



# Consultancy Services

## Terms & Conditions

T +44 (0)1904 500808 | E [support@cloudoko.com](mailto:support@cloudoko.com) | [www.cloudoko.com](http://www.cloudoko.com)

Cloudoko Ltd is registered in England & Wales under company number 09294405 | Registered office: 1 Derwent Business Centre, Clarke Street, Derby, DE1 2BU

# CONTRACT CONFIRMATION NOTE

**Agreement dated:** <<Insert Date>>

**Agreement number:** <<Agreement Number>>

## BETWEEN:

**CLIENT:** <<Client Limited>>

**& CONSULTANCY:** Cloudoko Ltd

**Address:** <<Client Address>>

**Commencement date:** <<Start Date>>

**Expected completion date:** <<Expected End Date>>

**The total price for this contract is estimated to be (excluding VAT):** <<Estimated Contract Value>>

**The daily rate which will apply (excluding VAT) is:** <<Invoice Rate>>

**Invoicing frequency:** <<Consultancy Invoice Frequency>>

## Redisbursements:

**Nature of consultancy services:** <<details of project or services to be supplied>>  
<<These can be set out here or in separate schedule>>

## Facilities/Equipment provided:

**By client:** <<Add details of any equipment you will be providing>>

**By consultancy:** <<Add details of any equipment we will be providing>>

## Notice Period for early Termination:

**By Client:** <<Both parties should have equal rights of termination

**By Consultancy:** normally 30 days>>

THIS CONSULTANCY AGREEMENT made on

<< >>

AGREEMENT NUMBER:

<<Agreement Number>>

BETWEEN

- (1) **Cloudoko Ltd** (registered number 9294405), whose registered office is at 1 Derwent Business Centre, Clarke Street, Derby, DE1 2BU ("the Consultancy").
- (2) <<Client Limited>> registered in England under Number <<...>> of <<Address>> ("the Client")

WHEREAS

- (A) The Consultancy carries on the business of the provision of consultancy services relating to the services ("the Consultancy Services") specified in <<the attached Contract Confirmation Note ("the Confirmation Note") or the attached schedule>>.
- (B) The Client has requested the Consultancy and the Consultancy has agreed with the Client, to provide the Consultancy Services on the terms and subject to the conditions of this agreement ("the Agreement").

IT IS AGREED as follows:-

## 1 INTERPRETATION AND DEFINITIONS

1.1 Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine, and vice versa.

1.2 The headings contained in the Agreement are for convenience only and do not affect their interpretation.

**"Client"** means the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 2006 requiring the services of the Consultancy and identified in the contract confirmation Note.

## 2 CONSULTANCY

2.1 The Consultancy's obligation to provide the Consultancy Services shall be performed by one or more employees of the Consultancy as the Consultancy may consider appropriate ("the Staff"), subject to the Client being reasonably satisfied that the Staff has the required skills, qualifications and resources to provide the Consultancy Services to the required standard.

2.2 The Consultancy has the right, at its own expense, to enlist additional or substitute Staff in the performance of the Consultancy Services or may, sub-contract all or part of the Consultancy Services, provided that the consultancy provides details, whenever practicable, of the proposed substitute or sub-contractor ahead of the planned substitution and subject to the Client being reasonably satisfied that such additional Staff or any such sub-contractor has the required skills, qualifications, resources and personnel to provide the Consultancy Services to the required standard.

2.3 Where the Consultancy provides a substitute or sub-contracts all or part of the Consultancy Services pursuant to clause 2.2 above, the Consultancy shall be responsible for paying the substitute or sub-contractor and shall ensure that any agreement between the Consultancy and any such substitute or sub-contractor shall contain obligations which correspond to the obligations of the Consultancy under the terms of this Agreement and the Consultancy shall remain responsible for the acts or omissions of any such substitute or sub-contractor.

2.4 The Consultancy shall take all reasonable steps to avoid any unplanned changes of Staff assigned to the performance of the Consultancy Services but if the Consultancy is unable for any reason to perform the Consultancy Services the Consultancy should inform the Client on the first day of unavailability and in such case shall provide a substitute subject to the provisions of clause 2.2.

