

Project Consultancy Services Agreement

between

Adecco, 10 Bishops Square, London, E1 6EG
(the “Company”)

and

[ClientName]
[ClientAddress]
(the “Client”)

| Project Schedule | |
|------------------|-------------------|
| Project Services | Statement of Work |

| | |
|--------------------|--|
| Project Fees | |
| Expenses | |
| Commencement Date | |
| Estimated End Date | |
| Estimated Duration | |
| Special Provisions | |
| Personnel | |

1. Definitions

- 1.1 “Intellectual Property Rights (IPR)” means any and all patents, patent applications, trade marks, trade mark applications, trade names, registered designs, copyright, database rights or similar intellectual property rights created, developed, subsisting or used in connection with the Project Services (whether in existence at the date hereof or created in the future).
- 1.2 “Project Services” means any goods, services or advice to be provided by the Company to the Client as detailed in the PROJECT SCHEDULE to this Agreement.
- 1.3 “Project Fees” means the agreed consideration, to be paid by the Client to the Company for the supply of Project Services, as specified in the PROJECT SCHEDULE to this Agreement.

2. Company's Undertakings

- 2.1 In consideration of the payment of the Project Fees by the Client to the Company, the Company undertakes to provide the Project Services subject to the terms and conditions of this Agreement.
- 2.2 The Company undertakes that it will perform the Project Services to such high level of professional industry standards to be expected at all times, and devote such time, attention, skill and ability to the performance of the Project Services as the Client may require.
- 2.3 The Company will be responsible for, and exercise its own control over how the Project Services are to be completed, where they are to be performed, and will have complete flexibility as to hours worked (subject to Clause 2.6 below). The Company recognises that the Client has a right to review of the progress of the Project Services, and shall use all reasonable endeavours to discuss and agree with the Client the allocation and execution of the Project Services as necessary.
- 2.4 The Company shall take all necessary steps to comply with any timetable or other targets for progress or delivery or completion of any task comprised within the Project Services as agreed in writing between the Company and the Client.
- 2.6 On all occasions that the Company provides the Personnel to work on any Client site from time to time, the Company will ensure that the Personnel will observe Health and Safety regulations and will comply with all reasonable requests made by the Client in relation to data protection, working hours or security.
- 2.7 In the event of any conflict between the terms and conditions contained in Clauses 1 to 13 herein, and any terms and conditions specified in the Project Schedule, the terms contained within the Project Schedule shall take precedence.

3. Change Orders

- 3.1 Due to the nature of the work to be performed by the Company, both parties accept that it may be necessary to agree to alter or adapt the Project Services, and that any additional works required may not be included in the Project Fees. In such event, the parties accept that:
 - 3.1.1 Any changes or additions to the Project Services or the terms of this Agreement will only be valid if agreed in writing by the Client and the Company (a “Change Order”). The Company is not obliged to perform any additional Project Services unless this is the subject of an agreed Change Order.
 - 3.1.2 The Project Fees may be revised in the light of any Change Orders. The Company will inform the Client of any proposed changes to the Project Fees in writing. Such changes will not be valid until accepted in writing by the Client.
- 3.2 Change Orders may be effective in any writing format agreed between the Client and the Company.

4. Duration and Termination

- 4.1 This Agreement shall commence from the Commencement Date specified in the PROJECT SCHEDULE, and shall remain in force until the completion of the Project Services.
- 4.2 Either party may terminate this Agreement with immediate effect by giving written notice to the other party in the event that:
 - 4.2.1 The other party is in breach of this Agreement and fails to remedy such breach (where capable of remedy) within 14 (fourteen) days after being required in writing to do so.
 - 4.2.2 The other party goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed.
- 4.3 In the event that (in the Client's reasonable opinion) the services of the Company's Personnel are unsatisfactory or if the Client deems that the Personnel's behaviour, attitude or demeanour is unsuitable or prejudicial to the interests of the Client during the

term of this Agreement, the Client may terminate this Agreement forthwith and withhold the payment of any outstanding invoices pending an assessment of the Client's loss. The period of assessment will be a maximum of 4 weeks. The Client reserves the right to offset any losses sustained as a result of the Company's actions, breach or unsatisfactory performance from monies owed.

- 4.4 Either party shall be entitled to terminate this Agreement without cause by providing to the other party not less than 3 calendar month's notice in writing.
- 4.5 Termination of this agreement under any of the provisions hereof shall be without prejudice to the rights of the parties' hereto arising prior, or as a result of, such termination.

