

G-CLOUD 14 – Cloud Support Services Agreement

Parties:

OGEL IT: OGEL IT LTD which has its registered office at Unit 4 Meadway Court, Rutherford Close, Stevenage, Herts, SG1 2EF

Client: <NAME>,<ADDRESS> (referred to as “you” and “your”)

- A. We are an independent consultancy in the business of providing work services to clients requiring consultancy services
- B. You have requirements from time to time and wish to utilise our services
- C. We agree to provide our consultancy services to you on the terms set out herein

AGREEMENT

In consideration of the mutual benefits it is hereby agreed that you will appoint us to provide the Services as required from time to time under this agreement and we shall provide work services to you subject to the following **Terms and Conditions**.

Terms and Conditions

Your Obligations

- 1 You agree
 - (a) to confirm any offer of work to us in advance of commencement of work in the form of a **Proposal** containing the information required for this purpose, and that our acceptance of a **Proposal**, which may be oral and confirmed in writing, comprises our agreement to the **Assignment**
 - (b) to ensure that the work conditions on your work site are in compliance with health and safety regulations, and that we and our **Representative** are at all times fully informed of any health and safety issues relevant to the **Assignment**
 - (c) to provide us with such information as is necessary to ensure that our understanding of the work requirements are in accordance with your objectives
 - (d) to pay us in accordance with the **Payment Terms** on invoices we issue under the arrangements herein without any deduction or set off of any kind save only to the extent that our invoice is not supported by a signed record of work done

and the record incorrectly shows the number of hours worked (where applicable)

- (e) that the signature by your **representative** on a record of work done shall be deemed to be conclusive evidence of the accuracy of the record
- (f) to comply with the **Client Responsibilities** during an **Assignment**
- (g) to comply with all statutory requirements, including the provision of third-party liability insurance, relevant to external contractors
- (h) that if we are to comply with any rules or regulations relevant to external contractors you will provide us with details of such rules and regulations promptly and in writing
- (i) that neither we nor our **Representative** shall be subject to rules and regulations relevant only to your employees
- (j) that whilst you may provide our **Representative** with instructions in relation to the work to be done you shall have no right of, nor shall seek to exercise, control over the **Representative**.

Our Obligations

2 We agree

- (a) that where we receive a **Proposal** we shall use our reasonable endeavours to indicate our acceptance or rejection as soon as is practicable, but attendance on the site of a **Client** by our **Representative(s)** shall not be deemed to be our acceptance
- (b) to provide the **Services** under an **Assignment** through our allocated **Representative(s)**, in each case during the **Work Time** and throughout the **Assignment Period** subject to the provisions in this agreement
- (c) that the **Representative(s)** will be required to undertake the work subject to
 - (i) your direction so far as it is relevant to the work services, but not further or otherwise
 - (ii) the proper requirements for the **Services**
 - (iii) any **Special Terms**
- (d) that our **Representative(s)** will be required to keep written records of time worked and requested by you, and at the end of each month to use reasonable endeavours to have a **Monthly Acceptance Certificate** agreed and signed by your authorised representative, but not so that a record shall be invalid because it is not signed
- (e) to promptly provide to you our invoice based upon such records, the invoice being calculated at the agreed **Rate** plus VAT together with any agreed **Expenses**

- (f) during an **Assignment**, to maintain such insurance as may be required in accordance with the **Insurance Limits**.

Additional Arrangements

3 The following additional arrangements shall apply:

- (a) we shall provide the **Services** using our own skill and expertise in good faith and with due care
- (b) during an **Assignment** we shall be entitled to suspend the **Services**, without liability for any loss, for any periods during which we allow the **Representative(s)** time off in order to comply with the Working Time Regulations 1998
- (c) save where the proper performance of the **Services** requires otherwise, during any **Assignment** the **Representative(s)** will be restricted by agreement with us from
 - (i) importing any software onto your systems without your prior recorded consent
 - (ii) using any of your facilities save as you strictly authorise
- (d) we shall perform the **Services** as we consider appropriate using our own equipment, where appropriate, subject to the requirements of the **Assignment**
- (e) we shall use reasonable endeavours to comply with any agreed timetables for completion of the **Assignment** but not so that delay in itself will render us in breach of this agreement
- (f) where work we have undertaken is defective we shall rectify such work, without charge provided that
 - (i) you notify us in writing of the defects within the earlier of 5 working days of the date you became aware of those defects or the end of the relevant **Assignment**, and
 - (ii) the work was not undertaken strictly pursuant to your instructions, and
 - (iii) the work was undertaken negligently, and
 - (iv) the work is reasonably capable of remedy.

