

G-Cloud 14 Terms & Conditions

THIS AGREEMENT is between **BYTEHIRE LIMITED** whose registered office is at 47 Geddes Hill, East Kilbride, Glasgow, Scotland, G74 3LQ and whose registered number is SC491641 (the '**Company**') and the individual, partnership, organisation or company purchasing goods and/or services from the Company ('the **Customer**').

The Customer wishes to obtain, and the Company is willing to provide, software, consultancy or other commercial services as may from time to time be agreed by the parties on the terms and conditions below.

It is agreed as follows:

1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

"Agreement" means the agreement between the Company and the Customer comprising this document and any Work Statements under it.

"Commencement Date" means the date specified in writing by the Company or the first date upon which the Company provides Services to the Customer if earlier.

"Confidential Information" shall mean in respect of any party any information relating to the business and affairs of that party or to the identity, business and affairs of its customers and potential customers which that party regards, or could reasonably be expected to regard, as confidential, whether or not such information is reduced to a tangible form or marked in writing as "confidential", and any and all information which has been or may be derived or obtained from any such information.

"Contract Charges" means all and any monies payable under the Agreement by the Customer to the Company for the performance of the Services in accordance with this Agreement and any Work Statement under it.

"Consultant" means the Company's personnel who are engaged in providing the Services and whose identity shall be agreed from time to time by the parties.

"Consultant Day" means a unit of eight hours.

"Customers Premises" means the premises specified by the Customer and as agreed and recorded in writing by the Company.

"Deliverable" means the documents, reports, the Software, specifications, projects or any items of work and their equivalent to be supplied by the Company or the Consultant under the Agreement and to be agreed between the parties throughout the duration of the Agreement.

"Equipment" means the Customer's computer equipment and operating system located at the Customer's Premises.

"Intellectual Property Rights" means copyrights, patents, utility models,

trademarks, service marks, design rights (whether registered or unregistered), database rights, semiconductor topography rights, proprietary information rights and all other similar proprietary rights as may exist anywhere in the world.

“Services” means all the services performed by and all other obligations of the Company and the Consultant hereunder, including any Services agreed to be undertaken in any Work Statement.

“Software” means the computer programs which may be specifically developed by the Company as part of the Services under the terms of this Agreement.

“VAT” means Value Added Tax.

“Work Statement” means any written document provided by the Company setting out the scope of Services to be undertaken, headed ‘Work Statement’ and signed by a director of the Company.

1.2 In this Agreement:

- (a) any reference to a notice is to a written notice (including by email);
- (b) headings are for convenience only and do not affect the interpretation of the Agreement;
- (c) words importing the singular include the plural and vice versa;
- (d) expressions in the masculine include the feminine and vice versa and reference to persons shall include corporations unincorporated associations and partnerships and vice versa.

2. DURATION OF THE AGREEMENT

The Company shall provide the Services to the Customer during the term of the Agreement which shall be the period from the Commencement Date until the Agreement is terminated under clause 10.

3. PERFORMANCE OF SERVICES

3.1 Services

- (a) The Company shall ensure that its Consultant in the performance of the Services complies with all the terms and conditions of the Agreement.
- (b) These conditions apply to all Company provision of Services and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing signed by a Director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not confirmed in writing by a Company Director.
- (c) Each request for Services or acceptance of a quotation or proposal for Services by the Customer from the Company shall be deemed to be an offer by the Customer to buy Services subject to these conditions. No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order or Work Statement (including by email) is issued by the Company or (if earlier) the Company delivers Services to the Customer. The Customer shall ensure that the terms of any order and specification of Service requirements are complete and accurate.

- (d) The Company and its Consultant shall perform the Services specified in any written Work Statement supplied by the Company from time to time from the Commencement Date in accordance with all applicable provisions of this Agreement.