5. Payments and Invoicing

- 5.1 The Company shall submit invoices from time to time in respect of the Project Services as set down in the Project Fees section of the PROJECT SCHEDULE. Interim payments shall only become due upon the achievement of certain pre-agreed milestones within the Project Services scope, with the balance payable upon completion of the Project Services.
 - 5.1.1 The Company shall be entitled to submit an invoice for milestone payments provided that: (a) such milestone payment is provided for in the Project Fees section of the PROJECT SCHEDULE; and (b) the Client has provided its written acceptance (either in physical or digital form) that the necessary requirements of the Project Services have been met in order to render the milestone payment due and payable.
 - 5.1.2 The Company shall be entitled to submit its final invoice upon completion of the Project Services. Such invoice must be supported by written confirmation (either in physical or digital form) of final acceptance of the Project Services by the Client.
 - 5.1.3 It is understood and accepted by the Client that written confirmation of acceptance of the achievement by the Company of Project Services milestones and final completion represents full and final acceptance, which may not be withdrawn, and authorises the Company to submit its invoice for payment. The Client shall not unreasonably withhold or delay such written confirmation of acceptance. Following acceptance, any subsequent dissatisfaction with the work product should be promptly notified to the Company and is covered by clause 10.2 below.
- 5.2 The Client shall settle all invoices within 14 days of the date of the Company's invoice. In the event of non-payment of the Company's invoices within such time frame, or in the event of any unreasonable withholding or delay of written confirmation of acceptance of milestones achieved to enable milestone payments to be made, the Company shall be entitled to temporarily suspend provision of the Project Services, until such time that the relevant invoice has been settled by the Client, or written confirmation duly received from the Client.
- 5.3 The Client will make payments using bank transfer. The Company shall ensure that the relevant banking details have been advised to the Client as soon as possible, and in any event prior to the date of the first scheduled payment.
- 5.5 All sums payable by the Client to the Company hereunder (i) shall be exclusive of Value Added Tax which shall be charged by the Company (where applicable) in addition at the rate in effect on the date of the invoice.
- 5.6 The Client shall only reimburse expenses reasonably incurred by the Company in the course of performing the Project Services if such claim is supported by all valid receipts and documentation, together with written authorisation from the Client authorising the Company to incur those expenses. All expenses claims must be invoiced separately to claims for Project Services performed.
- 5.8 The Company shall be entitled to charge interest and charges on all overdue accounts as set down in the Late Payment of Commercial Debts (Interest) Act 1998.

6. Substitution

- 6.1 The Company shall initially provide the Personnel designated in the PROJECT SCHEDULE to perform the Project Services.
- 6.2 The Company may send a substitute or delegate to perform part or all of the Project Services, subject to the written agreement of the Client.
- 6.3 Such written agreement of Client shall not be unreasonably withheld or delayed by the Client, and in any event can only be withheld on one of the following bases:
 - 6.3.1 The Client, acting reasonably, is not satisfied that the proposed substitute or delegate possesses the requisite skill, qualifications, expertise or experience to perform the Project Services to the required standard; or
 - 6.3.2 The Client, acting reasonably, is not satisfied that the proposed substitute or delegate will comply with the Company's obligations as provided in Clause 2 herein.

- 6.4 In the event that the Company wishes to send a substitute or delegate, the Company shall (at the Client's request) also provide the originally named Personnel for a period of not more than 1 week to work alongside the proposed substitute/delegate (at no additional cost), in order to ensure a full and complete handover of Project Services work in progress.
- 6.5 Where the Company provides a substitute or delegate under this Agreement, Client shall have no contractual relationship with the substitute or delegate, who is answerable only to the Company. The Company shall be solely responsible for arranging payment to the substitute or delegate.

7. Confidentiality

- 7.1 Both parties will take all necessary steps to ensure that any documents or other materials or data, or other information which are supplied to the other party for the provision of the Project Services and are either clearly marked as confidential or are clearly confidential from the surrounding circumstances, remain confidential to the disclosing party. Such information will only be made available by the parties to those personnel who have a reasonable need to know of it and the documents or other materials and data or other information or copies thereof will not be made available to any third parties.
- 7.2 This Clause 7 shall not apply to any documents or other materials and data or other information which are already in the public domain at the time when they are provided by the disclosing party, and shall cease to apply where either party is required by law to make a disclosure, or if at any time the information becomes public knowledge through no fault of the other party.
- 7.3 Both parties undertake that any information, which is received from the other party in the provision of the Project Services, will be used solely for the purposes of this Agreement.
- 7.4 The Company shall, and shall procure that the Personnel shall, if required to do so by the Client, sign any undertakings to the Client in respect of the Client's confidentiality requirements.
- 7.5 These obligations of confidentiality will remain in force beyond the cessation or other termination of this Agreement.

8. Intellectual Property

- 8.1 All Intellectual Property Rights (IPR) created in materials generated by the Company during the course of the Project Services shall remain the property of the Company until such point that payment is made to the Company in respect of the materials generated during the relevant phase of the Project Services, at which point full IPR ownership passes to the Client.
- 8.2 The Company warrants to the Client that no documents or other material and data or other information and devices or processes will be provided by the Company for use in the Project Services which infringe any third party intellectual property rights.
- 8.3 The Company undertakes to indemnify (without limitation) the Client against all loss and damage sustained or incurred as a result of the Company's breach of the warranty contained in Clause 8.2 above.

