

G-Cloud 14

Terms and Conditions

April 2024

Contents

1. DEFINITIONS	2
2. SUPPLY OF SERVICES	3
3. TERM AND TERMINATION.....	3
4. COSTS AND PAYMENTS	4
5. THE CLIENT'S OBLIGATIONS	5
6. DATA PROTECTION.....	6
7. CONFIDENTIALITY AND PUBLICITY	8
8. INTELLECTUAL PROPERTY RIGHTS	8
9. WARRANTIES AND LIABILITIES.....	10
10. THE USE OF SUB-CONTRACTORS AND AGENTS	11
11. NON SOLICITATION	11
12. MISCELLANEOUS	12

1. DEFINITIONS

For the purpose of this Agreement the following terms shall have the following meanings:

“Agreement” means this services agreement;

“Costs” means the costs payable by the Client to The Audience Agency in accordance with the terms of this Agreement, the details of which are set out in the Project Initiation Document;

“Client Content” means all Intellectual Property Rights in the materials which are provided by the Client to The Audience Agency for use in the performance of the Services;

“Force Majeure” mean any non-performance, defective performance or delay in the performance of any of the Services caused directly or indirectly by acts of God, war, hostilities, riot, fire, explosion, accident, flood, sabotage, terrorism, lack of adequate power or labour, strike, lock-out or injunction compliance with governmental laws, regulations or orders, sickness or indisposition of key The Audience Agency employees or sub-contractors, or any other cause whether or not of the class or kind enumerated which affects performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party affected; and in the case of the Client, their being required to provide for a United Kingdom state or other such occasion.

"Data Protection Regulations" means the General Data Protection Regulation 2016; the Privacy and Electronic Communication Regulation 2011 and the Data Protection Act 2018 (together referred to as “the Data Protection Regulations”)

“Defaulting Party” means a Party who is in Default as a result of a failure to fully and faithfully perform any obligations or duties under this Agreement.

“Intellectual Property Rights” means all intellectual property rights, including patents, utility models, trade and service marks, trade names, domain names, right in designs, copyrights, database rights, moral rights, topography rights, rights in databases, software rights (including without limitation rights to its object code and source code), trade secrets and know-how, in all cases whether or not registered or registerable and including registrations and applications for registration of any of these and rights to apply for the

same, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world;

“Personal data” means any data from which a living person can be identified.

“PID” means the project initiation document.

“Project” means [project name] for the Client as set out in the PID.

“Resource” means the Intellectual Property Rights owned by and/or licensed to The Audience Agency which have come into existence in connection with this Agreement and which for the avoidance of doubt, shall exclude the Client Content and the Intellectual Property Rights owned by and/or licensed to The Audience Agency.

“Services” means services to be supplied by The Audience Agency to the Client for the Project specified in the PID at Appendix 1 and or such Project Initiation Documents as may be agreed in writing by the parties from time to time.

2. SUPPLY OF SERVICES

2.1 The Audience Agency shall provide or procure the provision of the services as outlined in the PID, to the Client and the Client agrees to purchase these Services from The Audience Agency in accordance with the terms and conditions set out in this Agreement.

2.2 The Services shall be performed with reasonable skill and care in a manner consistent with generally accepted standards for identical or similar Services.

2.3 The Audience Agency and the Client may from time to time (as allowed through the G-Cloud terms) mutually agree in writing to additional services by executing an additional PID, which shall be subject to the terms and conditions set out in this Agreement.

3. TERM AND TERMINATION

3.1 This Agreement shall come into force on the date of this Agreement and shall remain in force, unless terminated in accordance with this clause 3, until such time as all deliverables in the PID has been completed.

3.2 The Audience Agency shall provide the Services until such time as:

3.2.1 the work described in the relevant PID has been completed; or

3.2.2 either party terminates the relevant PID in accordance with clause 3.3; or

3.2.3 this Agreement is terminated.

