



Terms and Conditions

Verbena Digital Ltd

April 2024

Verbena Digital G Cloud 12 Terms and Conditions

In these terms and conditions, Verbena Digital Limited is referred to as “Verbena Digital” and the party to whom the Proposal is addressed is referred to as “the Client” (collectively “**the Parties**” or individually the “**Party**”), the services and deliverables are detailed in the Proposal. The offer outlined in our Proposal is open for acceptance by the Client for a period of 30 days after which the offer shall lapse, unless otherwise notified by Verbena Digital.

1. The Agreement

1.1 The agreement made by the Parties comprises:

1.1.1 The Completed Order Form in connection with the Services (the “**Order Form**”), the Call-Off Contract in connection with the Services, and Terms and Conditions, as defined in the Crown Commercial Service (CCS) G-Cloud 14 Framework Agreement (RM1557.11);

1.1.2 Verbena Digital’s written proposal issued to the Client in connection with the Services (the “**Proposal**”);

1.1.3 the Schedule of Charges where one has been included in the Proposal; 1.1.4 these terms and conditions; and

1.1.5 any royalty agreement entered into in writing between the Parties (“**Royalty Agreement**”); collectively the “**Agreement**” and shall be interpreted in the above order of priority in the event of any inconsistency or conflict with documents appearing later in the list taking priority over documents appearing earlier in the list.

1.2 The Agreement shall be deemed accepted by the Client upon the first of (i) the Client’s signature of the Agreement, (ii) the Client’s instruction to commence work, (iii) Verbena Digital starting work at the Client’s site or (iv) the Client’s payment of any agreed fee.

1.3 Variations or additions to the Agreement can be made. However, both Parties must agree to the variation or addition in writing.

2. Provision of Services and Deliverables

2.1 Verbena Digital undertakes that it will perform the services and supply the deliverables expressly described in the Proposal (“**the Services**”) with reasonable skill and care and in a professional and timely manner.

2.2 Verbena Digital will use practitioners with appropriate skills and experience for the provision of the Services. Verbena Digital may only replace any practitioner already working on a project with another of similar skills and experience.

2.3 Verbena Digital agrees to deliver the Services within an agreed and reasonable time. Both Parties will use all reasonable endeavours to meet any target date, project plan or timetable referred to in the Agreement (“**Date**”).

2.4 The Client acknowledges and agrees that where Verbena Digital designs, builds, develops, delivers, customises or integrates any product or other deliverable provided as a part of the Services (including without limitation software) it does so as a consultant providing services and not as a supplier or manufacturer of goods. Any supply of goods by Verbena Digital shall be governed by Verbena Digital’s Standard Terms of Supply.

3. Client's Obligations

3.1 Verbena Digital may need access to the Client's facilities, information, tools and resources for and during the provision of the Services. If so requested by Verbena Digital, the Client, without charge to Verbena Digital, will provide access to these to the extent reasonably requested by Verbena Digital and shall co-operate with Verbena Digital to the extent reasonably required to achieve the objectives set out in the Agreement.

3.2 The Client acknowledges that, in giving any opinion or advice in the course of provision of the Services, Verbena Digital relies on the information about the Client, or any project described in the Proposal provided to it by the Client, and does not seek to establish the reliability of such information; accordingly, the Client:

3.2.1 undertakes to provide complete and accurate information about itself and about any such project which is or may be relevant to the Services and to provide such other information as Verbena Digital may reasonably request; and

3.2.2 warrants that any such information provided is accurate, complete and not misleading.

4. Fees and Payment

4.1 The Agreement sets out the proposed fees, costs and expenses for the Services ("**the Price**"). Fees based on time and materials or on an estimate do not constitute a fixed price. Verbena Digital may increase the Price (i) on each occasion that the meeting of any Date is delayed by the Client for 3 months or more; and (ii) to reflect any variation to the Proposal requested by the Client; and (iii) to reflect any increase in raw materials, supplier costs or any currency fluctuation. Any such variation shall be recorded in writing and signed by both parties.

