

May 2024

General Terms of Business For G-Cloud 14

Business Thinking Limited trading as Datavault

1 APPLICABLE LAW

- 1.1 This agreement is governed by, and construed in accordance with, English law. The Courts of England will have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Service and any matter arising from it.
- 1.2 Each party irrevocably waives any right it may have to object to any action being brought in those courts, to claim that the action has been brought in an inappropriate forum, or to claim that those courts do not have jurisdiction.

2 SCOPE, FEES AND EXPENSES

- 2.1 The Scope of work to be performed is defined in an attachment to this agreement.
- 2.2 A schedule of fees and expenses to be charged in respect of the provision of the Services are set out in The Scope.

3 TERMS OF PAYMENT

- 3.1 Supplier invoices are due for payment in accordance with G-Cloud 14 terms and conditions.

4 LATE PAYMENT

- 4.1 If full payment is not received within the agreed period, then the Supplier reserves the right to charge interest at 5% above Bank of England base rate from the invoice date and to recover any additional costs as per the Late Payment of Commercial Debts (Interest) Act 1998 and Late Payment of Commercial Debts Regulations 2002.
- 4.2 If an invoice is disputed, the Client will contact the Supplier as soon as it is practically possible with details of the disputed amount to seek a resolution. On resolution of the disputed amount, the Supplier will provide a Credit Note, replacement Invoice or other paperwork as agreed. Any amount not disputed on the invoice will still be subject to the original settlement period.

5 INTELLECTUAL PROPERTY

- 5.1 Any and all intellectual property rights in materials directly produced by the Services ('the Intellectual Property Rights') will remain at all times the property of the Supplier, including without limitation, any and all computer programs, source code, data, diagrams, charts, reports, specifications, studies and inventions and all drafts thereof and working papers relating thereto. The Supplier assigns an unrestricted license to the Client to use materials produced by the Services for the purposes of the Client's business.

6 WARRANTY

- 6.1 The Supplier warrants that the Services will be performed using reasonable skill and care.
- 6.2 Material defects in Service deliverables caused by the Supplier not exercising reasonable skill and care will be corrected by the Supplier at the Suppliers' own expense.

7 LIABILITY

- 7.1 The Client agrees that the total aggregate liability on the part of the Supplier for any loss or damage resulting from the provision of the services or other work carried out for the Supplier, however caused and regardless of the cause of action (whether in contract, tort (including negligence), statute or otherwise), shall not exceed the Service fees (excluding expenses) paid to the Supplier.
- 7.2 Each addendum to The Scope shall be treated as a separately contracted item of work for the calculation of this liability.
- 7.3 This liability shall be limited to the proportion of the total loss or damage after taking into account the Client's contributory negligence (if any) and the negligence of any other party also liable or potentially liable to the Client in respect of the same loss or damage. This limitation is subject to the qualification set out below.
- 7.4 Neither party shall be liable for the other party's indirect or consequential loss or damage, or for any loss of data, profit, revenue or business (whether direct or indirect) however caused even if foreseeable.
- 7.5 Nothing in this agreement shall have the effect of excluding or limiting either parties' liability for:
- 7.5.1 death or personal injury caused by their negligence, or the negligence of their employees acting in the course of their employment,
 - 7.5.2 any fraudulent pre-contractual misrepresentations made by either party upon which the other party can be shown to have relied, or
 - 7.5.3 any other liability that cannot be excluded by applicable law.
- 7.6 Subject to the provisions of this agreement the Supplier agrees to indemnify the Client from and against all liabilities, costs and expenses suffered by the Client as a result of any of the Services infringing the intellectual property rights of a third party provided that:

- 7.6.1 The Client shall promptly notify the Supplier of such infringement; and
- 7.6.2 The Client shall not admit, compromise or settle any claim against it; and
- 7.6.3 The Client permits the Supplier to have full conduct in the defence or settlement of any claim.

8 CONFIDENTIALITY

- 8.1 A Non-Disclosure Agreement will be signed by both parties.
- 8.2 Each Party shall take such steps as it, in good faith, thinks fit to preserve the confidentiality of any Confidential Information concerning each others' affairs held in connection with the Services.
- 8.3 Confidential Information as used throughout this agreement means any information relating to the Client or Supplier of a confidential nature that is not available in the public domain.
- 8.4 Each Party agrees to keep confidential all Confidential Information and will not, without the other Party's express written authorisation, signed by one of the Party's authorised officers, use, sell, market or disclose any Confidential Information to any third person, firm, corporation or association for any purpose.
- 8.5 The obligation of confidentiality shall not apply to any information which:
 - 8.5.1 is required to be disclosed by law;
 - 8.5.2 has come into the public domain through no fault of the Party;
 - 8.5.3 is developed independently by the Party without reference to the Confidential Information.
- 8.6 The Client agrees that the Supplier may refer to the existence of the business relationship between the two parties and the nature of the services provided for use in presenting the Supplier's corporate CV.

9 CONTRACTUAL RELATIONSHIP

- 9.1 The Supplier is an independent business entity and nothing in this Agreement renders its consultants an employee, worker agent, or partner of the Client and the Supplier shall not hold itself out as such and shall procure that the Supplier's consultants shall not hold themselves out as such.
- 9.2 This Agreement constitutes a contract for the provision of services and is not a contract of Employment.

10 FORCE MAJEURE

10.1 A Force Majeure event is an event which causes a delay in the performance of a party's obligations set out in this agreement and which is beyond the reasonable control and without the fault or negligence of such party. These may include, but not be limited to:

10.1.1 If, due to resignation, death, accident, illness, official duty, or bereavement affecting a key, skilled resource, the Supplier is rendered unable to deliver the Services for a period, until a suitable replacement can be found.