2.5 Due to the specialised nature of the work there may be a lengthy learning process for any Staff prior to becoming familiar with the work. As a result where substitute or additional staff are provided or where the performance of all or part of the Consultancy Services is sub-contracted, the Consultancy shall provide wherever possible, at its own expense, an overlap period for such substitute or additional Staff or any such subcontractor.

2.6 In the event that the Consultancy is unable to supply either the original personnel or acceptable substitutes or sub-contractors then the Client is entitled to cancel this Agreement forthwith.

- 2.7 The Confirmation Note shall specify the Client, the fee payable by the Client and such disbursements as may be agreed and any other relevant information.
- 2.8 Save as otherwise stated in this Agreement, the Client acknowledges and accepts that the Consultancy is in business on its own account and the Consultancy shall be entitled to seek, apply for, accept and perform contracts to supply its services to any third party during the term of this Agreement.

### **3 THE CONTRACT**

- 3.1 This Agreement constitutes the contract between the Client and the Consultancy and governs the performance of the Consultancy Services by the Consultancy for the Client.
- 3.2 The Consultancy shall not be required to provide any advice and assistance in addition to the Consultancy Services and any requests to provide such additional advice and assistance shall be subject to the prior approval of the Consultancy and agreement between the Consultancy and the Client as to the level of fees payable for such additional advice and assistance. In the event that such additional advice and assistance is agreed, the Consultancy must notify the Client of the terms upon which such services will be provided including details of any new fee arrangements in order that the fee arrangement between the Consultancy and Client as set out in the Confirmation Note may be adjusted accordingly.
- 3.3 No variation or alteration of these terms shall be valid unless approved by the Client and the Consultancy in writing except where changes to the Consultancy Services are necessary to comply with applicable safety and other statutory requirements, in which case the Consultancy may make such necessary changes without prior notification to the Client.
- 3.4 A person who is not a party to this Agreement has a right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement in addition to any right or remedy which exists or is available apart from that Act.

## **4 UNDERTAKING OF THE CONSULTANCY**

4.1 The Consultancy warrants to the Client that by entering into and performing its obligations under this Agreement it will not thereby be in breach of any obligation which it owes to any third party.

4.2 The Consultancy warrants to the Client that its Staff and any substitutes or sub-contractors will carry out the Consultancy Services with reasonable skill and care and as far as possible in accordance with the terms of this Agreement and any other timetables or other targets agreed.

## **5 TRAINING**

5.1 The Consultancy warrants to the Client that its Staff and any substitutes and sub-contractors used in accordance with the terms of this contract have the necessary skills and qualifications to perform the Consultancy Services.

## **6 CONSULTANT'S OBLIGATION**

6.1 The Consultancy agrees on its own part and on behalf of its Staff and any substitutes and subcontractors used in accordance with the terms of this contract as follows:-

6.1.1 Not to engage in any conduct detrimental to the interests of the Client which includes any conduct tending to bring the Client into disrepute or which results in the loss of custom or business.

6.1.2 To comply with any statutory rules or regulations including but not limited to those relating to health and safety, together with such procedures of the Client as the Client notifies the Consultancy and/or its Staff and any substitutes and sub-contractors that it is essential that the Consultancy and its Staff and any substitutes and sub-contractors comply with to properly perform the Services (including for example where the Services are to be performed at the premises of the Client the health and safety policy, security arrangements and fire drill of the Client) during the performance of the Consultancy Services. Subject to the rules and regulations which the Client notifies the Consultancy and/or its Staff and any substitutes and sub-contractors that it is essential

that the Consultancy and its Staff and any substitutes and sub-contractors comply with the Consultancy and its Staff and any substitutes and sub-contractors shall not be bound by the policies and procedures which an employee of the Client would be bound by.

6.1.3 To furnish the Client with any progress reports as may be requested from time to time.

6.1.4 To notify the Client forthwith in writing if it should become insolvent, dissolved or subject to a winding up petition.

## **7 EQUIPMENT**

7.1 The Consultancy shall provide at its own cost, subject to any agreement to the contrary specified in the Confirmation Note, all such necessary equipment as is reasonable for the satisfactory performance by the Staff and any substitutes and sub-contractors of the Consultancy Services.