9. Relationship of the Parties

- 9.1 Both parties intend and agree that the legal relationship created by this Agreement is one of the provision of freelance independent specialist services. The Company shall not be entitled to any payments under this Agreement in respect of holiday pay, sick pay or any other employee benefits. Under no circumstances shall the Company, nor any of its personnel or agents, represent themselves or hold themselves out as a servants or employees of Client.
- 9.2 Without limitation to the foregoing, the Company hereby undertakes to indemnify the Client against:
- any income tax or primary National Insurance Contributions, including any interest penalties or costs incurred in connection with the Company or the Company's personnel which may at any time be levied or demanded, or assessed on Client by HMRC or other statutory authority in connection with this Agreement; and
 - any and all costs and expenses that Client may incur arising out of or in connection with any claim made by the Company's Personnel (or any substitute or delegate provided in accordance with Clause 6) that they are employed by the Client and entitled to employment rights accordingly.
- 9.3 At the termination or cessation of this Agreement, the Client shall be under no obligation whatsoever to offer further work to the Company and the Company shall be under no obligation whatsoever to accept any further work, if offered.
- 9.4 The Client understands and accepts that the Company is entitled to seek, apply for and accept contracts to supply goods and services to other parties at any time, whether before, during or after the currency of this Agreement.

10. Business Benefit/Risk

- 10.1 The Company will be entitled to the Project Fees upon completion of the Project Services (subject to any milestone payment schedules or provisions specified in the PROJECT SCHEDULE), notwithstanding that completion may occur at an earlier time than originally envisaged by the parties.
- 10.2 Defective work by the Company, or any of its personnel, agents, substitutes, delegates, employees or hired assistance shall be promptly corrected by the Company to the Client's satisfaction at the Company's own cost.
- 10.3 Where any of the Project Services have not been completed to any scheduled date as provided in the PROJECT SCHEDULE, the Company shall use all reasonable endeavours to complete the Project Services as soon as reasonably possible. The Company shall not be entitled to any increase in the Project Fees as a result of extra time spent to complete Project Services, except by means of the Change Order procedure set out under Clause 3 herein.

11. Indemnity and Insurance

- 11.1 Subject to Clauses 11.3 and 11.4 below, the Company shall indemnify the Client against all claims, costs, damages, loss or liability arising directly from the performance or non-performance by the Company of its obligations hereunder, or from any breach of the terms of this Agreement, or from any negligent or unlawful act or omission of the Company relating to the performance of the Project Services.
- 11.2 The Company will indemnify the Client from and against any liability to which the Client may be or become subject as a result of any Company personnel or other individual(s) who from time to time provide services hereunder being deemed to be the employee(s) or worker(s) of the Client (or subject to the PAYE Regulations or National Insurance) or otherwise entitled to any rights or benefits that employees or workers enjoy.
- 11.3 With the exception of any loss or damage sustained or incurred by the Client in respect of (a) death or personal injury caused by the Company's negligence; or (b) fraud on the part of the Company, the Company's liability hereunder shall be limited in aggregate to the sum of £250,000.
- 11.4 Under no circumstances shall the Company be liable hereunder for any of the following categories of loss or damage: loss of profit, loss of revenue, loss of business, loss of contract, loss of goodwill, loss of anticipated savings, or for any category of consequential, special or indirect loss, howsoever incurred.
- 11.5 The Company shall insure with a reputable insurance company against all loss or damage arising under Clause 11.1 above. Such insurance cover shall include employees' liability, public liability and professional negligence. The Client reserves the right to see proof of such insurance cover upon request.

12. Non-solicitation

- 12.1 During the currency of this Agreement and for a period of 6 (six) months thereafter, both parties undertake not to induce or attempt to induce any personnel, agent or employee of the other party, with whom they have come into contact as a result of this Agreement, to leave the other party's employment. Breach of this provision shall render the party in breach to make a payment to the innocent party of a sum equivalent to 30% of the gross annual remuneration of the person induced/solicited.

13. General

- 13.1 The terms of this Agreement represent the entire agreement between the parties, and supersede any previous contractual documents, representations or agreements whether in writing or otherwise.
- 13.2 Should either party fail or delay to exercise any right or remedy, or part of a right or remedy under this Agreement, it will not waive that right or remedy or the further exercise of that right or remedy, or the exercise of any other right or remedy, against the other party.
- 13.3 If any restriction or other provision of this Agreement is declared by any Court to be unenforceable, such part shall be severed from the Agreement and the remaining parts of the Agreement shall remain in full force and effect.
- 13.4 The Agreement may be suspended or terminated forthwith if either party is unable to commence, continue or completely perform its obligations hereunder by reason whether in the United Kingdom or elsewhere, of force majeure including, without limitation, fire, flood, aircraft damage, explosion, electrical failure, strikes, lock-outs, riots, civil commotion or state of national emergency, Government action or any cause whatsoever (whether or not of a similar nature to the foregoing) which is not within that party's control, provided that notice is promptly given to the other party of suspension or termination and stating the event relied upon.
- 13.5 No variation of the terms of this Agreement shall be valid unless in writing and signed by both a Director or legal representative of the Client and a Director or legal representative of the Company.
- 13.6 Except as specifically provided by the clauses herein, this Agreement does not create any right or benefit enforceable by any third party.