3.3 Either party (the “Terminating Party”) may terminate a PID or part thereof or this Agreement with immediate effect by written notice to the other party on or at any time after the occurrence of a material breach by the other Party of any of its obligations in the PID or this Agreement which (if the breach is capable of remedy) the defaulting party has failed to remedy within thirty (30) days after receipt of notice in writing claiming the breach requiring the defaulting party to do so. For the avoidance of doubt, failure to pay Costs shall be a material breach.

3.4 The Terminating Party may terminate this Agreement with immediate effect by notice to the other party on or at any time after the occurrence of any of the events specified below in relation to the Defaulting Party:

3.4.1 the defaulting party goes into liquidation either compulsorily or (except for the purpose of reconstruction or amalgamation) voluntarily;

3.4.2 a receiver is appointed in respect of the whole or any part of the assets of the Defaulting Party;

3.4.3 a provisional liquidator is appointed to the defaulting party or the Defaulting Party enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors;

3.4.4 the defaulting party threatens to do any of the things listed in clauses 3.4.1 to 3.4.3 or an administration order is made against the defaulting party or any similar occurrence under the laws of any jurisdiction affects the defaulting party; or

3.4.5 the occurrence of any Force Majeure.

3.5 On termination of this Agreement or any PID (or any part thereof) for any reason:

3.5.1 The Audience Agency shall be entitled to be paid all Costs due and any additional costs specified in the PID(s); and

3.5.2 termination shall not affect the rights of either party accruing or accrued prior to the termination of this Agreement or the relevant PID as applicable.

3.6 On termination of this Agreement for any reason this Agreement shall continue in force to the extent necessary to give effect to those of its provisions which expressly or impliedly have effect after termination.

4. COSTS AND PAYMENTS

4.1 The Client shall pay the Costs set out in each PID.

4.2 The Audience Agency shall issue invoices for applicable Costs and disbursements as specified in the PiD or otherwise agreed in writing by the Parties on a monthly basis.

4.3 The Client shall pay The Audience Agency all amounts due in accordance with payment terms set out in each PID or otherwise within thirty (30) days of receipt of the invoice (the "Due Date").

4.4 All payments made or to be made under this Agreement shall be made in full, without any deduction, withholding, set-off or counterclaim on account of any taxes or otherwise.

4.5 The Audience Agency reserves the right to charge the Client interest on any payment not made by the Due Date. Interest will be calculated on a daily basis, both before and after any judgment, at the rate of 4 per cent per annum above the base rate from time to time of CAF Bank Ltd, for the period from the Due Date until the date on which it is actually paid. It would be compounded quarterly and payable on demand.

4.6 In the event of a bona fide dispute regarding any invoice or other request for payment, the Client shall notify The Audience Agency in writing as soon as possible and the parties shall attempt promptly and in good faith to resolve any dispute regarding amounts owed. The Client shall pay all undisputed amounts on the Due Date. The Audience Agency reserves the right to suspend performance of the Services until the dispute has been resolved.

4.7 All Costs are exclusive of any applicable value added tax (or any successor tax) and any other applicable tax of any nature whatsoever, which will be added and shall be payable by the Client in accordance with the law applicable from time to time against receipt of an appropriate invoice.

4.8 Costs in respect of any Services may be increased by The Audience Agency by agreement in writing with the client from time to time.

5. THE CLIENT'S OBLIGATIONS

5.1 The Client shall perform its obligations as set out herein and the PID, including, without limitation to:

5.1.1 provide The Audience Agency with access to the Client's premises, equipment, system and facilities as reasonably required by The Audience Agency to perform its

obligations under this Agreement, provided that The Audience Agency shall comply with the Client's security requirements;

5.1.2 to the extent that The Audience Agency requires access to the same, ensure that its premises comply with all applicable health and safety laws and regulations, and shall maintain insurance in respect of persons working on its premises as required by law;

5.1.3 provide The Audience Agency promptly with all necessary co-operation, information and data, including without limitation, the Client Content and access to staff and timely decision making which may be reasonably required by The Audience Agency for the performance of the Services and as outlined in the PID;