7.2 If as a matter of convenience, the consultancy is provided with equipment by the Client or Client for the purposes of an Assignment, the Consultancy shall be responsible for ensuring that they preserve the security and condition of such equipment. If and to the extent that any equipment is lost while in the Consultancy's possession, the Consultancy shall be responsible for the cost of any necessary repairs or replacement.

## **8 METHOD OF PERFORMING SERVICES**

8.1 The Consultancy's personnel are professionals who will use their own initiative as to the manner in which the Services are delivered provided that in doing so the Consultancy shall co-operate with the Client and comply with all reasonable and lawful instructions of the Client.

8.2 The Consultancy may provide the Consultancy Services at such times and on such days as the Consultancy shall decide but shall ensure that Services are provided at such times as are necessary for the proper performance of the Consultancy Services.

8.3 The relationship between the parties is between independent companies acting at arm's length and nothing contained in this Agreement shall be construed as constituting or establishing any partnership or joint venture or relationship of employer and employee between the parties or their personnel.

8.4 Where the proper performance of the Consultancy Services are dependent on the completion of tasks or services by third parties (including employees of the Client but excluding any substitute or subcontractor of the Consultancy), the Consultancy shall have no liability to the Client for any delay, non or partial performance of the Consultancy Services arising from the delay or non or partial performance of such tasks by third parties.

8.5 The Consultancy may provide the Consultancy Services from such locations as are appropriate in the Consultancy's judgment. When necessary the Client will provide the Consultancy with appropriate access to the client's facilities as is necessary for the effective conduct of the Consultancy Services

## **9 INVOICING**

9.1 Upon completion of the Consultancy Services or as may be agreed and specified in the Confirmation Note the Consultancy shall deliver to the Client its invoice for the amount due from the Client to the Consultancy giving a detailed breakdown showing the work performed. The Consultancy's invoice should bear the Consultancy's name, company registration number, VAT number and should state any VAT due on the invoice.

9.2 The Consultancy shall obtain the signature of an authorised representative of the Client as verification of execution of the Consultancy Services.

9.3 The Client shall not be obliged to pay any fees to the Consultancy unless an invoice has been properly submitted by the Consultancy in accordance with sub-clause 9.1 of this Agreement and until the Client has verified the execution of the Consultancy Services.

## **10 FEES**

10.1 Subject to the receipt of the Consultancy's invoice in accordance with clause 9 above and verification by the Client of execution of the Consultancy Services in accordance with sub-clause 9.3

above, the Consultancy will receive payment from the Client for the Consultancy Services in accordance with the fee specified in the Confirmation Note, plus VAT to be shown separately where appropriate.

10.2 The Consultancy shall be responsible for any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of its Staff in respect of the Consultancy Services.

10.3 All payments will be made to the Consultancy.

10.4 If the Consultancy shall be unable for any reason to provide the Consultancy Services to the Client, no fee shall be payable by the Client during any period that the Consultancy Services are not provided.

10.5 Notwithstanding the provisions of the proviso to clause 8.2, the Consultancy will be able to suspend the provision of the Consultancy Services on up to 25 days per annum per each Staff (or pro rata where the Consultancy Services are for less than one year), subject to giving the Client four weeks notice of such days. The Consultancy shall be responsible to pay the Staff all sums due in respect of those days upon which the Consultancy Services provided are suspended pursuant to the Working Time Regulations 1998 or otherwise.

## **11 OBLIGATIONS OF THE CLIENT**

11.1 Throughout the term of this Agreement the Client shall pay the Consultancy the agreed fee in accordance with clause 10.1 above.

11.2 The Client shall furnish the Consultancy with sufficient information about the Consultancy Services in order for the Consultancy to arrange for the Consultancy Services to be carried out.

11.3 The Client will advise the Consultancy of any health & safety information or advice which it receives from the Client which may affect the Consultancy's Staff during the performance of the Consultancy Services.

