the reasons for the request. If Agilent International Limited agrees to the request (such agreement not to be unreasonably withheld) the said staff member shall be removed within a reasonable period and Agilent International Limited shall provide a suitably qualified replacement, if available, unless otherwise agreed. The Client shall bear all costs incurred by Agilent International Limited that are associated with the removal and replacement (if applicable) of the said staff member, provided that if the Client can show that the reason for its request is some act of misconduct, incompetence or negligence by the said staff member, then Agilent International Limited shall bear such costs.

e. If Agilent International Limited deems it necessary to replace any member of Agilent International Limited staff Agilent International Limited shall endeavour to give reasonable written notice thereof and to maintain continuity of effort. Agilent International Limited shall bear the cost of training replacement staff members unless the replacement is necessitated by an event outside Agilent International Limited's reasonable control.

3.3. Each party agrees that during a period from the commencement of the Professional Services to twelve months after the Completion of the Professional Services (as defined in Sub Clause 7.1 below), it shall not employ or engage on any other basis or offer such employment or engagement to any of the other party's staff who have been associated with the provision of the Professional Services without the other party's prior agreement in writing. Each party agrees that the aforementioned agreement will not be unreasonably withheld and that a finder's fee not exceeding 25% of annual gross salary for a permanent employee or 10% of 30 days' fees for a contractor may be charged in this instance.

3.4. Each party agrees that the terms of Clause 3.3 above shall not apply for engagement resulting from a general advertisement for vacancy placed by the employing party.

4. Estimates

4.1. Unless otherwise stated in the Order, this Contract is performed on a time and materials basis and accordingly:

- a. any timetable of work and/or delivery dates relating to the whole and each part of the Professional Services shall be deemed to be estimates only; and
- b. Agilent International Limited gives no undertaking to complete the whole or any part of the Professional Services for a fixed or ascertainable sum and, if such sums are referred to in relation to the Professional Services, they shall be deemed to be estimates only.

5. Progress reports and meetings

5.1. Until Completion of the Professional Services, Agilent International Limited shall provide the Client with status reports advising the Client of Agilent International Limited's progress in the performance of the Professional Services. In addition, if requested by either party, the parties shall conduct progress meetings. Status reports and progress meetings (if applicable) shall occur monthly unless otherwise agreed in writing.

6. Changes to the Professional Services

6.1. Either party may request at any time before the date of Completion of the Professional Services that some change be made to the Professional Services. Each party shall have the right to reject any such change requested by the other party but shall not exercise such right unreasonably. Change requests shall be made in writing.

6.2. When the parties agree to implement a change requested to the Professional Services, the details of such change shall be specified and confirmed in writing by the parties. Agilent International Limited shall not be obliged to implement such change until such time as it shall have been so confirmed and any revision to the Price and any timetable of work and/or delivery dates shall have been agreed in writing.

7. Completion of the Professional Services

7.1. The Professional Services shall be deemed to have been completed ("the Completion of the Professional Services") upon expiry of the notice period or date specified in the Statement of Work or, if no such period or date is specified, upon thirty days' notice in writing from either party pursuant to Sub Clause 11.1 below.

8. Client responsibilities

8.1. The successful and timely performance by Agilent International Limited of the Professional Services is in part dependent upon the Client's prompt performance of the client obligations which will be agreed and reviewed during the engagement and include, among others, the responsibilities described in this Clause 8.

8.2. The Client agrees to make available to Agilent International Limited an authorised representative who shall:

- a. be authorised to make binding decisions for the Client with regard to this Contract, including any change to the Professional Services or other variation hereto; and
- b. provide Agilent International Limited with all reasonable information concerning the Client's operations and activities which may be required by Agilent International Limited for the performance of the Professional Services.

8.3. The Client further agrees:

- a. to provide Agilent International Limited staff with such office accommodation, facilities and access to the Client's premises as may be reasonably necessary to perform the Professional Services; and
- b. to execute all licences for Agilent International Limited or third party pre existing proprietary items which may be required under Sub Clause 9.2 below.

9. Intellectual Property Rights

9.1. To the extent that any document, material, idea, data or other information constitutes an original item developed by Agilent International Limited in performing the Professional Services ("Foreground IP"), title thereto and all Intellectual Property Rights therein shall, subject to payment of the Price, be vested in the Client.

9.2. To the extent that any document, material, idea, data or other information submitted or disclosed by Agilent International Limited to the Client in performing the Professional Services constitutes a pre-existing proprietary item of Agilent International Limited or a third party ("Agilent International Limited Background IP"), title thereto and all Intellectual Property Rights therein shall be vested in Agilent International Limited or such third party (as the case may be) and the rights of the Client to use and reproduce the same are either set out herein or in a separate licence. Where the Client enters into a separate licence for such Agilent International Limited or third party proprietary items, such licence shall in no way be deemed to affect or increase Agilent International Limited's liability for such items arising under this Contract.

9.3. The Client shall retain title to and all Intellectual Property Rights in all documents, materials, ideas, data or other information which constitute the pre existing proprietary items of the Client ("Client Background IP") and which are submitted by the Client to Agilent International Limited for the performance of the Professional Services. Upon termination of this Contract Agilent International Limited shall return to the Client or destroy, at the Client's option, such documents, materials, data or other information. Agilent International Limited holds such documents, materials, ideas or data on a revocable, royalty-free licence to use them within the UK.

