



CONSULTANCY TERMS AND CONDITIONS

FOR G-CLOUD 14 MAY 2024

- 1) **DATA TO VALUE LTD**
- 2) **CLIENTS**

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CONSULTANCY PROCUREMENT AGREEMENT

DATED the [day] day of [month] [year]

PARTIES:

- (1) **DATA TO VALUE LTD** (registered number 08531975) whose registered office is at Unit 1A Icknield Way Industrial Estate, Icknield Way, Tring, Hertfordshire, England HP23 4JX (the "**Consultant**"); and
- (2) **Client** whose headquarters are located [address] (the "**Client**");

PREAMBLE

The Client wishes to appoint the Consultant to perform the Assignment(s) and the Consultant accepts such appointment on the terms and conditions set out below.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Assignment" means the work specified in any relevant Work Order including, but not limited to, the Deliverables;

"Confidential Information" shall have the meaning accorded to it in Clause 9.1;

"Date of Commencement" shall have the meaning accorded to it in the relevant Work Order;

"Deliverables" means the items described in a Work Order or as otherwise agreed by the parties in writing from time to time to be delivered by the Consultant as part of the Assignment;

"Disputes" shall have the meaning accorded to it in Clause 15.1;

"IPR" means all intellectual property, including patents, utility models, trade and service marks, trade names (including domain names), design rights, registered designs, copyrights, topography rights, database rights, format rights and moral rights, (whether or not any of these is or are registered and including, without limitation, applications for registration), know-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration of any of these, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;

"Key Personnel" shall have the meaning accorded to it in clause 5.7;

"Working Day" means any day other than a Saturday, Sunday or Public or Bank Holiday in England;

"Work Order" means a document in a form substantially the same as **Schedule 1** to this Agreement setting out details of any Assignment to be carried out by the Consultant for the Client and signed by or on behalf of the parties in accordance with the provisions of this Agreement, the first Work Order being attached at **Schedule 2**.

1.2 The headings are included for convenience only and shall not affect the interpretation or construction of this Agreement.

1.3 In this Agreement, unless the context requires otherwise, any reference to:

- (a) a party or the parties is to a party or the parties (as the case may be) to this Agreement;
- (b) this Agreement includes the Schedules and Work Orders, which form part of this Agreement for all purposes; and
- (c) the masculine, feminine or neuter gender respectively includes the other genders and any reference to the singular includes the plural (and vice versa).

2. **ENGAGEMENT**

2.1 The Consultant warrants that:

- (a) it has the know-how, qualifications and necessary ability to undertake the work required to be carried out in each Assignment; and
- (b) it is not disbarred in any way from working on any Assignment and does not have any conflict of interest in so doing.

2.2 In the light of Clause 2.1 above, the Client hereby engages the Consultant and the Consultant hereby accepts such engagement to serve the Client as a consultant in performance of each Assignment upon the terms and subject to the conditions set out in this Agreement.

3. **TERM**

Notwithstanding the date hereof, the Consultant shall commence work on the Date of Commencement stated in the relevant Work Order and shall continue thereafter: (i) until completion of the Assignment; or (ii) until or unless this Agreement or the relevant Work Order is earlier terminated pursuant to clause 11.1 or by either party giving to the other not less than the required period of written notice shown in the Work Order, such termination to take effect on the expiration of such notice (provided that this Agreement may not be terminated whilst there remain other Work Orders which have not been subject to a similar notice of termination).

4. **PROJECT MANAGEMENT AND PERSONNEL**

Each party warrants to the other that, in the case of the Consultant and the Client respectively, those named in the Work Order are their respective authorised representatives and are empowered to act on their behalf save as specified to the contrary in this Agreement. Any information given to these people shall be deemed to have been given to the relevant party. Notwithstanding the above, the authorised representatives have no right or authority to agree amendments to this Agreement other than as expressly permitted pursuant to this Agreement.

5. **DUTIES OF THE CONSULTANT**

5.1 The Consultant shall, while this Agreement is in force or until the satisfactory completion of the Assignment, unless prevented by circumstances beyond its reasonable control, devote such of its time, attention and abilities to the Assignment as may be necessary for the satisfactory completion thereof and as set out in the Work Order.