- 13.7 Any notice required to be given hereunder shall be sent by either (i) pre-paid first class post (ii) registered post (iii) recorded delivery post (iv) facsimile transmission (v) e-mail transmission. Notice served by post under methods (i), (ii) or (iii) shall be sent to the party to whom it is addressed at their last known address or place of business and shall be deemed to be served on the day following or if that day be a Sunday the second day following that upon which it shall be shown to have been posted. Notice served by facsimile or e-mail transmission under methods (iv) and (v) shall be sent to the party to whom it is addressed at their last known facsimile number or e-mail address respectively, and shall be deemed to be served on the same day unless it can be shown that the facsimile or e-mail transmission did not successfully reach its intended destination.
- 13.8 The Company warrants that any Personnel (including substitute Personnel) supplied under this Agreement have entitlement to live and work in the United Kingdom or such country in which the Project Services are performed, and shall produce proof of such entitlement upon Client's reasonable request.
- 13.9 This Agreement shall be governed and construed in accordance with English Law. Both parties agree that the Courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise in connection with this Agreement.

Adecco have provided our example terms and conditions for our second tier consultancy Statement of Work below:

Project Consultancy Services Agreement G-Cloud

between

Adecco UK Limited, 10 Bishops Square, London, E1 6EG
(the “Company”)

and

NAME
ADDRESS
(the “Contractor”)

| PROJECT SCHEDULE | |
|--------------------|--|
| Project Services | |
| Project Fees | |
| End Client | |
| Expenses | |
| Commencement Date | |
| Estimated End Date | |
| Estimated Duration | |
| Special Provisions | |
| Personnel | |

Dated _____

Dated _____

Signed _____

Signed _____

For and on behalf of the Company

For and on behalf of the Contractor

1. Definitions

- 1.1 “Intellectual Property Rights (IPR)” means any and all patents, patent applications, trade marks, trade mark applications, trade names, registered designs, copyright, database rights or similar intellectual property rights created, developed, subsisting or used in connection with the Project Services (whether in existence at the date hereof or created in the future).
- 1.2 “Project Services” means any goods, services or advice to be provided by the Contractor to the Company for the benefit of the End Client as detailed in the PROJECT SCHEDULE to this Agreement.
- 1.3 “Project Fees” means the agreed consideration, to be paid by the Company to the Contractor for the supply of Project Services, as specified in the PROJECT SCHEDULE to this Agreement.

2. Contractor’s Undertakings

- 2.1 In consideration of the payment of the Project Fees by the Company to the Contractor, the Contractor undertakes to provide the Project Services subject to the terms and conditions of this Agreement.
- 2.2 The Contractor undertakes that it will perform the Project Services to such high level of professional industry standards to be expected at all times, and devote such time, attention, skill and ability to the performance of the Project Services as the Company or End Client may require.

- 2.3 The Contractor will be responsible for, and exercise its own control over how the Project Services are to be completed, where they are to be performed, and will have complete flexibility as to hours worked (subject to Clause 2.6 below). The Contractor recognises that the End Client has a right to review of the progress of the Project Services, and shall use all reasonable endeavours to discuss and agree with the End Client the allocation and execution of the Project Services as necessary.
- 2.4 The Contractor shall take all necessary steps to comply with any timetable or other targets for progress or delivery or completion of any task comprised within the Project Services as agreed in writing between the Contractor and the End Client.
- 2.6 On all occasions that the Contractor provides the Personnel to work on any End Client site from time to time, the Contractor will ensure that the Personnel will observe Health and Safety regulations and will comply with all reasonable requests made by the End Client in relation to data protection, working hours or security.
- 2.7 In the event of any conflict between the terms and conditions contained in Clauses 1 to 13 herein, and any terms and conditions specified in the Project Schedule, the terms contained within the Project Schedule shall take precedence.

3. Change Orders

- 3.1 Due to the nature of the work to be performed by the Company, both parties accept that it may be necessary to agree to alter or adapt the Project Services, and that any additional works required may not be included in the Project Fees. In such event, the parties accept that:
 - 3.1.1 Any changes or additions to the Project Services or the terms of this Agreement will only be valid if agreed in writing by the Company and the Contractor (a "Change Order"). The Contractor is not obliged to perform, and the Company is not obliged to accept, any additional Project Services unless this is the subject of an agreed Change Order.
 - 3.1.2 The Project Fees may be revised in the light of any Change Orders. The Company will inform the Contractor of any proposed changes to the Project Fees in writing. Such changes will not be valid until accepted in writing by the Contractor.
- 3.2 Change Orders may be effective in any writing format agreed between the Company and the Contractor.

