

## G-Cloud 14

## Terms & Conditions

Service Definition- Cloud Support Services

# Terms & Conditions

## 1. Introduction

- 1.1 These terms of business ("Terms") set out the basis on which The Berkeley Partnership LLP ('Berkeley') performs assignments for a client ('the Client'). These Terms, together with any statement of works agreed with the Client (the "Statement of Works"), form the entire agreement between the parties in relation to the assignments Berkeley provides. It replaces any earlier agreements, representations or discussions. Any departure from these Terms and/or the Statement of Works will be the subject of explicit written agreement between Berkeley and the Client.

## 2. Calculation of Fees

- 2.1 Berkeley's fees will be based on an hourly or daily rate for time spent ("Time Spent Assignments"), or will specify a fixed fee for the whole or part of a given assignment ("Fixed Fee Assignments"). Berkeley and the Client will agree the basis on which fees are to be charged prior to the commencement of an assignment.
- 2.2 For Time Spent Assignments, the fee will be calculated on the time spent by Berkeley consultants on the particular assignment, charged at their fee rates notified to the Client. Berkeley will give reasonable prior notice of the timing and extent of any revision of these rates. Time spent travelling to and from the Client's premises in excess of the time that would normally be spent travelling to and from Berkeley's premises will be charged. Berkeley will not charge for more than eight hours worked per consultant in any given day and will pro rata its fees for part days.
- 2.3 For Fixed Fee Assignments, a fixed fee will be agreed for the completion of a specified piece of work. Berkeley and the Client will agree prior to the commencement of the assignment whether this is to be paid in instalments or on completion.

## 3 Expenses

- 3.1 Out-of-pocket expenses, such as travel and hotel accommodation, incurred by Berkeley in connection with the work being performed for the Client will be charged at cost.

## 4 Payment of Fees & Expenses

- 4.1 For Time Spent Assignments, the Client will be invoiced monthly in arrears for the fees and expenses incurred that month. For Fixed Fee Assignments, the Client will be invoiced for fees and expenses according to a schedule agreed prior to commencement of the assignment. Where applicable, VAT will be added to invoices.
- 4.2 Invoices are due for payment on their receipt by the Client. Interest may be charged on unpaid invoices after one month's non-payment at a rate three percentage points above the Bank of England base rate from time to time.

## 5 Authority to Instruct Berkeley

- 5.1 Unless instructed otherwise, Berkeley shall assume that any of the Client's employees, directors, officers and representatives who give Berkeley instructions are authorised to do so and that Berkeley may act on their oral instructions.

## 6 Use of Professional Third Parties

- 6.1 Where there is a choice available as to which third party professional to instruct, Berkeley shall be entitled to instruct whichever professional it considers appropriate unless otherwise agreed with the Client; and the Client shall be liable to pay all the disbursements incurred in relation to that instruction. Services provided by such third party will be subject to their terms of business (and as provided to the Client).

## **7 Office Services**

- 7.1 When work is carried out at the Client's premises the Client will provide, without charge, suitable office accommodation and, if requested, the use of a personal computer, telephone or secretarial services.

## **8 Termination**

- 8.1 The Client may, at any time, immediately terminate any contract for the provision of services from Berkeley. On termination of an assignment, Berkeley shall be entitled to be paid immediately all outstanding fees. For Time Spent Assignments, this shall be all fees and expenses incurred up to the date of termination. For Fixed Fee Assignments this shall be a pro rata amount of the fixed fee based on the elapsed time of the assignment up to the date of termination plus any expenses incurred to date.

- 8.2 Berkeley may summarily suspend its performance of a contract where it judges that circumstances have occurred which will affect materially and adversely either its ability to complete the assignment or the quality of its services.

If performance of an assignment shall be suspended, then the time for performance of Berkeley's obligations shall be extended appropriately.

The assignment will terminate one calendar month after the date of suspension if Berkeley and the Client are unable to agree an approach to resume performance of the assignment. Upon termination, for Time Spent Assignments, Berkeley shall be entitled to be paid immediately all fees and expenses incurred up to the date of termination and for Fixed Fee Assignments, a pro rata amount of the fixed fee based on the elapsed time of the assignment up to the date of termination plus any expenses incurred to date.

- 8.3 Berkeley may (without prejudice to any other rights) summarily suspend performance of and/or (whether or not after such a suspension) summarily terminate an assignment if:

- the Client shall commit any breach of any of these Terms or any other contract with Berkeley; or
- the Client compounds with or negotiates for any composition with its creditors or allows any judgement against it to remain unsatisfied for seven days; or
- being an individual, the Client shall die, have a bankruptcy petition presented or apply to the court for an interim order with a view to a voluntary arrangement; or
- being a company the Client shall call any meeting of its creditors or any meeting of its members to consider a winding up resolution or have a receiver or all or any of its assets appointed or have a petition presented for its winding-up or the appointment of an administrator.