5.2 The Consultant agrees to advise and assist the Client with respect to all material aspects of the Assignment. In performance of such duties as the Assignment requires the Consultant shall comply with all reasonable requests and directions of the Client and any other independent contractors appointed by the Client to provide services which fall within the scope of, are complementary with or are likely to be impacted or affected by the Assignment including, but not limited to:

- (a) accurately recording work durations and activities on a weekly basis; and

- (b) complying with all local or internal policies and regulations operated by or affecting the Client and its customers as notified to the Consultant from time to time.
- 5.3 The Consultant shall at all times keep the Client fully and properly informed on all aspects of the progress of and performance of each Assignment, attend all meetings as the Client may reasonably request and shall prepare and submit any reports or supply any information relating to the Assignment as may be required by the Client.
- 5.4 If in undertaking the Assignment the Consultant may consider it necessary to use the services of a third party (a "**sub-contractor**") whether for information or for the supply of goods or services, The Consultant shall at all times have full responsibility for the due and proper work of its sub-contractors and retain liability for the acts and omissions of such sub-contractors.
- 5.5 The Consultant warrants and represents that all employees and sub-contractors engaged by it from time to time in connection with the Assignment shall possess such skill and experience as is necessary for the due fulfilment of the Assignment in accordance with the provisions of this Agreement. If the Consultant is unable to provide the services in relation to the Assignment for any reason the Consultant will immediately inform the Client of the fact, giving the reason and the likely duration of such inability.
- 5.6 The Consultant warrants and represents that:
 - (a) it will, and will procure its employees and sub-contractors, perform the Assignment in a diligent, timely and professional manner and using all reasonable skill and care; and
 - (b) any goods or materials used or produced in the performance of an Assignment shall be free from any defects in design and workmanship and shall be fit for their intended purpose.
- 5.7 The parties hereto agree that certain personnel may be named in a Work Order as key personnel ("**Key Personnel**"). The Consultant will ensure that any Key Personnel specified in a Work Order continue to be actively involved in the Assignment throughout the term of that Work Order. If any of the Key Personnel are unable to continue such involvement as a result of long term illness or injury, or cessation of their employment, the Consultant will substitute alternative personnel in place of the Key Personnel with substantially similar expertise at no charge or additional expense to Client in accordance with the procedure set out in Clause 5.8.
- 5.8 If there are any changes to Key Personnel, the identity of any replacement personnel shall be mutually agreed promptly between the Consultant and the Client and the Consultant shall provide a reasonable overlap between the approved replacement personnel and the Key Personnel being replaced.
- 5.9 If any of the Consultant's personnel are prevented by illness or injury from performing a Work Order, the Consultant shall inform the Client and, in the case of ongoing absence of uncertain duration, shall keep the Client informed of the reason for their continued absence and of the expected duration. The Consultant shall provide suitable alternative staff to meet the Client's needs under any Work Order whose progress is delayed or otherwise impaired by such absence.
- 5.10 The Consultant shall replace with persons whose identity shall be agreed beforehand with the Client, such agreement not to be unreasonably withheld or delayed, staff engaged on the Assignment, at the reasonable request of the Client on the basis of unsatisfactory performance, behaviour, appearance or demeanour identified by the Client.

- 5.11 The Consultant undertakes to take reasonable care to ensure that in the execution of any part of the Assignment it shall not interfere with the operations of the Client, its employees or any other independent contractor engaged from time to time by the Client.
- 5.12 The Consultant shall ensure that any of its personnel who enter any of the Client's premises in connection with this Agreement shall comply with the Client's security procedures and health and safety regulations, as from time to time notified to the Consultant or otherwise brought to the notice of the Consultant or its personnel. The Client shall be entitled to remove or refuse admission to any person who is, or has been, in breach of such procedures and regulations.
- 5.13 The Consultant shall maintain at all times adherence to the accreditation standards and shall conform to the codes of conduct from time to time applicable to it as a member of any professional body or trade association and shall generally adhere to best practice duties of care and skill in undertaking the Assignment and providing the Deliverables including concentrating on producing the best possible advice and work consistent with its being good value for money.
- 5.14 The Consultant shall comply with all applicable laws and regulations which may apply from time to time to the performance of the Assignment. Where the Assignment includes the processing of personal data (within the meaning of the Data Protection Act 2020), the Consultant shall comply with the provisions of the Data Protection Act 1988 as amended or substituted from time to time and with any similar provisions of law in any applicable jurisdiction.
- 5.15 The Consultant warrants and represents that it shall provide the Deliverables in accordance with the relevant Work Order.
- 5.16 The Consultant also recognises and agrees that time shall be of the essence in fulfilling all stages of the Assignment.
- 5.17 The Consultant undertakes, represents and warrants that it has complied with, and will comply with, the requirements of Schedule 3 in respect of all of its personnel who enter any of the Client's premises in connection with this Agreement and who have dedicated log-in access to the Client's systems.
- 5.18 The Consultant undertakes, represents and warrants that it has completed the AML and KYC checks required by the Client and will promptly notify the Client in the event that any of the information provided in the AML / KYC checks changes or becomes inaccurate or untrue.