4. Duration and Termination

- 4.1 This Agreement shall commence from the Commencement Date specified in the PROJECT SCHEDULE, and shall remain in force until the completion of the Project Services.
- 4.2 Either party may terminate this Agreement with immediate effect by giving written notice to the other party in the event that:
 - 4.2.1 The other party is in breach of this Agreement and fails to remedy such breach (where capable of remedy) within 14 (fourteen) days after being required in writing to do so.
 - 4.2.2 The other party goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed.
- 4.3 In the event that (in the End Client's reasonable opinion) the services of the Contractor's Personnel are unsatisfactory or if the End Client deems that the Personnel's behaviour, attitude or demeanour is unsuitable or prejudicial to the interests of the End Client during the term of this Agreement, the Company may, at the End Client's request, terminate this Agreement forthwith and withhold the payment of any outstanding invoices pending an assessment of the Company's/End Client's loss. The period of assessment will be a maximum of 4 weeks. The Company reserves the right to offset any losses sustained as a result of the Contractor's actions, breach or unsatisfactory performance from monies owed.
- 4.4 Either party shall be entitled to terminate this Agreement without cause by providing to the other party not less than 3 calendar month's notice in writing. In such event the parties will enter into good faith discussions to ascertain and agree any revisions to the delivery of Project Services during the notice period and the corresponding Project Fees that may be claimed.
- 4.5 Termination of this agreement under any of the provisions hereof shall be without prejudice to the rights of the parties' hereto arising prior, or as a result of, such termination.

5. Payments and Invoicing

- 5.1 The Contractor shall submit invoices from time to time in respect of the Project Services as set down in the Project Fees section of the PROJECT SCHEDULE. Interim payments shall only become due upon the achievement of certain pre-agreed milestones within the Project Services scope, with the balance payable upon completion of the Project Services.
 - 5.1.1 The Contractor shall be entitled to submit an invoice for milestone payments provided that: (a) such milestone payment is provided for in the Project Fees section of the PROJECT SCHEDULE; and (b) the End Client has provided its written acceptance (either in physical or digital form) that the necessary requirements of the Project Services have been met in order to render the milestone payment due and payable.

- 5.1.2 The Contractor shall be entitled to submit its final invoice upon completion of the Project Services. Such invoice must be supported by written confirmation (either in physical or digital form) of final acceptance of the Project Services by the End Client.
- 5.2 The Company shall settle all invoices within 30 days of the date of the Contractor's invoice. In the event of non-payment of the Contractor's invoices within such time frame, or in the event of any unreasonable withholding or delay of written confirmation of acceptance of milestones achieved to enable milestone payments to be made, the Contractor shall be entitled to temporarily suspend provision of the Project Services, until such time that the relevant invoice has been settled by the Company, or written confirmation duly received from the End Client.
- 5.3 The Company will make payments using bank transfer. The Contractor shall ensure that the relevant banking details have been advised to the Company as soon as possible, and in any event prior to the date of the first scheduled payment.
- 5.5 All sums payable by the Company to the Contractor hereunder shall be exclusive of Value Added Tax which shall be charged by the Contractor (where applicable) in addition at the rate in effect on the date of the invoice.
- 5.6 The Company shall only reimburse expenses reasonably incurred by the Contractor in the course of performing the Project Services if such claim is supported by all valid receipts and documentation, together with written authorisation from the End Client authorising the Contractor to incur those expenses. All expenses claims must be invoiced separately to claims for Project Services performed.
- 5.8 The Contractor shall be entitled to charge interest at the rate of 2% per annum above the base lending rate for the time being of Barclays Bank plc on any sums due but not paid, from the date payment became due until the actual date of payment. The parties agree that this represents a substantial remedy in the context of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.9 At the request of the Company, the Contractor shall submit to a self-billing arrangement under which self-bill invoices are created by the Company upon receipt of milestone confirmation by the End Client, and upon completion of the Project Services. Details of such an arrangement will be provided by the Company to the Contractor in good time before the first scheduled payment.

6. Substitution

- 6.1 The Contractor shall initially provide the Personnel designated in the PROJECT SCHEDULE to perform the Project Services.
- 6.2 The Contractor may send a substitute or delegate to perform part or all of the Project Services, subject to the written agreement of the End Client.
- 6.3 The Company shall procure that such written agreement of the End Client will not be unreasonably withheld or delayed, and in any event can only be withheld on one of the following bases:
- 6.3.1 The End Client, acting reasonably, is not satisfied that the proposed substitute or delegate possesses the requisite skill, qualifications, expertise or experience to perform the Project Services to the required standard; or
- 6.3.2 The End Client, acting reasonably, is not satisfied that the proposed substitute or delegate will comply with the Contractor's obligations as provided in Clause 2 herein.
- 6.4 In the event that the Contractor wishes to send a substitute or delegate, the Contractor shall (at the End Client's request) also provide the originally supplied Personnel for a period of not more than 1 week to work alongside the proposed substitute/delegate (at no additional cost), in order to ensure a full and complete handover of Project Services work in progress.
- 6.5 Where the Contractor provides a substitute or delegate under this Agreement, the Company shall have no contractual relationship with the substitute or delegate, who is answerable only to the Contractor. The Contractor shall be solely responsible for arranging payment to the substitute or delegate.

