

# G Cloud 14

Terms & Conditions

## **G-Cloud 14**

### **Terms and Conditions**

Our standard terms of engagement are included below. At embracent, we have two key documents that together form the basis of our commercial agreements with all of our clients. These are:

1. A Master Services Agreement (MSA), signed by both parties, setting out the standard terms of business between us; and
2. A Schedule that sits underneath the MSA and sets out the specific services, scope, timescales, resources and fee arrangements. This Schedule is also signed by both parties prior to commencement of a specific project or engagement

For any queries regarding our Terms of Business and how they fit within the G-Cloud 14 Framework and Call Off arrangements, please contact us at:

[GCloud@embracent.com](mailto:GCloud@embracent.com)

## Master Consultancy Services Agreement

This Master Consultancy Services Agreement is made between:

- A **embracent Limited** a company incorporated in England & Wales (registration number 09920398) whose registered office and trading address is at Phoenix House, 18 King William Street, London, EC4N 7BP ('the Consultancy') and
- B a company incorporated in England & Wales (registration number ) whose registered office and trading address is ('the Client').

The Consultancy agrees to supply, and the Client agrees to engage the Consultancy's Services on the following terms:

### 1. Nature of this Agreement

- 1.1 This is a Master Agreement and defines the terms under which the Consultancy will undertake such Services for the Client as may be agreed between the parties from time to time. No changes will apply unless the same expressly refer to this Master Agreement and are in writing and signed by both parties.
- 1.2 Entering this Agreement does not of itself oblige the Client to offer any work to the Consultancy nor for the Consultancy to provide or the Client to accept or pay for any particular consultancy services. Neither party wishes to create or imply any mutuality of obligation between themselves either in the course of or between any performance of the services or during any notice period.
- 1.3 Where it is agreed between the parties that any Services are to be provided, a schedule in the form annexed to this Agreement setting out the nature of the Services, the charging basis, and any other material terms (a 'Schedule') will be produced by the Consultancy and provided to the Client.
- 1.4 On receipt of a Schedule,
  - 1.4.1 if the Client accepts its terms, the Client will promptly sign and return one copy to the Consultancy.
  - 1.4.2 if the Client does not accept its terms, the Client will promptly advise the Consultancy.
- 1.5 Upon a Schedule being signed by both parties, it will become a contract binding on the parties.
- 1.6 A contract formed on the basis of a Schedule referencing these terms is governed only by these terms and by no others, except where both parties expressly agree in writing with reference to these terms. In particular, it is agreed that any purchase order, delivery note or other such document from either party is intended for administrative purposes only, and that notwithstanding its wording, neither a Purchase Order, delivery note nor the content therein will have any legal effect. Save to the extent expressly provided, all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 1.7 Either party may request change to the nature or scope of Services covered by a Schedule. Any such request shall be sufficiently detailed to enable the other party to assess the impact of the proposed change. No such change will become effective until agreed in writing between the parties.
- 1.8 This Agreement is not exclusive; the Client acknowledges that the Consultancy enters this Agreement in the course of its business of providing services to its customers, and the Consultancy is and remains at liberty to also provide services to third parties; it is the Consultancy's responsibility to ensure it does not enter any third-party engagement which might cause a conflict of interest to arise. The Client is and remains at liberty to engage services (including similar services) from third parties. The Consultancy reserves the right to decline to provide any advice and assistance outside the scope of the Services as specified in Schedules agreed between the parties, even if the Consultancy may previously have provided such additional advice and assistance.

### 2. Services

- 2.1 The Consultancy will provide Services as agreed from time to time in Schedules, so far as is reasonably practicable within any agreed timescale, and with all proper skill and care.
- 2.2 As an independent professional,
  - 2.2.1 the Consultancy will not require or be subject to supervision direction or control as to its daily activities or the manner of performance thereof, and itself accepts the responsibility for the proper provision of Services.
  - 2.2.2 for the avoidance of doubt, the Client shall not (and does not have the right to) exercise supervision, direction or control as to the manner of performance of the Services.
  - 2.2.3 it is the Consultancy's responsibility to maintain adequate Professional Indemnity,

Employer's Liability (where legally required), and Public Liability insurance.