6. FEES AND EXPENSES

- 6.1 In consideration of the services rendered by the Consultant under this Agreement (pursuant to any Work Order) the Client shall pay to the Consultant the fees at the rates set out in the Work Order in accordance with the provisions of Clause 7.
- 6.2 The Consultant will be solely responsible for ensuring payment to its employees and sub-contractors of all remuneration, expenses and benefits to which such person may be entitled in respect of an Assignment and is responsible for accounting to the relevant fiscal and/or revenue authorities for all tax liabilities, national insurance liabilities, charges, dues and other amounts due in respect of monies payable in connection with such payments and benefits and the fees payable under this Agreement. The Consultant shall keep the Client indemnified in respect of any claim or demand for tax or other amounts (including penalties and interest) made by such fiscal and/or revenue authorities in respect of the engagement of the Consultant under this Agreement or any payment made in connection with services performed by the Consultant hereunder.

- 6.3 The Client shall not be liable for any out-of-pocket or other expenses except as otherwise expressly stated in an applicable Work Order (if any). Should any reimbursable expenses be specified in a Work Order the Client shall reimburse those expenses to the extent that they are wholly and necessarily incurred by the Consultant in the performance of its duties pursuant to the relevant Work Order. All claims for reimbursement shall be itemised in detail in an appropriate invoice and accompanied by evidence of payment or expenditure.
- 6.4 The Consultant shall provide the Client with a statement on a monthly basis setting out the amount of fees chargeable to the Client pursuant to any Work Order together with a statement setting out the total amount of fees chargeable to the Client.
7. **PAYMENT**
- 7.1 Fees and reimbursement of expenses (if any) are payable monthly in arrears or at such other times or intervals shown in the relevant Work Order upon receipt by the Client of the Consultant's invoice for work done supported by the appropriate documentation necessary to verify such invoice (including, but not limited to time sheets and receipts).
- 7.2 The Client reserves the right to withhold payment against any claim for reimbursement of expenses which is not submitted in accordance with clause 6 or against any claim for payment which covers or purports to relate to services which have not been satisfactorily provided in accordance with the provisions of this Agreement or for payment in circumstances where there are any disputes or claims whatsoever with or against the Consultant and the Client shall in such circumstances notify the Consultant of the reasons for such withholding.
- 7.3 Invoices shall be payable within 30 Working Days of receipt by the Client.
- 7.4 Payment by the Client shall be without prejudice to any claims or rights which the Client may have against the Consultant and shall not constitute any acceptance by the Client as to the performance by the Consultant of its obligations hereunder.
- 7.5 All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties or taxes. Such VAT or other duties or taxes payable in respect of such sums shall be payable at the rate and in the manner prescribed by law in addition to such sums.
8. **OTHER CLIENT OBLIGATIONS**
- The Client undertakes to provide the Consultant and its employees with such information, support and co-operation as is within its power or control and as may reasonably be required of the Client and in the contemplation of the parties so as to enable the Consultant to carry out each Assignment.
9. **CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**
- 9.1 Save with the prior written consent of the Client, the Consultant shall not, during or after the termination or expiry of this Agreement, use (otherwise than for the purposes of this Agreement) or disclose directly or indirectly to any person, firm, company or third party any information relating to the Assignment, the Client or its affiliated companies or their respective businesses, trade secrets, customers or suppliers or any other information of whatever nature which the Client, its affiliated companies or customers or its independent sub-contractors may deem to be and duly designate as confidential ("**Confidential Information**") and of which the Consultant has or shall hereafter become possessed.
- 9.2 The Consultant shall ensure that no Confidential Information is divulged to any employees or independent contractors who do not need to know it and shall ensure that those that do are bound by the requirements of this Clause 9.

9.3 The foregoing provisions contained in Clauses 9.1 and 9.2 shall not prevent the disclosure or use by the Consultant of any information which is or hereafter becomes, through no fault of the Consultant, public knowledge or to the extent as required by law or any recognised stock exchange or regulatory body.