## 12 TERM OF THE AGREEMENT

12.1 This Agreement shall commence in accordance with the Confirmation Note and shall either (as specified in the Confirmation Note) continue until completion of the Consultancy Services to the reasonable satisfaction of the Client or the termination date as specified in the Confirmation Note, at which time this Agreement shall expire automatically, or the contract be terminated early by the Client or Consultancy upon giving the required notice as set out in the Contract Confirmation Note.

12.2 Notwithstanding sub-clause 12.1 of this Agreement, the Client may at any time with one week's notice instruct the Consultancy to cease work on the Consultancy Services, or at any time without notice and without liability require the Consultancy to cease work on the Consultancy Services, where:

12.2.1 The Consultancy (or its substitutes and sub-contractors) has committed any serious or persistent breach of any of its obligations under this Agreement;

12.2.2 The Client reasonably believes that the Consultancy (or its substitutes and sub-contractors) has not observed any condition of confidentiality applicable to the Consultancy from time to time; or

12.2.3 The Consultancy (or its substitutes and sub-contractors) proves, in the reasonable opinion of the Client, unsatisfactory to the Client including while performing the Consultancy Services acting in breach of any statutory obligations or acting in breach of such procedures of the Client as the Client notifies the Consultancy and/or its Staff that it is essential that the Consultancy and its Staff comply with to properly perform the Services;

12.2.4 If performance of the Consultancy Services is prevented by the incapacity of the Staff and the Consultancy is unable to provide a replacement member of Staff or a suitable substitute or sub-contractor pursuant to the provisions of clause 2.2.

12.2.5 The Consultancy becomes insolvent, dissolved or subject to a winding up petition;

12.2.6 Any member of the Consultancy (or its substitutes and sub-contractors) is guilty of any fraud, dishonesty or serious misconduct.

AND the provisions of this clause 12.2 shall equally apply to any party performing the Consultancy's obligations as provided for in clause 2.

12.3 Upon completion or termination of the Consultancy Services the Client shall be under no obligation to offer the Consultancy further work, nor shall the Consultancy be under any obligation to accept any offer of work made by the Client.

12.4 Notwithstanding sub-clause 12.1 of this Agreement the Consultancy may terminate the contract if the Client has committed any serious or persistent breach of any of its obligations under this Agreement or in the event that the Client becomes insolvent, dissolved or subject to a winding up petition.

### **13 INTELLECTUAL PROPERTY**

13.1 The Consultancy acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the Consultancy Services shall belong to the client, including any documents or other works prepared by the consultancy its staff and any substitutes and subcontractors. Accordingly the Consultancy shall (and shall procure that any relevant member of its Staff and any substitutes and subcontractors) execute all such documents and do all such acts at its own cost as the Client shall from time to time require in order to give effect to its rights pursuant to this clause.

### **14 CONFIDENTIALITY**

14.1 In order to protect the confidentiality and trade secrets of any Client and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Consultancy agrees on its own part and on behalf of its Staff and any substitutes and sub-contractors used in accordance with the terms of this contract as follows:-

14.1.1 Not at any time whether during or after the performance of the Consultancy Services (unless expressly so authorised by the Client as a necessary part of the performance of its duties)

to disclose to any person or to make use of any of the trade secrets or confidential information of the Client;

14.1.2 To deliver up to the Client (as directed) at the end of the Assignment all documents and other materials belonging to the Client (and all copies) which are in its possession including documents and other materials created by it or the Staff during the course of the Assignment;

14.1.3 Not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Client except when required to do so in the course of its duties under the Assignment in which event any such item shall belong to the Client or the as appropriate.

14.2 The Consultancy shall procure and ensure that the provisions of this clause 14 shall also apply to any subcontractor performing the Consultancy's obligations provided for in clause 2.

## **15 COMPUTER EQUIPMENT WARRANTY**

15.1 The Consultancy warrants to the Client that any computer equipment and associated software which it provides to its Staff for the purpose of providing the Consultancy Services contains anti-virus protection with the latest released upgrade from time to time and will be year 2000 compliant, and the Consultancy shall procure that the provisions of this clause shall also apply to any computer equipment and associated software provided by any subcontractor of this Agreement.