3.2 Level of Services

The Company shall procure that relevant skilled Consultants shall be provided to undertake such hours as may be agreed, a Consultants normal working week, for the purpose of this Clause means forty (40) hours per week during the required period in the performance of the Services, unless otherwise agreed in writing by the Company. The Company acknowledges that Consultants may be required to work outside normal business hours as may be reasonably requested by the Customer, in the absence of written agreement to the contrary the Company shall be entitled to charge the Customer for all time expended.

3.3 Standard of Services

- (a) Any complaints which the Customer may have concerning the performance of Services by the Consultant should be notified as soon as reasonably practical to the Company.
- (b) Whilst working on the Customer's Premises, the Consultant will comply with the normal rules and regulations (in so far as the Consultant has been notified by the Customer of these) governing the Customer's staff, provided always that the Customer shall permit the Consultant to have access to the Customer's Premises to undertake Services.

3.4 Intellectual Property Rights

- (a) Subject to Clause 3.4(b) the Company hereby assigns all Intellectual Property Rights arising in the course of the performance of the Services to both the Customer and the Company to hold jointly. Each party will hold such rights separately from the other and each may deal with such rights independently and without the consent of the other.
- (b) The provisions of Clause 3.4(a) are subject to the Customer paying the Company in full all Contract Charges and until such time as the Customer has paid the Company in full all Contract Charges ownership of the Intellectual Property Rights arising in the course of the performance of the Services to the Customer shall vest solely in the Company.

4. CALCULATION AND PAYMENT OF FEES AND EXPENSES

4.1 Charges and Payment

- (a) The Customer shall pay the Company the Contract Charges at the daily rates set out in any Work Statement plus VAT which shall be charged in addition to the Contract Charge. If any Services are commenced without a Work Statement the Contract Charges shall be calculated on the Company's then prevailing standard rate card tariff.
- (b) Unless otherwise stated in a Work Order or as agreed between the parties, upon each anniversary of this Agreement the Company may vary the Contract Charges set out in any Work Statement by no more than the rate of change of the Retail Prices Index for the year preceding the anniversary concerned.
- (c) In addition to the daily rates set out in Clause 4.1(a) the Customer will reimburse

the Company for reasonable travel and hotel expenses incurred by any Consultants in providing the Services.

- (d) The Company will maintain accurate records of the time spent by each Consultant.
- (e) The Company will invoice the Customer monthly in arrears. Each invoice shall specify the time spent by each Consultant and any expenses.

- (f) Payment shall be due thirty (30) days following receipt by the Customer of a valid VAT invoice.

4.2 Tax

- (a) All sums due to the Company under the Agreement are exclusive of VAT, if any, which shall be charged in addition thereto in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be paid by the Customer against receipt from the Company of a valid Value Added Tax invoice in respect thereof.

- (b) The Company shall be responsible for and shall account for all its own tax including any income tax, National Insurance contributions and VAT to the relevant tax authorities.

5. CUSTOMER'S RESPONSIBILITIES

5.1 The Customer will provide the Company with such information as it may reasonably need concerning the Customer's operations and answers to queries, decisions and approvals which may be reasonably necessary for the Consultant to undertake the Services. The Customer is responsible for ensuring that such information and answers are accurate and complete.

5.2 The Customer will provide free of charge the following facilities to the Company and its Consultant throughout the Customer's normal business hours and at such other times as the Customer authorises after reasonable prior notice from the Company and/or its Consultant (such authorisation not to be unreasonably withheld or delayed):

- (a) access to and use of the Equipment;

- (b) access to the Customer's employees and the Customer's Premises;

- (c) all electric power, lighting, heating and air conditioning at the Customer's Premises reasonably needed by the Consultant to perform the Services;

- (d) to the extent the Consultant needs to work on the Customer's Premises, office space readily accessible to the Equipment which is suitable for this purpose and the provision of normal office services, including first aid, photocopying, Internet connection and telephone, (but excluding any secretarial support, typing and photocopying facilities needed to produce any documentation for which the Consultant is responsible) and such facilities may be used only for the purpose of the Services;

- (e) competent operators for the Equipment.