- 2.3 The Consultancy is responsible for maintaining reasonable continuity in personnel providing Services on its behalf,
  - 2.3.1 but reserves the right in its sole discretion to make changes from time to time.
  - 2.3.2 no additional charge will be made for any handover period.
  - 2.3.3 the Consultancy remains responsible.
    - 2.3.3.1 for defining the scope of (and, if any supervision and direction is required, for providing such supervision and direction of) any Services to be performed by a substitute.
    - 2.3.3.2 in any event for all Services performed on its behalf.
- 2.4 Where the Consultancy's charges are on a time and materials basis, or where any individual who will provide Services is named in a Schedule (or the Client has a reasonable expectation that the Services will primarily be provided by a specific individual), it is the Consultancy's responsibility to ensure:
  - 2.4.1 that the relevant skills and experience of any replacement personnel remain commensurate with the fee rates charged.
  - 2.4.2 that any replacement personnel have the necessary skills to perform the Services without the need for additional training by the Client.
- 2.5 It is the Client's responsibility:
  - 2.5.1 to afford the Consultancy with such access, information and staff cooperation as the Consultancy may reasonably require for the proper performance of any Services.
  - 2.5.2 to ensure that all relevant Health and Safety policies, risks, information and relevant statutory compliance measures are disclosed to the Consultancy.
  - 2.5.3 to ensure that operating practices in place to manage health & safety and risk of infection relating to COVID-19 are communicated to the Consultancy before any services commence.

### 3. Confidentiality

- 3.1 Unless the parties have signed a separate agreement containing more specific provisions in relation to confidentiality (in which case the provisions of such agreement will continue to apply in lieu of this clause), each party:
  - 3.1.1 will keep any confidential information disclosed by the other secret.
  - 3.1.2 on termination (or sooner if required) will at the option of the owner thereof return or destroy such confidential information.
- 3.2 Neither party may use or take advantage of any such confidential information without the discloser's consent, even after the end of this Agreement.
- 3.3 This obligation does not apply to:
  - 3.3.1 information known to the receiver before disclosure by the other party, and free of any obligation of confidentiality.
  - 3.3.2 information independently developed or acquired by the receiver, without reference or access to the discloser's confidential information, and free of any obligation of confidentiality.
  - 3.3.3 information which becomes public knowledge without fault on the part of the receiver.
  - 3.3.4 disclosures made to the extent required by some applicable legal or regulatory requirement.

### 4. Copyright and Intellectual Property Rights

- 4.1 'Deliverable' means a work produced by the Consultancy in the course of Services for delivery to the Client.
  - 4.1.1 Where pre-existing works are, with the prior knowledge and consent of the Client, incorporated in any Deliverable, the Client has non-exclusive irrevocable world-wide royalty free license to use modify and distribute such pre-existing works, but only as part of the Deliverable; all other rights in the pre-existing works are reserved.
  - 4.1.2 Subject thereto, all rights in any Deliverable pass to the Client upon payment of all fees due to the Consultancy which relate to that Deliverable, and the Consultancy will execute a formal assignment thereof on request by the Client.

- 4.2 The Consultancy will indemnify the Client against infringement of third-party rights by a Deliverable, provided that the Client notifies the Consultancy of any relevant third-party rights promptly on such rights becoming known to or suspected by the Client.
- 4.3 Nothing shall prevent the Consultancy from using techniques, ideas, and other know-how gained during the performance of Services under this Agreement in the furtherance of its own business, to the extent that such does not result in disclosure, reproduction, or abuse of confidential information in breach hereof, or any infringement of any Intellectual Property Rights of the Client.