5.1.4 ensure that its use of the Services provided hereunder are compliant under the provisions of the Data Protection Regulations. For personal information processed by The Audience Agency on Client's behalf as part of the Services, The Audience Agency will act in accordance with Client's instructions by following such processing and security obligations. Client also confirms that Client is solely responsible for ensuring that any processing and security obligations comply with applicable law;

5.1.5 Client shall use its best endeavours to ensure that all information contained in the Client Content shall be true, accurate and complete. For the avoidance of doubt, the Client hereby acknowledges and agrees that:

5.1.6 Client shall be responsible for verifying all Client Content prior to its provision to The Audience Agency; and

5.1.7 The Audience Agency shall bear no responsibility or liability for checking the Client Content prior to or during its use by pursuant to this Agreement.

5.2 The Audience Agency shall not be liable for any delay or failure to perform its obligations hereunder which arise as a result of a failure by the Client to comply with this clause 5.

6. DATA PROTECTION

6.1 Both parties agree that they will at all times comply with their obligations under the Data Protection Regulations.

6.2 The Audience Agency will

6.2.1 process Personal Data in accordance with the purpose of the Project and in accordance with the Regulations;

6.2.2 process Personal Data only to the extent, and in such a manner, as is necessary for the purpose of the Project and shall not process Personal Data for any other purpose;

6.2.3 take technological and procedural steps to protect data which is or may become personal information from unauthorised access or processing

6.2.4 not transfer Personal Data outside the European Economic Area or sub-contract the processing of Personal Data without the prior written consent of the Client

6.2.5 promptly provide such information, co-operation and assistance as may reasonably be required to comply with the rights of data subjects, including subject access rights, or with information notices served by any data protection authority;

6.2.6 assist the controller in meeting its obligations under the regulations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments

6.2.7 immediately inform the Client if:

a) any Personal Data is lost or destroyed, damaged or unusable and restore such Personal Data at its own cost; or

b) it becomes aware of any actual or suspected unauthorised or unlawful processing of the Personal Data; or

c) it receives any communication from data subjects, any data protection authority or other law enforcement authority which relates directly or indirectly to the processing of Personal Data or to either party's compliance with the Act;

6.2.8 keep or cause to be kept full and accurate records relating to all processing of Personal Data on the Client's behalf;

6.2.9 delete or return all copies of the Personal Data in whatever form stored or held upon expiry or termination of this Agreement unless the Parties agree that it continues to be required for the Purpose

6.3 Each party will indemnify the other against all actions, claims and expenses whatsoever which arises out of any breach of this provision and for the avoidance of doubt clause 5.1.4.

7. CONFIDENTIALITY AND PUBLICITY

7.1 Each party agrees that its employees, agents and sub-contractors use all reasonable endeavours to ensure that all data and information relating to the other's business provided to or acquired by it, its employees, agents or sub-contractors ("Receiving Party") under this Agreement is treated as secret and confidential and will not be disclosed to any third party without the prior written consent of other party unless:

7.1.1 the information was already lawfully known or became lawfully known to the Receiving Party independently of its involvement in this Agreement; or

7.1.2 the information is or becomes within the public domain other than due to the wrongful disclosure by the Receiving Party; or

7.1.3 disclosure or use is necessary for the proper and effective performance of the Receiving Party's rights under this Agreement; or

7.1.4 disclosure is required by a person or body having a legal right, duty or obligation to have access to the information and then only in pursuance of such a legal right, duty or obligation; or

7.1.5 disclosure is to those employees, agents or sub-contractors who need to know the information in order to perform obligations under this Agreement.