5.3 The Customer will be responsible for ensuring that the Equipment is properly installed and is sufficient and suitable for its purpose and that any adjustments which may be required are carried out expeditiously. The Customer is responsible at its own expense for the prompt and continuing availability to the Consultant of the Equipment and any other computing facilities to be provided by the Customer in good working

order throughout the duration of this Agreement.

- 5.4 The Customer will ensure that all software other than the Deliverables which is used on the Equipment is either the property of the Customer or legally licensed to the Customer and that the Consultant is permitted to use such software.
- 5.5 The Company may suspend Services carried out at the Customer's Premises if the Company reasonably believes conditions at the Customer's Premises represent a health or safety hazard to any of the Consultants.
- 5.6 The Customer acknowledges that if it has asked for or approved the inclusion of any third-party software in the Deliverables; the Customer shall be responsible, unless the Company has otherwise specifically agreed in writing, for the cost of and for obtaining the necessary licence(s) pertaining to that third-party software.

6. SKILL AND CARE

The Company warrants that for the term of the Agreement the Services will be performed using reasonable skill and care in a timely and professional manner using appropriately skilled, qualified and experienced personnel. The Services to be provided under this Agreement shall be provided on a time and materials basis only, unless specifically agreed to the contrary in writing signed by a Director of the Company. The Company shall not be responsible for providing any Deliverable unless specifically stated in a Work Statement.

7. LIMITATION OF LIABILITY

- 7.1 The Customer acknowledges that the Company's obligations and liabilities in respect of the Services are exhaustively defined in this Agreement. The Customer agrees that the express obligations and warranties made by the Company in this Agreement are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to anything supplied or services provided under or in connection with this Agreement including (without limitation) as to the condition, quality, performance, merchantability or fitness for the purpose of the Services the Deliverables or any part of them.
- 7.2 The Customer is responsible for the consequences of any use of the Deliverables. In relation to this Agreement and any obligations, Services or Deliverables the Company will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused, whether arising under contract, tort (including negligence) or otherwise including (without limitation) loss of production loss of or corruption to data loss of profits or of contracts loss of operation time and loss of goodwill or anticipated savings, even if the Company has been advised of their possibility.

7.3 The Company accepts liability for:

- (a) death or injury caused by the negligence of the Company, its employees, agents or sub-contractors for the course of their engagement under this Agreement and damage caused by a defective product within the meaning of the Consumer Protection Act 1987 Part I without limit;
- (b) physical damage to or loss of the Customer's tangible property to the extent it results from the negligence of the Company its employees, agents or sub-contractors for the course of their engagement under this Agreement up to the amount of £1,000,000 in respect of each incident or series of connected incidents; and
- (c) any breach of any obligations implied by Section 12 of the Sale of Goods Act

1979 or Section 2 of the Supply of Goods and Services Act 1982 (to the extent that and if the same are applicable).

7.4 In all other cases not falling within clause 7.3 the Company's total liability (whether in contract, tort, including negligence, or otherwise) under or in connection with this Agreement and any other agreement with the Customer relating to the Services or based on any claim for indemnity or contribution will not exceed repayment of Contract Charges paid, one hundred percent (100%) of the total Contract Charges in aggregate, or £1,000,000 (one million pounds), whichever is the lesser.

7.5 The Customer agrees that except as expressly provided in clauses 8, 9 and this clause 7 the Company will not be under any liability of any kind whatever and

however caused arising directly or indirectly in connection with Services or Deliverables or any obligation under this Agreement. The Customer will indemnify the Company in respect of any third party claim for any injury, loss, damage or expense occasioned by or arising directly or indirectly from the Customer's possession, operation, use, modification or supply to a third party of the Deliverables and any part of them or Services provided under or in connection with this Agreement except and in so far as the Consultant is liable as expressly provided for in this Agreement.

7.6 The Customer acknowledges and agrees that the allocation of risk contained in this clause 7 is reflected in the Contract Charges and is also a recognition of the fact that, inter alia, any Deliverable cannot be tested in every possible combination and therefore the Company does not warrant that the operation of any Software provided (or code or work undertaken on Software) will be uninterrupted or error free and it is not within the Company's control as to how and for what purpose the Deliverables are used by the Customer.