## **16 RELATIONSHIP BETWEEN THE CLIENT AND CONSULTANCY**

16.1 The Consultancy acknowledges to the Client that there is no intention on the part of the Consultancy, its staff, substitutes or sub-contractors or the Client to create an employment relationship between any of those parties and that the responsibility of complying with all statutory and legal requirements relating to the Staff of the Consultancy (including but not limited to the payment of taxation, maternity payments and statutory sick pay) shall fall upon and be discharged wholly and exclusively by the Consultancy. In the event that any person should seek to establish any liability or obligation upon the Client on the grounds that the staff are an employee of the Client, the Consultancy shall upon demand indemnify

the Client and keep them indemnified in respect of any such liability or obligation and any related costs expenses or other losses which the Client shall incur.

16.2 The Consultancy shall be responsible for all obligations arising under or in connection with, the National Minimum Wage Act 1998 in connection with the Staff.

16.3 The Client is under no obligation to offer work to the Contractor and the Contractor is under no obligation to accept any work that may be offered by the Client. Neither party wishes to create or imply any mutuality of obligation between themselves either in the course of, or between, any performance of Service under the Agreement

## **17 NOTICES**

17.1 All notices which are required to be given hereunder shall be in writing and shall be sent to the registered office from time to time of the party upon whom the notice is to be served. Any such notice may be delivered personally or by first class prepaid post or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours and if by facsimile transmission when dispatched.

## **18 LIABILITY**

18.1 The Consultancy shall be liable for any loss, damage or injury to any party, resulting from the acts or omissions of the Consultancy or its Staff (including substitute or replacement Staff) or from the acts or omission of any sub-contractor to whom the Consultancy sub-contracts the performance of the Consultancy Services whether or not such act or omission constitutes a breach of this Agreement and the Consultancy shall indemnify and keep indemnified any such party including, without limitation to the foregoing, the Client against any such loss, damage or injury provided that the total aggregate liability of the Consultancy shall not exceed in the case of liability covered by professional indemnity insurance £1,000,000.

18.2 The Consultancy shall ensure the provision of adequate insurance to cover the risk of a claim against the Consultancy (or its Staff or any sub-contractor) whether pursuant to the terms of this Agreement (including clause 19.1) or otherwise (including without limitation Employer's Liability Insurance,

Public Liability Insurance and any other suitable policies of insurance such as Professional Indemnity insurance in respect of the Consultancy and its Staff or any sub-contractor).

18.3 The Consultancy shall be liable for any defects arising as a result of the provision of the Consultancy Services and the Consultancy shall rectify at its own cost such notified defects as may be capable of remedy.

## **19 GOVERNING LAW AND JURISDICTION**

19.1 This Agreement shall be construed in accordance with the laws of England & Wales and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of this Agreement shall be subject to the exclusive jurisdiction of the Courts of England & Wales.

## **20 ILLEGALITY**

20.1 If any provision or term of this Agreement shall become or be declared illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, by reason of the provisions of any legislation or other provisions having the force of law or by reason of any decision of any Court or other body or authority having jurisdiction over the parties of this Agreement such terms or provisions shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement and the remainder of the provisions shall continue in full force and effect provided always that if any such deletion substantially affects or alters the commercial basis of this Agreement the parties shall negotiate in good faith to amend the modify the provisions and terms of this Agreement as necessary or desirable in the circumstances.

## **21 ENTIRE AGREEMENT**

21.1 This Agreement constitutes the entire understanding between the parties concerning the subject matter hereof.

## 22 FORCE MAJEURE

22.1 The Consultancy shall not be liable for any breaches of its obligations under this Agreement resulting from causes beyond its reasonable control including but not limited to Acts of God, enemy, fire, flood, explosion or other catastrophe.

22.2 The Consultancy accepts that the Client shall not be liable for any breaches of its obligations to the Consultancy under its agreement with the Client resulting from causes beyond its reasonable control including but not limited to Acts of God, enemy, fire, flood, explosion or other catastrophe.

SIGNED by .....

(Name)

For and on behalf of the **Consultancy** .....

(Signature)

SIGNED by .....

(Name)

For and on behalf of the **Client** .....

(Signature)



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