7. Confidentiality

- 7.1 Both parties will take all necessary steps to ensure that any documents or other materials or data, or other information which are supplied to the other party for the provision of the Project Services and are either clearly marked as confidential or are clearly confidential from the surrounding circumstances, remain confidential to the disclosing party. Such information will only be made available by the parties to those personnel who have a reasonable need to know of it and the documents or other materials and data or other information or copies thereof will not be made available to any third parties.
- 7.2 This Clause 7 shall not apply to any documents or other materials and data or other information which are already in the public domain at the time when they are provided by the disclosing party, and shall cease to apply where either party is required by law to make a disclosure, or if at any time the information becomes public knowledge through no fault of the other party.
- 7.3 Both parties undertake that any information, which is received from the other party in the provision of the Project Services, will be used solely for the purposes of this Agreement.
- 7.4 The Contractor shall, and shall procure that the Personnel shall, if required to do so by the End Client, sign any undertakings to the End Client in respect of the End Client's confidentiality requirements.
- 7.5 These obligations of confidentiality will remain in force beyond the cessation or other termination of this Agreement.

8. Intellectual Property

- 8.1 All Intellectual Property Rights (IPR) created in materials generated by the Contractor during the course of the Project Services shall pass to the Company upon generation/creation, and will remain in the Company's ownership until such point that payment is made to the Company by the End Client in respect of the materials generated during the relevant phase of the Project Services, at which point full IPR ownership passes to the End Client.
- 8.2 The Contractor warrants to the Company that no documents or other material and data or other information and devices or processes will be provided by the Contractor for use in the Project Services which infringe any third party intellectual property rights.
- 8.3 The Contractor undertakes to indemnify (without limitation) the Company against all loss and damage sustained or incurred by the Company or End Client as a result of the Contractor's breach of the warranty contained in Clause 8.2 above.

9. Relationship of the Parties

- 9.1 Both parties intend and agree that the legal relationship created by this Agreement is one of the provision of freelance independent specialist services. The Contractor shall not be entitled to any payments under this Agreement in respect of holiday pay, sick pay or any other employee benefits. Under no circumstances shall the Contractor, nor any of its personnel or agents, represent themselves or hold themselves out as a servants or employees of the Company or End Client.
- 9.2 Without limitation to the foregoing, the Contractor hereby undertakes to indemnify the Company against:
- any income tax or primary National Insurance Contributions, including any interest penalties or costs incurred in connection with the Contractor or the Contractor's personnel which may at any time be levied or demanded, or assessed on the Company or End Client by HMRC or other statutory authority in connection with this Agreement; and
 - any and all costs and expenses that the Company or End Client may incur arising out of or in connection with any claim made by the Contractor's Personnel (or any substitute or delegate provided in accordance with Clause 6) that they are employed by the Company or End Client, and entitled to employment rights accordingly.
- 9.3 At the termination or cessation of this Agreement, the Company shall be under no obligation whatsoever to offer further work to the Contractor, and the Contractor shall be under no obligation whatsoever to accept any further work, if offered.
- 9.4 The Company understands and accepts that the Contractor is entitled to seek, apply for and accept contracts to supply goods and services to other parties at any time, whether before, during or after the currency of this Agreement.

10. Business Benefit/Risk

- 10.1 The Contractor will be entitled to the Project Fees upon completion of the Project Services (subject to any milestone payment schedules or provisions specified in the PROJECT SCHEDULE), notwithstanding that completion may occur at an earlier time than originally envisaged by the parties.
- 10.2 Defective work by the Contractor, or any of its personnel, agents, substitutes, delegates, employees or hired assistance shall be promptly corrected by the Contractor to the End Client's satisfaction at the Contractor's own cost.
- 10.3 Where any of the Project Services have not been completed to any scheduled date as provided in the PROJECT SCHEDULE, the Contractor shall use all reasonable endeavours to complete the Project Services as soon as reasonably possible. The Contractor shall not be entitled to any increase in the Project Fees as a result of extra time spent to complete Project Services, except by means of the Change Order procedure set out under Clause 3 herein.

11. Indemnity and Insurance

- 11.1 Subject to Clause 11.3 below, the Contractor shall indemnify the Company against all claims, costs, damages, loss or liability arising directly from the performance or non-performance by the Contractor of its obligations hereunder, or from any breach of the terms of this Agreement, or from any negligent, reckless or unlawful act or omission of the Contractor relating to the performance of the Project Services.
- 11.2 The Contractor will indemnify the Company and the End Client from and against any liability to which the Company or End Client may be or become subject as a result of any Contractor personnel or other individual(s) who from time to time provide services hereunder being deemed to be the employee(s) or worker(s) of the Company or End Client (or subject to the PAYE Regulations or National Insurance), or otherwise entitled to any rights or benefits that employees or workers enjoy.

- 11.3 With the exception of any loss or damage sustained or incurred by the Company or End Client in respect of (a) death or personal injury caused by the Contractor's negligence; or (b) fraud on the part of the Contractor, the Contractor's liability hereunder shall be limited in aggregate to the sum of £1,000,000.
- 11.4 The Company shall insure with a reputable insurance company against all loss or damage arising under this Clause 11. Such insurance cover shall include employees' liability, public liability and professional negligence. The Company reserves the right to see proof of such insurance cover upon request, and shall be entitled to withhold payments hereunder until such proof of insurance cover is submitted by the Contractor.