- (a) all personnel engaged by the Consultant in connection with the Assignment will be engaged pursuant to a contract which includes a provision stating that all IPR conceived by that person in the course of his engagement with the Consultant shall belong to the Consultant, or words to that effect.
- (b) the Consultant warrants and represents that any inventions, confidential information and other IPR conceived, originated, developed or made by the Consultant's personnel and sub-contractors, will not infringe any IPR of which a third party is the proprietor. The Consultant undertakes to indemnify the Client against any and all liability, loss, damage, costs and expenses which the Client or a third party may incur or suffer as a result of any dispute or contractual, tortious or other claims or proceedings brought against the Client by a third party alleging infringement of any IPR owned by or licensed to it by reason of the use of exploitation of any invention, confidential information, or IPR conceived, originated, developed or made by the Consultant's personnel or sub-contractors provided that:
 - (i) the Client gives written notice to the Consultant of any disputes, claims or proceedings within reasonable time after receipt of notice thereof;
 - (ii) the Client gives the Consultant sole authority to defend or settle such disputes, claims or proceedings at the Consultant's cost and expense; and
 - (iii) the Client gives the Consultant all reasonable assistance in connection with the claims or proceedings at the Consultant's cost and expense; and

in addition to the aforesaid indemnity, if any claim is made under this clause or, in the Client's reasonable opinion is likely to be made, the Consultant undertakes to do all such acts and things either to render the relevant item non-infringing without affecting any of the Consultant's other duties and obligations under this Agreement or shall obtain a licence from the third party granting the Client the right to continue using them.

9.7 All IPR existing in any material provided by the Client to facilitate the performance of the Assignment shall at all times remain the property of the Client. The Consultant shall only use such materials in connection with the performance of the Assignment and for no other purpose.

Any IPR in any material provided by the Consultant during the course of the Assignment shall remain the Consultant's property. The Consultant hereby licences the Client to use and make copies of any material provided to it.

10. VARIATIONS TO THE AGREEMENT

10.1 In the event that the Client shall seek to vary the purpose, basis or any details of this Agreement for any reason, the Consultant will use all reasonable endeavours to fulfil the Assignment in accordance with the desired variation. The Client shall give to the Consultant notice in writing of its desire for a variation and (where applicable) the circumstances giving rise to the need for such variation. The Consultant shall be entitled to charge for considering any request for a variation.

10.2 Any variations to this Agreement (including the Schedules) must be agreed to in writing by both parties.

11. TERMINATION

11.1 In addition to the provisions of Clause 3, either party shall be entitled to terminate this Agreement by giving the other at least three months' prior written notice of termination. Either party may also terminate this Agreement or a Work Order with immediate effect by giving written notice to the other:

- (a) if the other commits any material or persistent breach of its obligations under this Agreement or the relevant Work Order (which in the case of a breach capable of remedy, has not been remedied within 30 days of notice of breach being received);
- (b) if the other passes a resolution for winding-up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect or becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors or has a liquidator, receiver, administrator, administrative receiver, manager or trustee or similar officer appointed over any of its assets or ceases, or threatens to cease, to carry on business or any event analogous to any of the foregoing occurs to the other in any jurisdiction; or
- (c) pursuant to clause 16.4.

11.2 Any termination of this Agreement or a Work Order pursuant to Clauses 3 or 11.1 shall be without prejudice to any other rights or remedies a terminating party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

11.3 In the event of the temporary or permanent disablement, death, absence or detention in lawful custody of any employee or sub-contractor engaged by the Consultant in connection with the Assignment, the Consultant shall forthwith notify the Client and shall use its best endeavours to offer the Client a suitable replacement for any such individual (the "**Replacement**") on the same terms of this Agreement. In default of such an offer of a Replacement within 5 Working Days or on rejection of such Replacement by the Client (in its absolute discretion) the Client shall be entitled to terminate this Agreement or any Work Order immediately.

12. TRANSFER, SUB-CONTRACTING OR ASSIGNMENT

The Consultant shall not transfer, assign or sub-contract the whole or any part of this Agreement without the prior written consent of the Client, such consent not to be unreasonably withheld.

13. INVALIDITY AND SEVERABILITY

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Client and the Consultant hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives underlying the invalid or unenforceable provision.

14. **DISPUTES**

- 14.1 The Client and the Consultant shall meet to discuss and resolve all matters not specifically provided for in this Agreement and which require a decision, and all differences, disputes or disagreements ("**Disputes**") which may arise between the parties. If the parties are still unable to resolve any such matters they shall reconvene for further discussions within 48 hours of the previous meeting. If the parties are still unable to resolve such matters at the reconvened meeting, then the matters shall be referred to the respective senior executives of the parties who have authority to settle any Dispute.
- 14.2 If the matter has not been resolved by any of the above procedures within 60 days of the initiation of such procedures, then either party may exercise its rights to refer the Dispute to the Courts of England and Wales.
- 14.3 The provisions of this Clause 14 shall not apply in circumstances where either party is seeking injunctive relief.