## 5. Charges and Payment

- 5.1 Estimates are subject to change if based on incorrect information provided by the Client, or if any specified dependencies / facilities are not available on time, or if any equipment required to be provided by the Client fails to operate correctly (save where the Consultancy or representatives of the Consultancy have caused the malfunction or where the engagement itself is for the repair thereof).
- 5.2 All sums due shall be invoiced and paid as specified in the applicable Schedule.
- 5.3 The Client will pay the Consultancy's invoices within 30 days, plus VAT.
- 5.4 Unless otherwise specified, where payment is on a time and materials basis, the Consultancy may invoice monthly.
- 5.5 The Consultancy reserves the right to review and amend the rates for any engagement over 6 months in duration. Such a review will be initiated by the consultancy, providing written notice to the client, outlining the basis for the proposed rate adjustment.
- 5.6 If any of the Consultancy's invoices become overdue,
  - 5.6.1 the Consultancy may suspend provision of Services, and any agreed timescale will be automatically extended;
  - 5.6.2 the Consultancy may also terminate this Agreement and any current Schedule for material breach whilst any payment is more than 7 days overdue. In the event of termination, any outstanding invoices for products and/or services provided up until the date of Termination, must be settled within 7 days. In the event of late payment, see 5.5.1.
  - 5.6.3 the Consultancy may charge interest on late payments of 5% plus the Bank of England base rate, per annum.

## 6. Liability

- 6.1 Neither party excludes liability related to, caused by or for death, personal injury, fraud, repudiatory breach, illegal activity, gross negligence, willful breach or otherwise where it is not lawful to do so. Subject thereto,
  - 6.1.1 each party expressly excludes liability for economic, consequential or indirect loss or damage of any kind, or for loss of profit, business, revenue, goodwill or anticipated savings.
  - 6.1.2 neither party shall be liable for any loss or damage in excess of the higher of (a) £100,000, and (b) 125% of the total sums payable under a Schedule, except where it may not lawfully exclude or limit liability.
  - 6.1.3 any liability or remedy for innocent or negligent (but not fraudulent) misrepresentation is expressly excluded.

## 7. Termination

- 7.1 Either party may terminate this Agreement at any time when there is no current Schedule, by immediate written notice.
- 7.2 Either party may terminate this Agreement and any current Schedule at any time: if the other is in material breach; If the other is in breach and has not remedied the breach within 30 days of being notified to do so; or if the other becomes insolvent, by immediate written notice.
- 7.3 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

## **8. Force Majeure**

If either party is obstructed in performing any of its obligations under a Schedule by an event outside its reasonable control, then performance to the extent obstructed is suspended for so long as the obstruction continues. Whilst performance is suspended and has been so for more than 7 days, either party may terminate that Schedule by immediate written notice.

## **9. Staff obligations and third-party rights**

- 9.1 The Client is a client of a business undertaking carried on by the Consultancy, and it is not the intention of either to create or allow to arise any employee/employer relationship between the Client and any individual providing Services on behalf of the Consultancy.
- 9.2 Each party solely retains all the responsibilities and rights of an employer towards and in relation to its own employees. Neither party second its employees or any of them to the other. No person providing Services is expected or required to integrate into the Client's business organisation or employed workforce.
- 9.3 The Consultancy will ensure that all remuneration it pays any personnel engaged on the Services is paid and taxed as employment income, within the meaning of the Income Tax (Earnings and Pensions) Act 2003 as amended.
- 9.4 Each party will indemnify the other against any claims brought by or in relation to its own employees, whether such claims relate to employment, tax, national insurance, or otherwise.
- 9.5 Where applicable, the Consultancy is solely responsible for complying with the requirements of the Working Time Regulations 1998 (as amended) and any other legislation relating to workers, in relation to any individual providing Services on its behalf.
- 9.6 Neither party will employ, engage, or otherwise solicit any person who during the previous 6 months was an officer, employee or sub-contractor of the other and with whom such party had material contact in connection with Services performed under any Schedule, until 6 months after that Schedule has terminated unless written approval of both The Client and The Consultancy is obtained in advance.
- 9.7 Neither party will solicit or deal with any person who during the previous 6 months was a client of the other and with whom such party had material contact in connection with Services performed under any Schedule, until 6 months after that Schedule has terminated, unless written approval of both The Client and The Consultancy is obtained in advance.
- 9.8 No third-party rights are intended to be conferred or created by this Agreement or any Schedule.
- 9.9 In this term, 'employees' includes, so far as the context permits: officers and employees.

