

# G-Cloud: Customer Agreement

## Terms and Conditions for Professional Services including Support and Maintenance

Customer Agreement between Prolifics, Inc., a New York corporation, operating through its UK branch office (Company number FC017916 and Branch number BR002404) located at 1 Fore Street, London, EC2Y 9DT, United Kingdom ("Prolifics"), and the specific G-Cloud customer ("Customer") as documented in an accompanying Statement of Work.

### 1. SERVICES

Upon the request of Customer from time to time, and subject to their availability, Prolifics shall assign employees ("Employees") to render computer programming and other advisory and consulting services ("Services") to Customer.

Each such assignment shall be described in a Statement of Work referencing this Agreement and setting forth the nature of the assignment and the terms and conditions applicable, including:

- (a) testing processes and acceptance criteria, if any;
- (b) any specific warranties beyond those set forth herein, and (c) termination provisions.

Each Statement of Work, once accepted by both parties, shall be incorporated into and become part of this Agreement. In the event of a direct conflict between the terms of this Agreement and any Statement of Work, the terms of the Statement of Work shall control for that specific assignment.

### 2. TERM; TERMINATION

This Agreement shall be effective on the date hereof, and shall remain in effect until terminated by either party in their discretion upon two week's prior written notice to the other (provided that no Statement of Work is then in effect). In the event of any termination of this Agreement, (i) any cause of action accrued in favor of any party hereunder shall be unaffected, and (ii) the obligations of each party relating to proprietary rights, confidentiality and solicitation of employees shall survive such termination.

### 3. FACILITIES & EXPENSES

During the term of this Agreement, Customer will provide the Employees with office space and general office services to the extent required to perform the Services..

### 4. CHARGES

The compensation for the Services shall be set forth in the applicable Statement of Work. In the case of time-and-material assignments, Prolifics shall invoice Customer monthly for the time expended, and all amounts are payable within thirty days following the date of invoice. In the case of fixed price assignments, Prolifics shall invoice the customer based upon the milestones or other invoicing schedule set forth in the Statement of Work. All overdue amounts shall bear interest at the lower of one percent per calendar month or the maximum interest rate allowable under applicable law.

Customer shall pay all reasonable expenses incurred by the Employees (including travel, meals and lodging) in connection with the performance of the Services, subject to any provisions set forth in the applicable Statement of Work.

## 5. CONFIDENTIALITY

During the term of this Agreement, and for a period of two years thereafter, each party shall safeguard the other party's Confidential Information (as hereinafter defined), and shall use its best efforts to avoid the disclosure of any such Confidential Information to any third party. For purposes hereof, a party's Confidential Information shall include any confidential or proprietary information, including but not limited to any processes, services, customers, transactions, suppliers, practices and trade secrets, in each case to the extent:

- (i) such information is marked confidential or ;
- (ii) based upon the nature of the information and the circumstances surrounding its disclosure, the other party should reasonably be expected to understand that such information is confidential or proprietary.

Confidential Information shall not include:

- (i) any information that is known or becomes known to the general public, other than as a result of a disclosure in violation of this Agreement;
- (ii) any information known by a party prior to its disclosure by the other party, or;
- (iii) any information that becomes available to a party on a non-confidential basis from a source other than the other party, provided that such source, to the knowledge of the first party, is not prohibited from disclosing such information to the first party by a legal, contractual or fiduciary obligation to the second party.

Any disclosure of Confidential Information may be made to the extent required by law or court order, provided that the disclosing party uses its reasonable best efforts to give the other party reasonable notice of same. Each party acknowledges that a breach of the above restrictions may cause irreparable damage, the exact amount of which may be difficult to ascertain, and that the remedies at law for any such breach may be inadequate. Accordingly, the parties agree that if either party breaches such restrictions, the aggrieved party shall be entitled to injunctive relief.