15. **WAIVER OF REMEDIES**

No forbearance, delay or indulgence by any party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for any party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

16. **FORCE MAJEURE**

- 16.1 Except as mentioned in Clause 16.2 neither party shall be liable for failure to perform its obligations under this Agreement if such failure results from acts, events, omissions or happenings beyond its reasonable control including, without limitation, any Act of God, natural disaster (including violent storms, cyclones, earthquakes, destruction by lightning and explosions), fire, insurrection, war or other hostilities, riots, civil commotion, embargoes, the requirements or regulations of any civil or military authority, explosion, accident, industrial dispute (save in respect of a party's own workforce), transportation or communication problems or any incident which is similar in nature or effect to any of the foregoing (a "**Force Majeure Event**").
- 16.2 Where the employees, agents and sub-contractors of the Consultant are subject to a Force Majeure Event the Consultant will use all reasonable endeavours to ensure continuity of services (including work around solutions) to be provided under this Agreement.
- 16.3 Each of the parties hereto agree to give notice forthwith to the other upon becoming aware of a Force Majeure Event, such notice to contain details of the circumstances giving rise to the Force Majeure Event and shall take all reasonable steps to mitigate the effect of the Force Majeure Event.
- 16.4 In the event of suspension of this Agreement because of Force Majeure Event for a period of more than 30 consecutive Working Days or a total 30 Working Days in any 6-month period, the Client may terminate this Agreement with immediate effect by giving written notice to the Consultant without any liability for such termination.

17. **ENTICEMENT/NON-SOLICITATION**

The Consultant undertakes that it shall not without the Client's prior written consent, either during or within six months after the termination or expiry of this Agreement, directly or indirectly solicit or entice away or endeavour to solicit or entice away from the Client any person who, during the relevant period, was an employee or sub-contractor of the Client engaged in operating the business in respect of which the Assignment is being undertaken or

administering, supervising or overseeing the fulfilment of this Agreement. The foregoing undertaking shall not apply in respect of any person who (without having been previously approached) responds to a general recruitment campaign of (or on behalf of) the new employer.

18. STATUS OF CONSULTANT

The parties acknowledge and agree that the Consultant is an independent contractor and that nothing in this Agreement shall be construed or deemed to create a partnership, joint venture, agency or employment relationship between the parties. No termination, determination or expiry of this Agreement by effluxion of time shall constitute unfair dismissal nor shall the Consultant be entitled to the payment of any compensation, redundancy payments or otherwise upon the occurrence of the same. Except as expressly authorised by this Agreement, neither party shall have any authority to act or make any representation on behalf of the other party or to bind the other party to any contractual or other obligation whatsoever.

19. ENTIRE AGREEMENT

Save only in respect of confidential information which may previously have been the subject of an earlier agreement (which shall accordingly continue in operation notwithstanding this Agreement), this Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. No addition or modification of any provision of this Agreement shall be binding upon the parties unless made in writing and signed by a duly authorised representative of each of the parties. For the avoidance of doubt, if there shall be any conflict, ambiguity or inconsistency between the provisions of this Agreement and the provisions of any Schedule (including any Work Order), the provisions of this Agreement shall prevail.

20. NOTICES

Any notice to be given hereunder shall be delivered by hand, sent by first class post, courier, e-mail or fax or facsimile to the address of the other party as set out in this Agreement (or such other address as may have been subsequently notified in writing) and any such notice shall be deemed to have been served, if delivered by hand, at the time of delivery, if sent by first class post, upon the expiration of 48 hours after posting if the recipient of the notice is within the UK or 5 days if the recipient of the notice is outside the UK and if sent by facsimile shall be deemed upon transmission to the correct number, provided such notice is confirmed within 48 hours by either delivery or posting a copy by first class post to the appropriate address.

21. LAW

The parties hereby agree that this Agreement and the provisions hereof shall be construed in accordance with the Laws of England to the exclusive jurisdiction of whose courts the parties agree to submit.

22. EXECUTION

This Agreement may be entered into in any number of counterparts and by the parties to it as separate counterparts, each of which when so executed shall together constitute one and the same agreement.

SIGNED by the parties on the date appearing at the beginning of this Agreement.

SIGNED for and on behalf of

)

CLIENT by

)

Signature

Print Name

.....

Date

SIGNED by for and on behalf of

)

DATA TO VALUE LTD by

)

Signature

Print Name

Date