10.1.2 Acts of God.

10.1.3 The consequences of any threats of or acts of war, terrorism or civil disobedience.

10.1.4 The consequences of epidemic, pandemic, quarantine or associated governmental measures or restrictions.

10.1.5 A breakdown of communication facilities, breakdown of internet service providers or hosting services.

10.2 To the extent that a Force Majeure event prevents the performance of an obligation by a party, that party shall be excused performance to that extent. Any fees paid for that part of the Services affected, less any expenses incurred, will be refunded to the Client and that shall be the limit of the extent of liability of the Supplier.

10.3 The party whose performance is affected by a Force Majeure event shall notify the other party in writing within five days after the occurrence of such Force Majeure event, specifying the cause and effect of the delay and setting out plans (where possible) to mitigate it and resume performance.

10.4 If however, the delay continues for ten days, either party shall have the right to give a notice of termination to the other party and the Agreement shall terminate automatically five days after such notice is given.

11 ASSIGNMENT

11.1 Neither party shall assign, novate or transfer this Agreement or any of its rights, duties or obligations to any person or entity, in whole or in part, without the prior written consent of the other party, which approval shall not be unreasonably withheld or unduly delayed. Nothing in this clause shall prevent the Supplier using sub-contractors or associates to deliver the services.

12 CANCELLATION

- 12.1 The Client has the right to cancel work at any time without notice. If the contract is to be cancelled, the Client must notify the Supplier in writing, setting out the reasons for doing so, and the Client will pay for the Services and expenses incurred or committed to date plus any cancellation penalty that may apply (as set out in The Scope).

13 NON-SOLICITATION OF EMPLOYEES

- 13.1 Neither party shall during the period of any services provided under this agreement and for one year thereafter solicit for employment, nor offer employment to, nor enter into any contract for services with, any persons engaged by the other in connection with the Services without the written consent of the other party.
- 13.2 If either party is in breach of 14.1 above then an introduction fee shall be payable with immediate effect of 30% of the gross annual salary or 30% of the total consulting fees paid over the first year of engagement to the other party.

14 SIMILAR SERVICES

- 14.1 Nothing in this agreement shall prohibit the Supplier from providing similar services to any other client or third party subject to the provisions of confidentiality set out above.

15 SERVICE PROVISION AND RIGHT OF SUBSTITUTION

- 15.1 The Supplier is engaged to provide a service to the Client resulting in the production of a number of Deliverables (see the statement of work in The Scope). The Supplier is free to determine how the service is delivered including the methods and tools used, the resources used, and the time and place of delivery. Consultants deployed on an engagement may be substituted at the sole decision and discretion of the Supplier.

16 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 16.1 Persons who are not party to this agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

17 GDPR (GENERAL DATA PROTECTION REGULATION – DATA PROTECTION ACT 2018)

- 17.1 The following definitions shall apply in respect of this Agreement:
- 17.1.1 "Personal Data" means data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other

information that is in, or is likely to come into, the possession of the Data Controller;

17.1.2 “Data Controller” means a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any Personal Data are, or are to be, processed;

17.1.3 “Data Processor” in relation to Personal Data, means any person (other than an employee of or worker for the Data Controller) who processes the data independently on behalf of the Data Controller; and

17.1.4 “Processing” in relation to information or data, means obtaining, recording or holding information or data or carrying out any operation or set of operations on the information or data, including:

- (a) organising, adapting or alteration of the information or data,
- (b) retrieval, consultation or use of the information or data,
- (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
- (d) alignment, combination, blocking, erasure or destruction of the information or data.

17.2 Each Party permits the other to hold records about their staff and subcontractors that are required to manage the business relationship.

17.3 The Client shall perform the role of Data Controller. Each work package agreed between the Client and Supplier shall specify the scope of data involved and the role performed by the Supplier in relation to that particular Scope of work.

17.4 Both the Client and Supplier shall comply with and shall procure that any individual appointed to supervise, collaborate with or perform the Services shall comply with applicable GDPR legislation.

18 RETENTION OF AND ACCESS TO RECORDS

18.1 During the course of the Supplier’s work the Supplier may collect information from the Client and others acting on the Client’s behalf. Whilst certain documents may legally belong to the Client, unless the Client informs the Supplier not to, the Supplier may retain such information as part of a project archive, and subsequently destroy correspondence and other papers that are stored by the Supplier which are more than seven years old, other than documents that the Supplier considers to be of continuing significance.

18.2 As a clarification to 18.1 above, the Supplier may not retain information that is classified as Client-owned Personal Data or marked as Client confidential.

18.3 If the Client requires the Supplier to return any documents that belong to the Client or the Client requires the Supplier not to destroy any documents that belong to the Client after the seven-year retention period, then the Client must notify the Supplier of that fact in writing with sufficient notice to allow the Supplier to action that requirement.

19 SEVERABILITY OF TERMS

19.1 If any of the terms of this Agreement are deemed unreasonable, void or otherwise unenforceable by any court, tribunal, ombudsman, arbitrator or other person, it is the intention of the parties that the remaining terms continue to have full force and effect.

20 TERMINATION

20.1 Both parties shall have the right to terminate this engagement by notice in writing to the other at any time. Termination will not affect either party's rights of remuneration, indemnification or any contractual provision intended to survive termination or any other accrued rights.

20.2 Without prejudice to any other right or remedy which a party may have, either party shall be entitled to terminate this agreement forthwith if the other party:

20.2.1 is guilty of any serious misconduct or material or persistent breach of any of the terms and conditions of this agreement;

20.2.2 has a bankruptcy order made against it or compounds with or enters into any voluntary arrangement with its creditors; or has anything similar or analogous happens in relation to it.