If performance of a contract shall be suspended, then the time for performance of Berkeley's obligations shall be extended appropriately.

If Berkeley shall have become entitled to suspend or terminate an assignment under the terms of this Clause 8.3 (whether or not any such right is exercised) Berkeley will be entitled to require to be paid in advance for any work to be done or expenses to be incurred notwithstanding any different basis of payment previously agreed.

Should an assignment be terminated or performance suspended under the terms of this Clause 8, Berkeley shall be entitled to be paid immediately all outstanding fees. For Time Spent Assignments, this shall be all fees and expenses incurred up to the date of termination. For Fixed Fee Assignments this shall be a pro rata amount of the fixed fee based on the elapsed time of the assignment up to the date of termination plus any expenses incurred to date.

## **9 End of Assignment**

- 9.1 At the end of the assignment (or should Berkeley cease the assignment for any other reason) the Client will tell Berkeley which, if any, of the documents it has passed to Berkeley during the course of the assignment or which were the result of the assignment should be returned to the Client.

- 9.2 Please note that where Berkeley holds soft copy documents relating to a Client, Berkeley will hold these for as long as it deems necessary from an IT management perspective. Berkeley will not be able to delete such copies on an assignment-by-assignment or client by client basis.

## **10 Employment of Staff**

- 10.1 Except with the prior written consent of the other party, the Client and Berkeley respectively undertake neither to attempt to solicit nor to procure the service or employment of staff employed by the other party during the term of any assignment, nor for a period of six months thereafter.
- 10.2 In the event that the Client solicits or procures the service or employment of staff employed by Berkeley in breach of Clause 10.1, the Client agrees to pay a sum equivalent to 60 times the standard daily fee rate applied by Berkeley at the time of the breach. Such sum shall be payable in respect of each employee that has been solicited or procured by the Client. The parties agree that such sum reflects a reasonable estimate of the likely loss and expense to Berkeley in losing a member of staff. The Client agrees to pay such sum within 30 calendar days of the member of staff ceasing to be an employee of Berkeley.
- 10.3 Clause 10.1 shall not prevent either party from placing job advertisements in the general press and making offers of employment to respondents to any such advertisement.

## **11 Confidentiality**

- 11.1 The Client and Berkeley respectively undertake to treat and keep as secret all information supplied by the other party that is identified as confidential and will not, without the other party's consent, directly or indirectly communicate or disclose the confidential information to any third party except:
- where such information is already publicly available;
  - the receiving party was already lawfully in possession of such information; or
  - where required by law or the rules of any applicable regulatory authority to do so.

## **12 Proprietary Rights and Protection**

- 12.1 Ownership of the copyright and any other monopoly or proprietary rights in any ideas generated and written material produced as part of an assignment shall be vested solely in the Client. Ownership of the copyright and any other monopoly or proprietary rights in any tools, approaches, methods, templates or document formats that Berkeley has introduced or developed as part of the assignment, or prior to the assignment, shall be vested solely in Berkeley.
- 12.2 The Client and Berkeley warrant that all material and information supplied to the other party shall not be such as to cause that party to infringe any rights vested in any third party. Subject to the limitations set out in Clause 16.4, both parties shall fully indemnify the other party against any claim made against that party in connection with any such rights or alleged rights including any and all consequential costs and expenses incurred or payable by the other party.

## **13 Data Protection**

- 13.1 A Client who is an individual will need to provide Berkeley with personal data for the purposes of Berkeley's engagement. Such data may include the Client's name, address, date of birth, passport or other identification documentation, contact numbers and email, bank account details, assets, family details including the names and ages of any children (where appropriate). Berkeley may also obtain from the Client and public resources the names, age, address and other details of anyone involved with the Client's assignment.
- 13.2 Any such personal data may be used by Berkeley for the provision of its assignments, billing and other administrative purposes (including the processing of any such data as part of those assignments or so as to improve the delivery of similar assignments in the future). It may also be used by Berkeley from time to time to provide the Client with information about Berkeley and its services (including contacting the Client by email or telephone).
- 13.3 If the Client is a representative of any legal entity other than an individual, Berkeley will use any personal data the Client provides for the purposes of the assignment, on the same basis as set out above.