4.2 All fees, costs and expenses referred to in the Agreement are exclusive of VAT.

4.3 Subject to clause 4.4, unless otherwise set out in the Proposal the Price shall be payable on completion of the Services.

4.4 Verbena Digital may invoice the Client for Services performed, notwithstanding completion of the Services has been delayed by the Client's failure to meet any Date.

4.5 Unless otherwise agreed in writing, the Client shall pay all fees, costs and expenses related to the Services upon presentation of Verbena Digital's invoice, including any invoice submitted in accordance with Clause 4.4 above.

4.6 If any invoice is not paid in full and cleared funds within 30 days from presentation, Verbena Digital may suspend performance of the Services and / or charge interest at the rate provided by the Late Payment of Commercial Debts (Interest) Act 1998 on any overdue amount from the due date until the date of actual payment of the overdue amount, whether before or after judgment.

5. Limitations and Exclusions

5.1 Each Party accepts liability without limit for death or personal injury to any person due to its negligence or the negligence of its employees.

5.2 In respect of any liability other than those falling within clause 5.1 above and subject to clause 5.4, each Party's total liability arising out of or in connection with the Agreement shall not exceed in aggregate 100% of the total fees payable by the Client under this Agreement.

5.3 Neither Party shall in any circumstances be liable to the other whether in contract, tort (including negligence) or otherwise for any loss of profit, loss of contracts, loss of benefit, loss of production, loss of availability, loss of data, loss of anticipated savings, loss of reputation, loss of goodwill or loss of use suffered or incurred directly or indirectly by the other Party, any consequential, indirect or special loss or damage howsoever arising and of whatsoever nature or any punitive or exemplary damages.

5.4 Nothing in this Clause 5 shall affect or limit the Client's obligation to pay sums properly due under the Agreement.

5.5 The express terms of this Agreement shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.

5.6 Verbena Digital shall not in any circumstances be liable to the Client for any loss or damage resulting from a modification of, adjustment or repair to the results of the Services or from any use by the Client of such results in a manner outside the reasonable contemplation of the Parties at the time the Agreement was made. Any such modification, adjustment, repair or use shall be undertaken at the Client's sole risk.

5.7 Verbena Digital shall have no liability to the Client to the extent that such liability would not have arisen but for a breach by the Client of its obligations under the Agreement and without limiting the foregoing Verbena Digital shall not be liable for any failure to meet any Date if such failure would not have occurred but for the Client's failure to meet any Date or for the Client's breach of the Agreement.

5.8 Verbena Digital shall not be liable for any defect, delay or other loss whatsoever in, of or arising from equipment, hardware or software or other items or made available to Verbena Digital by the Client ("Client Materials") which shall be held, worked on and used at the Client's risk.

5.9 Verbena Digital shall not be responsible for any loss, damage, cost or expense arising from, or from any defect, mistake or inaccuracy in any Client Materials or information specified or supplied by the Client; any loss, damage, cost or expense arising there from shall be for the sole account of the Client.

5.10 Verbena Digital's liability for Client Materials specified or provided to Verbena Digital by the Client or otherwise held or worked on by Verbena Digital on behalf of the Client shall be limited to the lesser of the basic raw material cost of the materials or an independent external valuation of such materials.

5.11 Nothing in this Agreement shall limit a Party's liability for fraud, fraudulent misrepresentation or deceit.

6. Intellectual Property and Rights of Use

6.1 Intellectual Property ("IP") means patents, rights to inventions, registered designs, copyright and related rights, database rights, design rights, topography rights, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual property rights of any nature including all applications, all rights to apply for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

6.2 IP and rights to IP which the relevant Party can demonstrate is either already held by it at the date of the Agreement or at any time on or before the relevant time has been acquired or developed by it

after the date of this Agreement entirely independently of the Services and of use of any Confidential Information of the other Party, and all modifications thereto and derivative versions thereof created at any time ("**Background IP**") shall remain the property of that Party.