## **10. Data Protection**

- 10.1 The parties mutually acknowledge their respective responsibilities (a) to comply with the provisions of the (i) the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) (the 'Regulation') and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK (the 'Data Protection Legislation') in relation to Personal Data, and (b) to use Personal Data provided by the other so far as necessary for the proper performance of this Agreement or any Schedule hereto, but not further or otherwise.
- 10.2 The Parties agree that for the purposes of this Agreement the Consultancy shall be a Data Processor where it processes all Personal Data in all forms which is shared or to which access is granted to the Consultancy by Client, or which is generated by the Consultancy (or any approved third party) in connection with this Agreement ('Client Data'). In the provision of the Services,
- 10.3 The Consultancy will:
  - 10.3.1 Only process the Client Data in compliance with, and shall not cause itself or the Client to be in breach of, Data Protection Legislation, including by only processing the Client Data in compliance with its obligations under Article 32 (security) of the Regulation and the terms of this Agreement.
  - 10.3.2 Only process the Client Data on the documented instructions of the Client and otherwise as reasonably necessary to provide the Services.
  - 10.3.3 Provide all reasonable co-operation and assistance requested by Client in complying with its obligations under Data Protection Legislation, and in particular cooperate and assist the Client, insofar as is possible, in respect of the Client's compliance with the following provisions of the Regulation: (i) Articles 12 to 23 (responding to data subject rights requests); (ii) Article 28(h) (making information available to the Client and

contributing to audits); (iii) Article 33 and 34 (notification of personal data breaches); (iv) Article 35 (data protection impact assessments); and (v) Article 36 (prior consultation).

- 10.3.4 Not transfer and/or disclose any Client Data to any other party nor transfer any Client Data outside the European Economic Area without the prior written consent of the Client. Where any such consent to third party transfers is provided by the Client, the Consultancy shall procure the third party's compliance with the provisions set out in this clause 10.
- 10.3.5 Notify Client immediately in writing if it becomes aware of any unauthorised or unlawful Processing, disclosure of, or access to, Client Data and/or any accidental or unlawful destruction of, loss of, alteration to, or corruption of Client Data.
- 10.3.6 On termination or expiry of the Agreement, for whatever reason, cease all use of the Client Data and shall, at Client's election, either irreversibly delete all Client Data or return all Client Data to Client or a nominated third party (in a mutually agreed format and by a mutually agreed method).
- 10.3.7 Inform the Client immediately of any enquiry, complaint, notice or other communication it receives from any competent data protection or privacy authority. The Consultancy shall: (i) not respond to any such enquiry, complaint, notice or other communication without the prior written consent of Client; and (ii) provide reasonable co-operation to Client in respect of Client's response.

- 10.4 For the purposes of this clause, the terms "Data Processor", "Personal Data" and "Process" shall have the meanings given to them in the Data Protection Legislation.

## **11. Bribery and Corruption**

- 11.1 The parties shall each comply with all applicable legal requirements relating to bribery and corruption.
- 11.2 The Consultancy shall comply with any Client policies relating to bribery and corruption that may be disclosed to the Consultancy, as though such policies applied to and had been adopted by the Consultancy.

## **12. Agency Workers Regulations 2010 ('AWR')**

The Consultancy is a business carried on by (and substantially owned by) the individual who it is envisaged will have primary responsibility for the provision of the Services. If any supervision and direction of any individual providing Services on behalf of the Consultancy is required, the Consultancy is responsible for providing such supervision and direction. No individual providing Services on its behalf will work under the supervision and direction of the Client. The understanding and intention of all parties is that no individual providing Services on behalf of the Consultancy will be an 'agency worker', within the meaning of AWR, and that AWR will not apply in respect of any engagement under these Terms.

## **13. Notices**

Any notice to be given by either party to the other shall be in writing and may be sent by recorded delivery to the address of the other and shall be deemed to be served 2 days following the date of posting.

## **14. Electronic signatures**

- 14.1 This Agreement and any Schedule may be signed by electronic signature (whatever the form the electronic signature takes), and that such method of signature shall be equally conclusive of the intention of each party to be bound by its terms and conditions as if signed with manuscript signatures.
- 14.2 Notwithstanding that this Agreement and/or a Schedule may have been signed by a form of electronic signature, no addition, amendment to, or modification or discharge of, this Agreement and/or a Schedule shall be effective otherwise than in writing on paper and signed with the manuscript signature of each party.

## **15. Law**

These terms and any non-contractual disputes or claims between the parties are governed by the laws of England & Wales, whose courts shall have sole jurisdiction in relation to all matters arising.