7.7 The provision of this Clause 7 shall survive termination and/or expiry of this Agreement.

8. INDEMNITY

8.1 The Company shall fully indemnify the Customer and hold harmless against all claims, demands, losses, costs, charges and expense arising from or incurred by reason of any claim, demand or action against the Customer arising from or incurred by reason of any infringement of any Intellectual Property Right by the provision of the Services or provision or use of any Deliverable or any part thereof except where such infringement is due to a fault on the part of the Customer.

8.2 The Customer agrees to:

- (a) notify the Company as soon as reasonably practicable in writing of any allegation of infringement;
- (b) make no admissions or offers of compromise or settlement without the consent in writing of the Company;
- (c) provide the Company with all reasonable assistance at the Company's cost which the Company shall reasonably require in respect of any such claims.

8.3 If the Company so elects the Company shall be entitled to conduct the defence of and/or settle all negotiations and litigations, but will promptly discuss with the Customer and keep the Customer informed of the progress of such defence and/or settlement issues.

8.4 The Company shall have the right at its option and expense to replace or modify all or any part of the Deliverables (without reducing the performance or function of any part of the Deliverables) in order to avoid any alleged or actual infringement or to procure the

right for the Customer to continue to use the same.

9. CONFIDENTIALITY

- 9.1 Except to the extent permitted by law, and subject to Clause 9.4, neither party shall disclose any Confidential Information relating to the other party without the other party's prior written consent. This provision shall not apply to any information in the public domain otherwise than in breach of this Agreement and/or information in the possession of the receiving party prior to its disclosure to it in connection with this Agreement and/or information obtained from a third party who is free to divulge the same and/or disclosure of information required by a Court of law or other competent authority.
- 9.2 Each party shall upon receiving a specific request in writing from the other party deliver up any Confidential Information belonging to the other party (including any and all copies made) to the other party following the termination of the Agreement.
- 9.3 Either party shall immediately inform the other if it becomes aware of the possession, use or knowledge of any of the Confidential Information by any unauthorised person, whether during or after the term of the Agreement and shall provide such reasonable assistance as is required to deal with such an event.
- 9.4 Notwithstanding the provisions of the rest of this clause 9 the Company is authorised to disclose that the Customer is a customer of the Company regarding the Services.

10. TERMINATION

- 10.1 Notwithstanding anything to the contrary contained in this Agreement either party (the **"Non-Defaulting Party"**) may terminate the Agreement by written notice having immediate effect if:-
- (a) the other (the **"Defaulting Party"**) commits any breach of this Agreement (other than a breach which is capable of remedy within 30 days of written notice of remediable breach) and such breach is not remedied forthwith by the Defaulting Party at the request of the Non-Defaulting Party to the complete satisfaction of the Non-Defaulting Party; or
 - (b) the Defaulting Party is unable through death, sickness or injury to carry out its obligations hereunder; or
 - (c) the Defaulting Party becomes or is likely to become unable to pay its debts (as defined in Section 123 of the Insolvency Act 1986) or becomes subject to or itself invokes, or evidences an intention to invoke, any law or proceedings (in any jurisdiction to which it is subject) relating to its insolvency, liquidation, bankruptcy, winding-up, administration or dissolution or to a rescheduling, composition or arrangement in respect of any of its debts, or the Defaulting Party has a receiver or other encumbrancer appointed over any part of its assets, allows a judgement against it to remain unsatisfied for more than 14 days or fails to make payment when due of any sum owed by it to a third party; or
 - (d) the Customer being the Defaulting Party the Customer fails to comply with any of the provisions of Clauses 4.2 (payment of Contract Charges), 5 (Customer's Responsibilities) or 11 (Restrictions) of this Agreement.