10. Confidentiality and publicity

10.1. Each party undertakes at all times to hold in confidence for the other party, to use only for the purposes hereof and not to print, publicise or otherwise disclose to any third party, Confidential Information of the other party. "Confidential Information" of the other party means any document, material, idea, data or other information which relates to either Agilent International Limited's or the Client's research and development, trade secrets or business affairs or which is marked as confidential and disclosed by either party to the other for the purposes hereof. In addition, pre-existing proprietary items referred to in Sub Clause 9.2 shall be, or be deemed to be, Agilent International Limited's Confidential Information. "Confidential Information" of the other party does not however include any document, material, idea, data, or other information which:

- a. is known to the receiving party, under no obligation of confidence, at the time of disclosure by the other party; or
- b. is or becomes publicly known through no wrongful act of the receiving party; or
- c. is lawfully obtained by the receiving party from a third party who in making such disclosure breaches no obligation of confidence to the other party; or

- d. is independently developed by the receiving party; or
- e. is disclosed by the other party to a third party under no obligation of confidence.

10.2. Notwithstanding Sub Clause 10.1 above, nothing in this Contract shall be construed to prevent or restrict either party from disclosing or using in the course of its business any technical knowledge, skill or expertise of a generic nature acquired by Agilent International Limited in the performance of this Contract, or disclosing the Confidential Information pursuant to the order of a court of competent jurisdiction, tribunal, governmental or regulatory body.

10.3. Agilent International Limited may refer to the Client in Agilent International Limited's publicity material as being a client of Agilent International Limited, but shall not, without the Client's permission (which shall not be unreasonably refused), publicise Agilent International Limited's work under this Contract.

11. Termination

11.1. Either party may terminate this Contract for its own convenience and not for a cause within Sub Clause 11.2 below upon 10 days' written notice to the other party, or at the end of an iteration.

11.2. Either party may terminate this Contract forthwith by written notice to the other party if:

- a. the other party shall commit a material breach of any of its obligations under this Contract and shall not have remedied such breach within thirty days of receiving written notice of the breach; or
- b. the other party shall become bankrupt or enter into liquidation (other than for reconstruction or amalgamation) or have a receiver appointed of its assets or any part thereof or an administration order is served upon it.

11.3. Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

12. Limitation of liability

12.1. In the performance of the Professional Services Agilent International Limited may give advice to the Client. Agilent International Limited shall exercise reasonable skill and care in performing the Professional Services and in giving such advice but shall not be responsible for the accuracy of advice based on information supplied by the Client or third parties. Responsibility for the use to which the results of the Professional Services are put shall remain with the Client.

12.2. Neither party shall be liable to the other for death or personal injury resulting from that party's negligence.

12.3. Under no circumstances shall either party hereto be liable to the other party for indirect, incidental, consequential, special or exemplary damages (even if such party has been advised of the possibility of such damages) such as, but not limited to, loss of revenue or anticipated profits or lost business.

12.4. Agilent International Limited hereby indemnifies the Client for any claim by a third party arising out of the use of any document, idea or data provided by Agilent International Limited, for the breach of that third party's Intellectual Property Rights.

13. Force majeure

13.1. Neither party shall be liable for any delay in meeting or for failure to meet any of its obligations under this Contract due to any cause limitation, strikes, lock outs, Acts of God, war, riot, malicious acts of damage, fire, acts of any government authority, failure of the public electricity supply, failure or delay on the part of any sub contractor beyond the sub contractor's reasonable control or the lack of availability of materials.

13.2. If either party is prevented from meeting any of its obligations due to any cause outside its reasonable control, it shall promptly notify the other party in writing of the circumstances and the other party shall grant a reasonable extension for the performance of this Contract, provided however that if either party shall have been so prevented from meeting its obligations for more than thirty days following receipt of such notice, then either party may terminate this Contract forthwith upon written notice.

14. Notices and other communications

14.1. Any notice, which expression includes any other communication whatsoever which is made in accordance with this Contract, shall, without prejudice to any other method of giving it, be sufficiently given if it is sent by registered or recorded delivery first class post to the other party to the address stated on the signature page of this Contract or to such other address as the respective party may advise by notice in writing from time to time.

14.2. Notices shall be deemed to have been properly given after three working days in the case of notices posted from the United Kingdom to a destination therein and eight working days in the case of all other notices posted internationally.

15. Assignment and delegation

15.1. No right under this Contract shall be assigned by either party without the prior written approval of the other party. Agilient International Limited may delegate the performance of any of its obligations hereunder to appropriately skilled third parties with the Client's consent, provided however that Agilient International Limited shall remain liable in contract for the performance of the Professional Services notwithstanding such delegation.

16. Waiver

16.1. No delay or failure of either party in enforcing against the other party any term or condition of this Contract, and no partial exercise by either party of any right hereunder, shall be deemed to be a waiver of any right of that party under this Contract.

17. Legal construction

17.1. The parties have read and understand this Contract and agree that it constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter hereof which supersedes all proposals, representations,

understandings and prior agreements, whether oral or written, and all other communications between them relating thereto.

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

17.3. The relationship of the Agilent International Limited to the Client will be that of independent contractor and each Statement of Work shall constitute a contract for the provision of services and not a contract of employment and accordingly Agilent International Limited shall be fully responsible for, and shall indemnify the Client against, any and all claims arising out of or in connection with Agilent International Limited's employees, contractors and other personnel whether such claims relate to their employment status (including claims under TUPE), tax, national insurance or otherwise.

17.4. This Contract shall be governed by English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.