6.3 The Client hereby grants to Verbena Digital a royalty-free, non-exclusive, non-transferable licence to use the Client's Background IP as required to allow Verbena Digital to perform its obligations under the Agreement.

6.4 Subject to clause 6.5, to signature of the Royalty Agreement and to payment by the Client of the Price in full and cleared funds, Verbena Digital shall assign to the Client IP, other than Background IP, created or developed by Verbena Digital exclusively in the course of performance of the Services ("**Foreground IP**").

6.7 The Client shall grant to Verbena Digital a royalty-free, non-exclusive, non-transferable licence to use the Foreground IP for Verbena Digital's marketing purposes; Verbena Digital shall submit such marketing materials to the Client for approval in advance (such approval not to be unreasonably withheld or delayed).

6.8 Where the Deliverables comprise or include software the IP in which is Background IP, the Client shall not unless otherwise agreed in writing:

6.8.1 copy adapt or reverse compile the whole or any part of the software other than solely for the purposes expressly permitted by and in accordance with section 50B(2) or section 296A(1) of the Copyright Designs and Patents Act 1998;

6.8.2 assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the software or use the software on behalf of any third party or make available the same to any third party;

6.8.3 remove or alter any copyright or other proprietary notice on any permitted copy of the software;

6.8.4 receive or be entitled to the source code.

7. Forecasts and Recommendations / Third Party Services

7.1 Statements made by Verbena Digital relating to the Services, and all recommendations, opinions surveys and forecasts (together "Forecasts") in the Agreement, or any report, presentation or other communication are made in good faith on the basis of information available at the time and such Forecasts are addressed only to the Client. Whilst Verbena Digital will use reasonable skill and care in the preparation of such Forecasts, neither Verbena Digital nor any practitioner employed or engaged by Verbena Digital shall have any liability in relation to losses or damage incurred as a result of or in relation to the Client's reliance on such opinions or recommendations and Client acknowledges that such liability is a business risk of the Client.

7.2 Implementation of the results of the Services and the Client's completion of any project of which the Services form part may require the involvement or supervision of or giving advice to third parties engaged by the Client. Verbena Digital strongly recommends that the Client obtain independent advice before entering into any legally binding commitment with any such third parties. Verbena Digital will not be responsible for any losses arising from the Client's decision not to follow Verbena's recommendation.

7.3 Verbena Digital may, during its performance of the Services, make statements about or recommendations of third-party products, software, equipment or services. Verbena Digital gives no warranty in relation to such products, software, equipment or services, and the Client shall rely solely on the warranties and remedies provided by any such third party with whom it may contract.

7.4 Without limiting any other provision of these terms and conditions, Verbena Digital will use reasonable endeavours to assist the Client to minimise risk and additional cost or delay relating to the involvement in the Client's project of any third parties involved in manufacturing or the provision of other services or goods to the Client: in no circumstance shall Verbena Digital be liable for any failure by any such third party to supply goods or perform services within particular timescales or to particular specifications.

7.5 Where the Services include the provision of software, the Client acknowledges that all software contains errors or defects and that the presence of errors or defects in software in particular does not mean that the Services have been performed negligently or in breach of contract. Accordingly, debugging, error correction or other remedial work will be at the Client's cost.

8. Termination

8.1 Either Party may at any time and without cause terminate the Agreement on giving 30 days' written notice of termination to the other Party.

8.2 Upon termination under clause 8.1, the Client shall pay Verbena Digital all sums due in respect of the Services provided and agreed expenses incurred prior to termination.

8.3 Either Party may terminate the Agreement forthwith by written notice if the other Party commits an act of bankruptcy or goes into liquidation or is put into liquidation (other than for a proper commercial purpose and whilst solvent) or a receiver is appointed or an administration order is made in respect of it.

8.4 Either Party may terminate the Agreement forthwith by written notice if the other Party commits a material breach of the Agreement and has failed to remedy the breach within 30 days of receipt of a written notice from the other Party identifying that the breach has occurred.