10.2 Either party may terminate the Agreement by not less than 30 days written notice to the other party.

10.3 Effects of Termination

(a) If this Agreement is terminated, each party, upon receiving a specific written request in writing from the other, shall return to the other party all property belonging to the other party then in its possession. The termination of the Agreement as provided for herein shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

(b) If this Agreement is terminated in addition to any other remedies that may be available to the Company either under the Agreement or otherwise (and without prejudicing such rights) the Company shall be entitled to immediately invoice for unpaid work. The Customer will pay the Company all monies properly due together with any monies incurred by the Company in the performance of the services at the date of termination of the Agreement.

11. RESTRICTIONS

The Customer shall not (and it shall procure that each member of its group shall not) for a period beginning on the Commencement Date hereof until twelve (12) months after termination of this Agreement for whatever reason, directly or indirectly solicit or procure (otherwise than by general advertising) the employment of any employee(s), agents or subcontractors including the Consultants of the Company involved in the performance of the Services.

12. GENERAL

12.1 Amendments

The Agreement shall not be amended except with the prior written approval of authorised representatives of both parties or by the Company issuing a Work Statement to be agreed in writing by the Customer. The Company shall not be under any obligation to provide services to the Customer without a relevant Work Statement signed by the Customer.

12.2 Notices and Communications

Any notice or request required or permitted to be given or made under this Agreement shall be in writing. Such notice or request shall be deemed to be duly given or made when it shall have been delivered by hand, mail, e-mail, cable, telex or fax to the party to which it is required to be given or made at such party's address specified above or such other address as notified to the other party.

12.3 Waiver

Any waiver or relaxation whether partly or wholly of any of the terms or conditions of the contract shall be valid only if in writing and signed by or on behalf of a director of each party and shall apply only to a particular occasion and shall not be continuing and further shall not constitute a waiver or relaxation of any other terms or conditions.

12.4 Severability

If any provision or part provision of the Agreement is held invalid, illegal or unenforceable for any reason, such provision or part provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid provision or part provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall immediately commence good faith negotiation to remedy such invalidity.

12.5 Assignment and Sub-Contracting

The Company may assign the Agreement in whole or in part without the prior written consent of the Customer. The Company may delegate or sub-contract its duties under this Agreement to any third party.

12.6 Set Off

Whenever under the Agreement any sum of money is recoverable from or payable by the Customer the same may be deducted from any sum then due or which at any time thereafter may become due to the Customer under the Agreement or any other contract between the parties.

12.7 Entire Agreement

This Agreement supersedes all previous conditions understandings commitments agreements or representations (other than fraudulent misrepresentations) whatsoever whether oral or written relating to the subject matter hereof and constitutes the entire agreement between the parties relating to the subject matter hereof.

12.8 Force Majeure

- (a) Neither party will be liable for any delay in performing or failure to perform any of its obligations under this Agreement caused by events beyond its reasonable control ("**Force Majeure Event**").
- (b) The party claiming the Force Majeure Event will promptly notify the other in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage.
- (c) If that party has complied with clause 12.9(b) its performance under this Agreement will be suspended for the period that the Force Majeure Event continues, and the party will have an extension of time for performance which is reasonable. As regards such delay or stoppage:
 - (i) any costs arising from the delay or stoppage will be borne by the party incurring those costs;
 - (ii) either party, may, if the delay or stoppage continues for more than 28 continuous days, terminate this Agreement with immediately effect on giving written notice to the other and neither party will be liable to the other for such termination; and
 - (iii) the party claiming the Force Majeure Event will take all necessary steps to bring the Event to a close or to find a solution by which the Agreement may be performed despite the Event.

12.9 Exclusion of Third Party Rights

A person who is not a 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 which exists or is available otherwise than pursuant to that Act.

12.10 Survival

No part of this Agreement shall survive termination or expiry of this Agreement, save for clauses 1, 4 and 6 - 12

12.11 Governing Law and Jurisdiction

The Agreement shall be governed, construed and shall take effect in accordance with the laws of England, subject to the exclusive jurisdiction of the English courts.