12. Non-solicitation

- 12.1 Throughout the term of this Agreement and for a period of 6 months thereafter, the Contractor will not, and will procure that any Personnel supplied will not, other than with the written consent of the Company, provide services the same as or similar to the Project Services in any capacity, either directly or indirectly, to:
- 12.1.1 the End Client;
 - 12.1.2 any of the End Client's subsidiary or associate companies in respect of which it provided Project Services during the course of the Agreement; and
 - 12.1.3 any customer of the End Client with whom the Contractor has had direct dealings (including in the provision of the Project Services) during the course of the Agreement.
- 12.2 The Contractor acknowledges and agrees that:
- 12.2.1 each of the sub-paragraphs of clause 12.1 above constitutes an entirely separate, severable and independent covenant and restriction, which may be enforced by the Company; and
 - 12.2.2 the duration, extent and application of each of the restrictions contained in clause 12.1 above are fair, reasonable and necessary for the protection of the goodwill and business interests of the Company.
- 12.3 In the event of a breach of clause 12.1 by the Contractor, a fee in the amount of 20% of the annualised Project Fees payable to the Contractor shall become immediately payable by the Contractor to the Company. This fee represents a genuine pre-estimate of the loss that would be suffered by the Company as a result of such breach.

13. General

- 13.1 The terms of this Agreement represent the entire agreement between the parties, and supersede any previous contractual documents, representations or agreements whether in writing or otherwise.
- 13.2 Should either party fail or delay to exercise any right or remedy, or part of a right or remedy under this Agreement, it will not waive that right or remedy or the further exercise of that right or remedy, or the exercise of any other right or remedy, against the other party.
- 13.3 If any restriction or other provision of this Agreement is declared by any Court to be unenforceable, such part shall be severed from the Agreement and the remaining parts of the Agreement shall remain in full force and effect.
- 13.4 The Agreement may be suspended or terminated forthwith if either party is unable to commence, continue or completely perform its obligations hereunder by reason whether in the United Kingdom or elsewhere, of force majeure including, without limitation, fire, flood, aircraft damage, explosion, electrical failure, strikes, lock-outs, riots, civil commotion or state of national emergency, Government action or any cause whatsoever (whether or not of a similar nature to the foregoing) which is not within that party's control, provided that notice is promptly given to the other party of suspension or termination and stating the event relied upon.
- 13.5 No variation of the terms of this Agreement shall be valid unless in writing and signed by both a Director or legal representative of the Company and a Director of the Contractor.
- 13.6 Except as specifically provided by the clauses herein, this Agreement does not create any right or benefit enforceable by any third party.
- 13.7 The Contractor and the Personnel have agreed to opt out of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 and hereby give notice to the Company to this effect pursuant to Regulation 32 of those Regulations.
- 13.8 Any notice required to be given hereunder shall be sent by either (i) pre-paid first class post (ii) registered post (iii) recorded delivery post (iv) facsimile transmission (v) e-mail transmission. Notice served by post under methods (i), (ii) or (iii) shall be sent to the party to whom it is addressed at their last known address or place of business and shall be deemed to be served on the day following or if that day be a Sunday the second day following that upon which it shall be shown to have been posted. Notice served by facsimile or e-mail transmission under methods (iv) and (v) shall be sent to the party to whom it is addressed at their last known facsimile number or e-mail address respectively, and shall be deemed to be served on the same day unless it can be shown that the facsimile or e-mail transmission did not successfully reach its intended destination.
- 13.9 This Agreement may not be assigned or transferred without the prior written consent of the other party, save that the Company may, without the consent of the Contractor, assign all of its rights and obligations under this Agreement to any of its Group companies (as defined by section 1261 of the Companies Act 2006).

- 13.10 The Contractor warrants that any Personnel (including substitute Personnel) supplied under this Agreement have entitlement to live and work in the United Kingdom or such country in which the Project Services are performed, and shall produce proof of such entitlement upon the Company's request.
- 13.11 This Agreement shall be governed and construed in accordance with English Law. Both parties agree that the Courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise in connection with this Agreement.

SCHEDULE THREE – G-CLOUD SPECIAL CONDITIONS

END CLIENT DATA

- The Contractor shall not delete or remove any proprietary notices contained within or relating to the End Client Data.
- The Contractor shall not store, copy, disclose, or use the End Client Data except as necessary for the performance by the Contractor of its obligations under this Call-Off Agreement or as otherwise expressly approved by the End Client.
- The Contractor shall ensure that any system on which the Contractor holds any End Client Data, including back-up data, is a secure system that complies with the Contractor security policy

OFFICIAL SECRETS ACTS

- The Contractor shall comply with and shall ensure that the Personnel comply with, the provisions of:
 - the Official Secrets Act 1911 to 1989; and
 - Section 182 of the Finance Act 1989.
- In the event that the Contractor or the Personnel fails to comply with this Clause, the Company reserves the right to terminate this Agreement at the End Client's request with immediate effect by giving notice in writing to the Contractor.