- 13.4 It is the Client's responsibility to ensure that they have appropriate procedures in place (including adequate privacy notices) when the Client asks Berkeley to collect and process personal data for the purposes of their assignment. The Client, if they have any concerns about the status of such data, must let the relevant Berkeley partner know before any such data is shared with Berkeley.
- 13.5 The legal basis for the processing of the personal data the Client provides under the General Data Protection Regulation (GDPR) is primarily that it is necessary preparation for or needed for the performance of the agreed assignments. Some of Berkeley's processing will also take place on the basis that it is necessary for the purposes of its legitimate interests, and those interests are not, in the circumstances, overridden by the Client's interests or fundamental rights and freedoms.
- 13.6 If the Client does not wish to receive information about Berkeley and its consultancy services, wishes to receive only certain kinds of information, or wishes to receive information only by a particular method, it shall have the right to inform Berkeley of its preferences in that regard.
- 13.7 None of the information Berkeley hold about its Clients will be disclosed to third parties except in accordance with Clause 11 above or for the purpose of managing its database or improving its business.
- 13.8 If, as part of Berkeley's services, Berkeley collect personal data about other people on behalf of a Client, Berkeley will hold and process that data in accordance with the prevailing data protection legislation. If, in Berkeley's view, certain of that personal data should not be held or processed by Berkeley, it will return or delete it as appropriate (and technologically practicable).
- 13.9 Berkeley agrees to comply with all its legal obligations to respond to any subject access requests. The Client has the right to make any such request at any time.
- 13.10 The Client has the right to request from Berkeley, in certain circumstances, rectification or erasure of personal data or to restriction of processing concerning that Client or to object to Berkeley's processing of the data as well as the right to data portability. The Client also has the right to complain to the Information Commissioner's Office about the manner in which Berkeley process its personal data.

## **14 Evidence of Identity**

- 14.1 Berkeley may require the Client to provide appropriate evidence as the Client's identity. In the event that the Client fails to provide such evidence within a reasonable period of time, Berkeley shall have the discretion to cease to act for the Client and to terminate the assignment.

## **15 Money Laundering**

There may be circumstances where Berkeley are required to act in accordance with obligations or directions arising or given under the various powers exercisable by the relevant authorities under the Terrorism Act 2000, the Anti-Terrorism, Crime and Security Act 2001, the Proceeds of Crime Act 2002, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and/or any Act or Regulation that replaces or supplements them.

Berkeley are obliged in certain circumstances to disclose otherwise confidential information to the National Crime Agency. Where it knows or suspects that a client transaction involves money laundering, Berkeley may be required to make a money laundering disclosure. If, whilst Berkeley is working on the assignment, it becomes necessary to make a money laundering disclosure, Berkeley may not be able to inform you that a disclosure has been made or the reasons for it.

## **16 Warranties and Limitation of Liability**

- 16.1 Statements made by Berkeley as to the results obtainable from an assignment and/or any surveys, forecasts and recommendations are made in good faith on the basis of information given by the Client for the purpose. Since the attainment of such results and the efficacy and accuracy of such surveys, forecasts and recommendations depend to a degree on factors outside Berkeley's knowledge and control, such statements, surveys, forecasts and recommendations will not be deemed in any circumstances to be

representations, warranties or contractual obligations.

- 16.2 However so arising, neither party shall be liable to the other for any indirect or consequential loss, even if such loss was reasonably foreseeable or the other party had been advised of the possibility of incurring the same.
- 16.3 Berkeley will not be liable to the Client if it fail to meet any of its obligations under these Terms and/or the Statement of Works due to matters beyond its reasonable control. For the avoidance of doubt this includes the actions, omissions, errors or deficiencies of any party instructed by Berkeley.
- 16.4 The liability of both parties in respect of any loss or damage which in any way arises out of or is connected with the performance or non-performance of an assignment shall be limited in aggregate in respect of all events occurring to the amount £5m. Berkeley shall maintain professional indemnity insurance covering its liabilities up to this amount. For the avoidance of doubt this limitation shall not apply to any death or personal injury caused by the negligent act or omission of either party.
- 16.5 The Client agrees to bring any claim (including one in negligence) in connection with Berkeley's assignments only against Berkeley, and not against any individuals. In the event that the Client does pursue any Partner, consultant or employee of Berkeley, that person will be entitled to rely on these Terms under the Contracts (Rights of Third Parties) Act 1999 (as may be amended).
- 16.6 Berkeley shall only be liable to the Client and not to any third party and, subject to Clause 16.5 above, no such third party will be entitled to enforce these Terms and/or the Statement of Works under the Contracts (Rights of Third Parties) Act 1999 (as may be amended).

## **17 Assignment**

- 17.1 Berkeley shall be entitled to transfer its rights and obligations under these Terms and any subsequent assignment to any successor in business.
- 17.2 The Client shall not be entitled to assign its rights under these Terms and any subsequent assignment to any third party without the prior written consent of Berkeley.

## **18 Severance**

- 18.1 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 18.1 shall not affect the validity and enforceable of the rest of these Terms.

## **19 English Law**

- 19.1 These Terms shall be governed by and construed in accordance with the laws of England and the parties irrevocably submit to the jurisdiction of the English courts.

# The Berkeley Partnership

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