Non-solicitation and Confidentiality

4 Neither party to this agreement shall during the period of this agreement or for a period of 12 months thereafter directly or indirectly solicit or entice away from the other any of the other's officers, agents or employees that have been involved in any matter relating to this agreement or an **Assignment**, but so that the restriction in relation to a **Representative** of ours shall be for 12 months after the end of the

Assignment in respect of which the **Representative** provided work on our behalf to you.

- 5 Neither party to this agreement shall divulge to any third party or use for its/his own benefit any information capable of being confidential relating to the affairs, business or business method of the other or information received from the other except that which is in the public domain or is trivial or obvious or authorised to be released or required by Court Order to be disclosed.

Dispute Resolution

- 6 If at any time any dispute shall arise between you and us relating to the performance of this agreement
- (a) both parties shall use all reasonable endeavours acting in good faith to resolve the dispute within 21 days from receipt of notice of the dispute being served by one party on the other or such other period as may be agreed in writing between the parties, and
 - (b) any dispute which cannot be resolved within 60 days may be referred by either party to mediation or other alternative dispute resolution procedure as agreed between the parties, each acting in good faith, and
 - (c) neither party to this agreement may commence any court proceedings / arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

Termination

- 7 The following shall apply in relation to termination or suspension:
- (a) either you or we may terminate an **Assignment** in the following circumstances
 - (i) on or after the commencement date specified in an **Assignment** if a notice to terminate is agreed for the **Assignment**, by the party so entitled giving to the other notice in writing of not less than the stated period of notice
 - (ii) immediately by giving notice if the other becomes insolvent within the meaning of the Insolvency Act 1986 or any amendment thereto, or has a winding up order made against it or it passes a resolution to wind up, or it enters into any arrangement with its creditors, or it passes a resolution to cease trading or actually ceases trading, or it is in material breach of any of the terms of this agreement (material breach including failure to make payment of any invoice for more than 28 days after the due date in accordance with the **Payment Terms**) without prejudice to any claim arising from any such breach
 - (b) you may terminate an **Assignment** immediately by giving notice where there is no requirement for prior notice to be given and you confirm to us that you no longer have any work requirement under the **Assignment**

- (c) we may terminate an **Assignment** if you fail to provide information required for the proper performance of the **Services**
- (d) this agreement may also be terminated by one party giving to the other not less than one week's written notice, save that neither you nor we may give notice to cause termination of this agreement during any **Assignment**
- (e) if you are in breach of your obligations and we have first provided you with written details of the breach alleged we may at our sole discretion either terminate an **Assignment** or suspend the provision of the **Services** for the period of the breach
- (f) subject only to earlier termination hereunder, an **Assignment** will terminate upon the earlier of the estimated date or the actual date of completion of any project included within an **Assignment**, and in that event you agree to notify us as soon as is practicable of the likely date of completion and also upon actual completion.

Consequences of Termination

8 Upon termination howsoever caused the following shall apply:

- (a) we shall at the end of an **Assignment** promptly deliver to you any equipment or other materials which you have supplied to us to perform the **Services**
- (b) we shall submit to you an invoice for work performed up until the date of termination together with any **Expenses** for the relevant period, such invoice to be paid by you in accordance with the **Payment Terms**
- (c) you will not be entitled to any compensation for works that are not completed at the date of termination.

Liability

9 Our liability shall be for direct losses only as follows:

- (a) for loss caused by our own negligence, liability is limited to
 - (i) remedying any defect in accordance with the provisions herein
 - (ii) if remedy cannot be applied, an amount equal to the amount paid by you for our **Services** under the relevant **Assignment** for the previous month
 - (iii) in any event the **Insurance Limit** for Professional Indemnity Insurance held
- (b) we shall not be liable for any loss, damages or claims resulting from breach of this agreement on our part or by any **Representative** to the extent that such breach is caused by the negligent acts or omissions of you or your staff, servants or agents
- (c) we shall not be liable for delay caused to you in any event or for indirect or consequential loss

(d) we shall not be liable for any damages arising due to our failure to provide the **Services** by reason of

(i) **Force Majeure Events**, or

(ii) absence of the **Representative** where you have failed to notify us of the non attendance and requested a suitable alternative representative as soon as the non attendance became reasonably apparent

(e) where liability cannot be limited by law for any reason, our liability is not limited.