8.5 Termination shall not affect any accrued rights or liabilities arising out of the Agreement.

9. Non-Solicitation

The Client shall not, either during the provision of the Services or for a period of six months from completion, employ or offer employment to any member of Verbena Digital's project team. This shall not prevent the Client from employing or offering employment to a member of Verbena Digital's project team who responds to an advertisement in the media.

10. Third Party Rights

No person or entity other than the Client shall have any rights to enforce any of the terms of the Agreement against Verbena Digital.

11. Assignment

Neither Party shall assign the Agreement without the other Party's prior written consent (not to be unreasonably withheld or delayed).

12. Publicity

12.1 The Client agrees that Verbena Digital may: 12.1.1 refer to the Client on its client lists; and

12.1.2 refer to the nature of the Services contracted for provided that the Client is not identified.

12.2 Neither Party shall make any statement about the Services to the press or the public without the other Party's written consent.

13. Waiver

No failure, delay or indulgence by either Party in exercising any power or right under the Agreement shall operate as a waiver of that power or right.

14. Notices

14.1 Where the Client is required to give notice in writing to Verbena Digital, the notice must be addressed to the individual who signed the Agreement at the address set out in the Agreement with a copy to the Managing Director at the then current registered office address of Verbena Digital.

14.2 Where Verbena Digital is required to give notice in writing to the Client, the notice will be addressed to the person who signed the Agreement (or that person's successor) at the address stated in the Agreement (or current place of business if Verbena Digital knows this to be different).

14.3 All notices in writing must be sent by post or delivered by hand to the addressee. 14.4 In the absence of evidence of earlier delivery:

14.4.1 a notice sent by post will be deemed to have been served two business days after posting;

14.4.2 a notice delivered by hand will be deemed received on delivery.

15. Force Majeure

15.1 Neither Verbena Digital nor the Client will be liable for any failure to perform their obligations, or delay in the performance of their obligations, if the failure or delay is due to causes outside their reasonable control, 'including, without limitation

- a) acts of God, flood, drought, earth or other natural disaster;
- b) new epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict in position of sanctions, embargo or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction quota or prohibition (or failing to grant unless so licenced or consent);
- f) Collapse of buildings, fire explosion or accident and any labour or trade dispute, strikes, industrial action or lockouts;
- g) none performance;
- h) Interruption or failure of utility service.

15.2 Provided it has complied with the Clause 15.4 below, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Clause, the effective parties shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligation. The time for performance of such obligations shall be extended accordingly.

15.3 The corresponding obligations of the other part will be suspended and its time for performance of such obligations extended to the same extent as those of the effected party.

15.4 The affected party shall:

- a) As soon as reasonably practicable after the start of the Force Majeure event [but no later than 7 days] from its start, notify the other party in writing of the Force Majeure event, the date on which it started, its likely or potential duration and the effect of the Force Majeure event on its ability to perform any of its obligations under the agreement; and
- b) Use all reasonable endeavours to mitigate the effect of the force measure event on the performance of its obligations.

15.5 If the Force Majeure event prevents, hinders or delays the affected parties' performance of its obligations for a continuous period of more than 2 weeks, the party not affected by the force measure event may terminate this Agreement by giving 2 weeks written notice to the affected party.

16. Severability

If any provision or part of a provision of the Agreement is held to be invalid, illegal or unenforceable that part shall be severed, and the remaining provisions shall continue to be valid and enforceable as if the Agreement had been executed with the invalid provision omitted.

17. Entire Agreement

This Agreement, as defined in Clause 1 above, constitutes the entire and only agreement in relation to the Services and deliverables and supersedes all prior agreements, representations, understandings or discussions. Any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document do not form part of this Agreement. The Client acknowledges that any agreement, representation, understanding or discussion it wishes to rely upon has been recorded in the Agreement and that no reliance has been placed upon any agreement, representation, understanding or discussion that has not been embodied in this Agreement.

18. Applicable Law & Jurisdiction

The Agreement shall be governed by and construed in accordance with the laws of England and Wales and any dispute arising out of or in connection with the Agreement will be subject to the exclusive jurisdiction of the English Courts.