7.2 The supplier may request the following from the Client, which requests may only be used by The Audience Agency on receipt of the written permission of the Client 7.2.1 The Audience Agency announcing the fact that it is providing the Services to the Client;

7.2.2 press releases;

7.2.3 assistance to The Audience Agency with the preparation of a case study after completion of all or part of the Services;

7.2.4 allow all material which has been authorised by the Client to be used by The Audience Agency for the purposes of marketing (including being used on the Internet); or

7.2.5 to act as a reference site.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 Nothing in this Agreement will serve to transfer from The Audience Agency to the Client any of the Intellectual Property Rights owned by The Audience Agency and/or its licensors including without limitation, the Resource, and all right, title and interest

thereof shall remain exclusively with The Audience Agency and/or The Audience Agency's licensors.

8.2 Except for the rights expressly granted in this Agreement, nothing in this Agreement shall serve to transfer from the Client to The Audience Agency any of the Client Content, and all right, title and interest in and to the Client Content will remain exclusively with the Client.

8.3 The Audience Agency grants the Client an exclusive, perpetual, worldwide, non-assignable, non-sub-licensable licence to use the Resource strictly and solely for [project name] (the "Purpose"). Where the Client's intended use of the Resource is other than for the Purpose, the Client agrees that it shall first procure the prior written consent of The Audience Agency (such consent not to be unreasonably withheld). For the avoidance of doubt, all information and data and/or analysis thereof in the Resource to be used by The Audience Agency shall be and shall remain anonymous.

8.4 The Client grants to The Audience Agency a non-exclusive, worldwide, non-assignable, non-sub-licensable, royalty-free licence to use the Client Content for the sole purposes of performing its obligations under this Agreement.

8.5 Nothing in this Agreement shall prevent The Audience Agency from using any know-how, methods, techniques or procedures owned or developed by The Audience Agency in the course of providing the Services for any purpose.

8.6 The Client shall promptly notify The Audience Agency of any claim or demand which is made, brought or threatened against the Client in respect of the infringement or alleged infringement of any Intellectual Property Right by reason of the use or possession of the Services by the Client. The Client agrees to grant The Audience Agency exclusive control of any litigation and negotiations arising from such a claim, and to give The Audience Agency such assistance as it may reasonably request.

8.7 If a claim or demand for infringement or alleged infringement of any Intellectual Property Right is made in respect of the Services, and/or the Resource or, in the reasonable opinion of The Audience Agency, is likely to be made, The Audience Agency shall be entitled, at its own expense and option, either to:

8.7.1 modify or replace the infringing items of the Services, and/or Resource (without detracting in any way from their performance or functionality) so that the same cease to be infringing; or

8.7.2 procure the right for the Client to continue using the Services, and/or Resource as contemplated by this Agreement; or

8.7.3 if neither of the foregoing options is practicable, to require the Client to return the affected Services, and/or Resource to The Audience Agency and The Audience Agency shall reimburse the Client for the amounts paid for such Services, Deliverables and/or Resource.

8.8 The Audience Agency shall have no liability for, and the Client shall indemnify The Audience Agency against any claim that the Services, and/or Resource or the performance of the Services infringes any Intellectual Property Rights, where the cause of the infringement is:

8.8.1 any materials or instructions provided to The Audience Agency by or on behalf of the Client; or

8.8.2 modification, enhancement or alteration of Services, Deliverables and/or Resource by or on behalf of the Client; or

8.8.3 due to the Client using the Services, Deliverables and/or Resource in breach of the provisions of this Agreement.

8.9 All third party Intellectual Property Rights required by the Client to enable them to use the and/or Resource shall be procured by the Client. The Audience Agency shall not be liable for any delay or failure of the Client to procure such third party Intellectual Property Rights.

9. WARRANTIES AND LIABILITIES

9.1 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Agreement whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by law.