TERMINATION WITHOUT CAUSE

- Clause 4.4 of the Agreement shall be amended to read as follows: "Either party shall be entitled to terminate this Agreement without cause by providing to the other party not less than 10 working days' notice in writing. In such event the parties will enter into good faith discussions to ascertain and agree any revisions to the delivery of Project Services during the notice period and the corresponding Project Fees that may be claimed."

TERMINATION FOR REPEATED DEFAULT

- If there are two or more Defaults (of a similar nature) that will be deemed a breach for Material Breach. Where the End Client considers and gives notice to the Company that the Contractor has committed a repeated Default in relation to this Agreement or any part thereof (including any part of the Project Services) and believes that the Default is remediable, then the Company shall be entitled to serve a notice on the Contractor:
 - specifying that it is a formal warning notice;
 - giving reasonable details of the breach; and
 - stating that such breach is a breach which, if it recurs or continues, may result in a termination of this Agreement or that part of the Project Services affected by such breach.
- If, thirty (30) Working Days after service of a formal warning notice as described above, the Contractor has failed to demonstrate to the satisfaction of the End Client that the breach specified has not continued or recurred and that the Contractor has put in place measures to ensure that such breach does not recur, then the End Client may deem such failure to be a Material Breach not capable of remedy, and this shall entitle the Company to terminate this Agreement at the End Client's request with immediate effect by giving notice in writing to the Contractor.
- For the purposes of this section, "Default" shall mean any breach of the obligations of the Contractor (including any fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Contractor in connection with or in relation to this Agreement.

CONSEQUENCES OF SUSPENSION, TERMINATION AND EXPIRY

- Where the Company has the right to terminate this Agreement, it may in addition elect to suspend this Agreement and its performance.
- Notwithstanding the service of a notice to terminate this Agreement or any part thereof, the Contractor shall continue to provide the Project Services until the date of expiry or termination (howsoever arising) of this Agreement (or any part thereof) or such other date as required by the End Client.
- Within ten (10) Working Days of the earlier of the date of expiry or termination (howsoever arising) of this Agreement, the Contractor shall return (or make available) to the End Client:
 - any data (including (if any) End Client Data), End Client Personal Data and End Client Confidential Information in the Contractor's possession, power or control, either in its then current format or in a format nominated by the End Client (in which event the Company will reimburse the Contractor's pre-agreed and reasonable data conversion expenses), together with all training manuals, access keys and other related documentation, and any other information and all copies thereof owned by the End Client; and
 - any sums prepaid in respect of the Project Services not provided by the date of expiry or termination (howsoever arising) of this Agreement.
- Subject to the section below (Liability), where the Company terminates this Call-Off Agreement under Clause 4.4 (Termination without Cause), the Company shall indemnify the Contractor against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of this Call-Off Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Clause 4.4 (Termination without Cause).

LIABILITY

- Clause 11.3 of the Agreement shall be amended to read as follows:

11.3.1 The annual aggregate liability of either Party for all defaults resulting in direct loss of or damage to the property of the other Party (including technical infrastructure, assets, equipment or IPR but excluding any loss or damage to the End Client Data or End Client Personal Data) under or in connection with this Agreement shall in no event exceed £1,000,000.

11.3.2 The annual aggregate liability for all defaults resulting in direct loss, destruction, corruption, degradation or damage to the End Client Data or the End Client Personal Data or any copy of such End Client Data, caused by the Contractor's default under or in connection with this Agreement shall in no event exceed £1,000,000.

11.3.3 The annual aggregate liability under this Agreement of either Party for all defaults shall in no event exceed £1,000,000.

11.3.4 The liability of the Contractor in respect of (a) death or personal injury caused by the Contractor's negligence; or (b) fraud on the part of the Contractor, shall be unlimited.

INSURANCE

- Minimum Insurance Period: Six (6) Years following the expiration or earlier termination of this Agreement.
- To comply with its obligations under this Agreement and as a minimum, the Contractor shall ensure that:
 - professional indemnity insurance is held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Project Services and that such professional indemnity insurance has a minimum limit of indemnity of one million pounds sterling (£1,000,000) for each individual claim or such higher limit as the Company may reasonably require (and as required by Law) from time to time;
 - employers' liability insurance with a minimum limit of five million pounds sterling (£5,000,000) or such higher minimum limit as required by Law from time to time.

FORCE MAJEURE

- Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Agreement to the extent that such delay or failure is a result of Force Majeure.
- Notwithstanding the above, each Party shall use all reasonable endeavours to continue to perform its obligations under the Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Agreement for a period in excess of one hundred and twenty (120) calendar days, either Party may terminate this Agreement with immediate effect by notice in writing to the other Party.

ADDITIONAL G-CLOUD SERVICES

- The Company may, at the End Client's request, require the Contractor to provide additional Project Services. The Contractor acknowledges that the End Client is not obliged to take any additional Project Services from the Contractor and that there is nothing preventing the End Client from receiving services that are the same as or similar to the Project Services from any third party.
- The Contractor shall provide additional Project Services in accordance with any relevant Implementation Plan(s) and the Contractor shall monitor the performance of such additional Project Services against the Implementation Plan(s).