Signed by the parties' authorised representatives as follows:

**Client** (to be completed by an Authorised Signatory)

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Name

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Job Title

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Signature

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Date

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**Consultancy** (to be completed by an Authorised Signatory)

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Name

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Job Title

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Signature

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Date

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**Schedule Number**  
to the Master Consultancy Services Agreement  
between embracent Limited ('the Consultancy') and ('the Client')  
dated DD/MM/YYYY(the 'Master Agreement')

## Introductory

The general nature of the Client's business is .  
The Client requires expert advice and assistance in relation to .  
The Consultancy's field of expertise includes the provision of such services, and the Consultancy has agreed to provide the following Services to the Client, under the terms of the Master Agreement.

## Services

The Client wishes The Consultancy to support The Client in the following:

Service Name  
Description of Service  
Description of Service

Service Name  
Description of Service  
Description of Service

- 2.2** The Consultancy is responsible for providing its own reference materials, administrative support, and equipment other than where use of the Client's equipment is required for reasons of security.
- 2.3** The Consultancy shall be responsible for correcting any defective Services or Deliverables at its own cost and in its own time, within a timeline agreed with the client, provided that such defects are notified to the Consultancy by the Client no more than six weeks after the completion of Service.

## Deliverables

The following artifacts will be delivered as part of this project

Service Name (repeat deliverable table if multiple services)				
Deliverable Name	Description of Deliverable	Type of Deliverable	Responsibility	Is Client Sign-Off required and sign off mechanism?
Project Plan	Creation and management of a Project Plan that brings together all deliverables into one document	XXX	XXX	XXX
RAID Log	RAID log to help identify and mitigate any Risks and Issues, as well as capture Assumptions and Dependencies	XXX	XXX	XXX
Weekly Highlight Reporting	Weekly Highlight Reports to provide regular progression and milestone updates	XXX	XXX	XXX

## Out of Scope

Out of Scope 1  
Out of Scope 2  
Out of Scope 3

## Assumptions

Assumption 1  
Assumption 2  
Assumption 3

## Timetable

Service 1: Provision of the Services is expected to commence **DD/MM/YYYY** and conclude on **DD/MM/YYYY**

Service 2: Provision of the Services is expected to commence **DD/MM/YYYY** and conclude on **DD/MM/YYYY**

Service 3: Provision of the Services is expected to commence **DD/MM/YYYY** and conclude on **DD/MM/YYYY**

## Charging basis

The Consultancy will deliver this work on a time and materials basis to an estimated value of: Total Value in £

Service Name 1				
Resource	Role	Day Rate	Days	Total
XXX	XXX	XXX	XXX	XXX
			Total	XXX
Service Name 2				
Resource	Role	Day Rate	Days	Total
XXX	XXX	XXX	XXX	XXX
			Total	XXX

For the avoidance of doubt there is no obligation on the Client to require Services on any particular day, and no obligation to make payment in respect of any periods during which the Services are not required, or during which the Services are not provided.

The Services will normally be provided at either the Client's offices in Office Location or at the Consultancy's premises.

The Client shall reimburse the Consultancy for all reasonable expenses of and in connection with travel to the primary business locations.

### **Termination for convenience**

The Consultancy may give the Client one month's notice in writing to terminate the Services to be provided under this Schedule.

The Client may give the Consultancy one month's notice in writing to terminate the Services to be provided under this Schedule.

### **Generally**

The Services will be performed under the terms of the Master Agreement, which together with this Schedule and any other documents expressly referred to in the Master Agreement or in this Schedule constitute the entire understanding between the parties relating to the subject matter of this engagement. Any earlier agreement between the parties relating to the subject matter of this Schedule is hereby superseded and is discharged by mutual consent. No other terms or changes will apply unless in writing and signed by both parties.

Neither party enters the agreement constituted by this Schedule and the Master Agreement on the basis of or relying on any representation, warranty or other provision not expressly stated herein.

This Schedule shall prevail if there is any conflict between it and the Master Agreement.



Signed by the parties' authorised representatives as follows:

**Client** (to be completed by an Authorised Signatory)

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Name

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Job Title

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Signature

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Date

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**Consultancy** (to be completed by an Authorised Signatory)

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Name

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Job Title

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Signature

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Date

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