## 6. RIGHTS TO DATA.

Prolifics, in consideration of the fees payable to it by Customer hereunder, and subject to the succeeding paragraph, hereby assigns to Customer, on an exclusive basis, all right, title and interest, and all proprietary claims to, the deliverables developed hereunder (the "Deliverables"). Prolifics agrees that it shall have no copyrights, patents or trade secrets in the Deliverables, and agrees that, upon the request of Customer, it shall sign any papers reasonably necessary to effect the foregoing assignment.

Customer acknowledges that in developing any work product, Prolifics may utilise pre-existing proprietary methodologies, tools, models, software, procedures, documentation, know-how and processes owned by Prolifics ("Prolifics Materials"). Customer further acknowledges that Prolifics may modify or improve the Prolifics Materials during the course of a Project.

Customer agrees that all such modifications or improvements shall remain the sole property of Prolifics. If any Prolifics Materials are incorporated into a Deliverable hereunder, Prolifics will grant to Customer a perpetual, royalty-free, non-exclusive license to utilise the Prolifics Materials for its internal business purposes.

## 7. RELATIONSHIP OF THE PARTIES

Customer and Prolifics acknowledge that Prolifics is an independent contractor and neither it nor any of the Employees shall be deemed to be employees, partners or joint venturers of, or with Customer. Neither party hereunder shall have any right, power or authority or assume or create any obligation or responsibility, express or implied, on behalf of the other or any of its affiliates, or to bind the other party or any of its affiliates.

## 8. WARRANTY

Prolifics represents and warrants (i) that it has full power and authority to execute, deliver and perform this Agreement; (ii) that this Agreement has been duly authorised, executed and delivered by Prolifics and is the legal, valid and binding obligation of Prolifics in accordance with its terms; and (iii) that it possesses the necessary equipment, personnel and other expertise necessary to provide the Services as set forth herein

With respect to each Statement of Work, Prolifics warrants to Customer that, for a period of thirty days following the delivery of the final deliverable thereunder, that:

- (i) all Services shall have been performed in a professional and workmanlike manner in accordance with the highest applicable professional standards;
- (ii) the Services shall comply in all material respects with any specifications set forth in the applicable Statement of Work.

If any element of the Services does not conform to the foregoing warranties, as Customer's sole and exclusive remedy, Prolifics shall, at its cost and expense, use its best efforts to promptly re- perform such element in a manner that does conform to such warranties.

## 9. ASSIGNMENT

This Agreement and all of the provisions hereof shall be binding upon the parties, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either of the parties without the prior written consent of the other party.

## 10. NOTICE

For purposes of this Agreement, notices and all other communications shall be in writing and shall be deemed to have been duly given when personally delivered. Notices shall be given as per the contacts detailed on the relevant SoW.

## 11. MISCELLANEOUS

No provisions of this Agreement may be modified, waived or discharged unless a written modification, waiver or discharge has been signed on behalf of both parties. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement.

## 12. DISCLAIMER OF WARRANTIES; LIMITATIONS ON LIABILITY; EXCLUSION OF DAMAGES

Prolifics shall not be liable to customer or any other party for any special, indirect, incidental or consequential damages, including but not limited to loss of revenues and loss of profits, even if Prolifics has been advised of the possibility of such damages.

Prolifics' total liability for all actions or claims of any kind shall be limited to money damages, and the aggregate amount thereof shall in no event exceed the amount paid by customer to Prolifics.

## 13. VALIDITY

The invalidity or inability to enforce any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

## 14. NONSOLICITATION

During the term of this Agreement and for one year thereafter, Customer shall not employ, or solicit or seek to employ, directly or indirectly, any employee of or subcontractor to Prolifics, so long as such employee or subcontractor is employed or engaged by Prolifics and for a period of six months after the termination of such employment or engagement.

If Customer shall breach the terms of this paragraph, Customer shall pay to Prolifics a sum equal to the first year's total compensation offered by Customer to such employee.

## 15. GOVERNING LAW AND JURISDICTION

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non- contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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