9.2 Subject to our total aggregate Liability arising out of or in connection with all claims in aggregate (including warranty claims and losses relating to the breach of warranty) shall be limited to the greater of:

9.2.1 100% of all amounts paid and total other sums payable, in aggregate, by you to us under this Agreement in the 12 months prior to the date on which the first claim first arose; or

9.2.2 £2,000,000

9.3 In no event shall The Audience Agency (including its respective agents and sub-contractors) be liable for:

9.3.1 any loss of profits, loss of data, business interruption, loss of use, loss of contracts, loss of goodwill (whether direct or indirect); or

9.3.2 any indirect or consequential losses of any nature whatsoever; or

9.3.3 any failure of the Services and/or Deliverables due to any integration or interoperability issues arising with any third party or Client systems or legacy systems unless expressly set out to the contrary in a Project Initiation Document; whether or not caused by or resulting from its negligence or a breach of its statutory duties or a breach of its obligations howsoever caused even if it is advised of the possibility of such loss.

9.4 For the avoidance of doubt, nothing in this Agreement shall be deemed to exclude, restrict or limit liability of either party (or their respective agents or sub-contractors) for death or personal injury resulting from their negligence or any liability for fraudulent misrepresentation.

9.5 Both parties accept that the limitations and exclusions set out in this Agreement are reasonable having regard to all the circumstances.

9.6 This clause 9 shall survive the termination of this Agreement for whatever cause.

10. THE USE OF SUB-CONTRACTORS AND AGENTS

10.1 Unless otherwise expressly set out to the contrary herein, The Audience Agency may engage any person, company or firm as its agent or sub-contractor to perform any of its obligations or duties under this Agreement.

The Audience Agency will inform the client of the use of any subcontractors or agents and the delivery of services as set out in this agreement and this will be outlined in the PID.

11. NON SOLICITATION

11.1 Neither party shall (except with the prior written consent of the other) during the term of this Agreement and for a period of one (1) year thereafter, solicit the services of any staff of the other party who have been engaged in the provision of the Services or the management of the Project or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement

other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other party.

12. MISCELLANEOUS

12.1 References to clauses and schedules shall be to clauses and schedules of this Agreement. The schedules to this Agreement form part of this Agreement and shall be interpreted accordingly.

12.2 The waiver by either party of its rights in respect of any breach of any provision of this Agreement shall not be taken or held to be a waiver in respect of any subsequent breach thereof.

12.3 No alteration, modification or addition to this Agreement shall be valid unless made in writing and signed by the duly authorised representatives from both parties.

12.4 All notices, documents and other communications relating to this Agreement must be in writing and delivered, or posted by first class pre-paid post or sent by facsimile to The Audience Agency or the Client as appropriate and any such notice shall be deemed to have been duly served upon and received by the party to whom it is addressed at the time of delivery if delivered by hand, on the expiry of forty eight (48) hours after posting or at the time of sending in the case of facsimile.

12.5 If any part of this Agreement is found to be unreasonable, invalid or unlawful under any enactment or rule of law the Court shall have the power to strike out or override that part whether it be an entire clause or clauses or some part or parts thereof and enforce this Agreement as if the offending part or parts had not been included.

12.6 The clause headings in this Agreement are inserted for ease of reference only and shall not affect the construction or interpretation of this Agreement.

12.7 In this Agreement the singular shall be deemed to include the plural and the plural shall be deemed to include the singular unless the context requires otherwise.

12.8 Nothing in this Agreement shall give, directly or indirectly, any third party any enforceable benefit or any right of action against The Audience Agency and such third parties shall not be entitled to enforce any term of this Agreement against The Audience Agency.

12.9 Neither party may assign the benefit of all or part of this Agreement without the prior written consent of the other party which shall not be unreasonably delayed or

withheld, except that The Audience Agency may upon written notice to the Client assign the benefit and burden of this Agreement to its holding company or to any company which is a subsidiary of its holding company.

12.10 Provisions of this Agreement which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination shall remain in full force and effect notwithstanding such termination.

12.11 This Agreement constitutes the entire Agreement between the parties. Other than as expressly stated otherwise in this Agreement neither party shall be under any liability for any representations made prior to or during the operation of this Agreement.

12.12 This Agreement shall be governed and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of English Courts.