Intellectual Property Rights

- 10 Ownership of the copyright or intellectual rights in any work undertaken by us for you in the provision of the **Services** and any materials, hardware, documents and data and including any relevant manuals supplied as part of the **Services** or generated during the provision of the **Services** shall be and remain your property save only to the extent that any such copyright or intellectual rights already vest in us.

General Terms

- 11 It is agreed that

(a) we are an independent supplier and neither we nor the **Representative(s)** are employed by you

(b) whilst the work we undertake will be performed by either subcontractors to our organisation or employees or partners of ours, no party has authority to bind us to any arrangement and no representation made by such a representative shall be binding upon us

(c) there is no implied restraint upon either us or the **Representative(s)** in providing services to any other party during an **Assignment** or otherwise

(d) if a person other than the named **Representative(s)** in an **Assignment** is to perform any part or all of the **Services** on our behalf whether by way of sub-contract or otherwise, we may use such person provided only that we have your prior written consent which consent will not be withheld in the case of a suitably qualified person

(e) for the avoidance of doubt there is no obligation upon you to offer us any work or upon us to accept any **Proposal**

(f) even though an **Assignment** may have been terminated, any clause in this agreement which is intended to have effect following termination shall survive and continue in effect

(g) for the avoidance of doubt we are not a legal agent for the **Representative(s)**, who may be a subcontractor, partner or employee of ours

(h) all the provisions of this agreement including this provision and the limitations on liability are reasonable

- (i) references to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment
- (j) each portion of this agreement, defined by punctuation numbering and paragraphs, is separate, distinct and severable and to give meaning to the intention of you and us the Court may modify any portion of this agreement that may otherwise be void; subject thereto any void portion may be severed, and the remaining provisions, including any such modified hereunder, shall continue in force
- (k) this agreement relates to each **Assignment** and our general relationship and subject only to the terms of any **Assignment** this is the sole and entire agreement between you and us, supersedes any previous agreement between you and us relating to our services
- (l) this agreement may not be varied save by agreement of both you and us (whether orally or otherwise) and confirmed in writing by us and signed by our authorised officer, who shall be the person authorised by us in writing to act as our authorised officer - Please Note that a **Representative** is not our authorised officer
- (m) except as provided for under clause 11(d), neither party shall be entitled to assign, transfer or subcontract this agreement or any rights arising hereunder (other than for factoring purposes) without the prior written consent of the other
- (n) any notice under this agreement shall be in writing and shall be sent to the addressee by first class post, by fax or by electronic mail, and shall be deemed to have been received in the case of post on the postal date following the date of posting, in the case of fax on the date of transmission, and in the case of electronic mail on the date electronic confirmation of receipt is received; in the case of service by more than one method the date of the first valid service applies
- (o) the Laws of England and Wales govern this agreement and the English Courts have sole jurisdiction.

Definitions and Meanings

12 The following definitions shall apply to this agreement:

Assignment a Proposal accepted by us in accordance with these terms

Assignment Period the period specified in an Assignment or such further term as may be agreed (verbally or otherwise) from time to time by you and us and which is subject to termination in accordance with terms herein

Client Responsibilities any specific responsibilities that you agree to undertake relevant to an Assignment, as specified in an Assignment

Expenses such expenses as are incurred by us in performance of the Services and supported by original vouchers/receipts provided that you shall first have agreed that the Expenses may be incurred

Force Majeure Event any event, act, occurrence or cause which is not within the reasonable control of either party, or which renders a party unable to perform its obligations

Insurance Limits Professional Indemnity: £1,000,000

Monthly Acceptance Certificate a document to be agreed (and signed) by the Customer at the end of each calendar month, it defines service achievements, progress and charges in preceding month (and as such is used by us to support monthly invoices) and objectives for following month.

Rate the charges specified in an Assignment.

Payment Terms 30 days from date of invoice and in the event of delayed payment interest thereon at the prevailing statutory interest rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998

Proposal an offer of temporary work setting out required information including the name of the Representative to be allocated, rate of pay, location, assignment term, hours of work and any other special terms including any agreed period for notice of termination

Representative our representative being either an employee in our organisation or a partner or subcontractor as may be named in an Assignment.

Service Definition a list of services and objectives within the scope of an Assignment.

Services the provision of consultancy services, through our Representative, agreed to be provided in an Assignment

Special Terms any additional or special terms specified in an Assignment.

Work Time the hours, comprising standard hours or standard hours and overtime as specified, or professional days as specified in an Assignment.

Dated this day of <DATE>.

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Signed on behalf of OGEL IT Limited

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Signed on behalf of the Client