



cheetah
TRANSFORMATION

G-Cloud 14

Cheetah Transformation

Master Services Agreement Document

May 2024

Parties

- (1) CHEETAH TRANSFORMATION LIMITED incorporated and registered in England and Wales with company number 06905892 whose registered office is at St Alban Tower, Wood Street, London, EC2V 7AF (Supplier)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Customer)

BACKGROUND

- (A) The Supplier is a platinum channel partner for Smartsheet Inc. (Smartsheet) in relation to their collaborative work management service (Smartsheet Licences) and provides consultancy services in relation to the Smartsheet Licences as described in clause 1 below (Cheetah Services) (together the Available Services).
- (B) The Customer wishes to use the Available Services in its business operations from time to time and the Supplier agrees to provide the Available Services subject to the terms and conditions of this agreement.

Agreed Terms

1. Interpretation

1.1 The following definitions and rules of interpretation apply in this agreement:

Applicable Data Protection Laws: means to the extent the UK GDPR (as defined in the Data Protection Act 2018) applies, the law of the United Kingdom which relates to the protection of personal data or the law of any jurisdiction which the Customer is subject and applies to the processing of personal data under this agreement.

Applicable Laws: all applicable laws, statutes and regulations from time to time in force.

Available Services: the Cheetah Services and the Smartsheet Licences.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Business Hours: the period from 9.00 am to 6.00 pm on any Business Day.

Cheetah Services: consultancy, solution build, support and training provided by the Supplier in relation to the Smartsheet Licences described more fully in a Statement of Work.

Customer Data: the data inputted into the information fields of the Smartsheet software by the Customer or by the Supplier on the Customer's behalf.

Deliverables: any output of the Works to be provided by the Supplier to the Customer as specified in a Statement of Work.

Effective Date: the date of this agreement.

Reference Charges: the standard charges for the Available Services or the framework for calculating them as notified in writing from the Supplier to the Customer from time to time.

Smartsheet End User Agreement: the form of agreement to be entered into between the Customer and Smartsheet which can be found at <https://www.smartsheet.com/legal/user-agreement>.

Smartsheet Licences: a licence to use the Smartsheet collaborative work management service.

SoW Charges: the sums payable for the Works as set out in a Statement of Work.

Statement of Work: a detailed plan, agreed in accordance with clause 3, describing the services to be provided by the Supplier, the timetable for their performance and the related matters listed in the template statement of work set out in Schedule 1.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

Works: the Available Services which are provided by the Supplier under a Statement of Work, including services which are incidental or ancillary to the Works.

2. Commencement and Duration

- 2.1 This agreement shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with clause 13 (Termination), until either party gives to the other party written notice to terminate. Such notice shall be served no earlier than the first anniversary of the date of this agreement and shall expire on the completion of all Statements of Work entered into before the date on which it is served.
- 2.2 If there are no uncompleted Statements of Work as at the date notice to terminate is served under clause 2.1 such notice shall terminate this agreement with immediate effect and the parties shall not enter into any further Statements of Work after the date of the notice under clause 2.1.
- 2.3 The Customer may procure any of the Available Services by agreeing a Statement of Work with the Supplier pursuant to clause 3 (Statements of Work) and the Supplier shall provide the Works from the date specified in the relevant Statement of Work.

3. Statements of Work

- 3.1 Each Statement of Work shall be agreed in the following manner:
 - (a) the Customer shall ask the Supplier to provide any or all of the Available Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Statement of Work for the Available Services requested;
 - (b) following receipt of the information requested from the Customer the Supplier shall, as soon as reasonably practicable either:
 - (i) inform the Customer that it declines to provide the requested Available Services; or
 - (ii) provide the Customer with a draft Statement of Work.
 - (c) if the Supplier provides the Customer with a draft Statement of Work pursuant to clause 3.1(b)(ii), the Supplier and the Customer shall discuss and agree that draft Statement of Work; and
 - (d) both parties shall sign the draft Statement of Work when it is agreed.
- 3.2 Unless otherwise agreed, the SoW Charges shall be calculated in accordance with the Reference Charges.

3.3 Once a Statement of Work has been agreed and signed in accordance with clause 3.1(d), no amendment shall be made to it except in accordance with clause 8 Change control) or clause 15.3 (Variation).

3.4 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

4. Supplier's Responsibilities

4.1 The Supplier shall appoint a lead consultant (to be notified in writing to the Customer), who shall have the authority to contractually bind the Supplier on all matters relating to this agreement. The Supplier shall use reasonable endeavours to ensure continuity of the Supplier's project manager, but has the right to replace him from time to time where reasonably necessary in the interests of the Supplier's business.

4.2 The Supplier shall use reasonable endeavours to provide the Works, and deliver the Deliverables, in accordance with a Statement of Work in all material respects although any dates agreed are estimates only and time for performance by the Supplier shall not be of the essence of this agreement.

4.3 The obligations at clause 4.2 above shall not apply to the extent of any non-conformance which is caused by use of the Smartsheet Licences contrary to Smartsheet instructions or modification of the Smartsheet Licences by any party other than Smartsheet or its duly authorised representatives.

4.4 Within five days of the Supplier's delivery to the Customer of any Deliverable, the Customer shall review the Deliverable to confirm that it is in accordance with the Statement of Work. If the Deliverable fails in any material respect to conform with the applicable portion of the Statement of Work, the Customer shall give the Supplier a detailed description of any such non-conformance, in writing, within the five-day review period and the Supplier shall work to rectify as soon as is reasonably possible and submit the revised Deliverable to the Customer.

4.5 If the Customer does not provide any written comments in the five-day period described above, or if the Deliverable is in accordance with the Statement of Work, the Deliverable shall be deemed accepted.

4.6 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this agreement.

5. Smartsheet Licences

5.1 If requested in a Statement of Work, the Supplier shall procure the delivery of the Smartsheet Licences however the Customer acknowledges that delivery of the Smartsheet Licences is conditional on the Customer entering into a Smartsheet End User Agreement and complying with the terms of the Smartsheet End User Agreement for the duration of the Smartsheet Licences.

5.2 The Customer acknowledges that the Supplier shall not have any liability in the event the Smartsheet Licences are not delivered or withdrawn in breach of clause 5.1 above.

5.3 The Customer acknowledges that, regardless of the reason for it claiming a refund of fees in relation to the Smartsheet Licences, it shall not be entitled to any refund unless the Supplier receives such refund from Smartsheet.

6. Customer's Obligations

6.1 The Customer shall:

- (a) provide the Supplier with:
 - all necessary co-operation in relation to this agreement and information requested; in order to prepare a Statement of Works or render the Works, including but not limited to Customer Data, security access information and software interfaces to the Smartsheet Licences and the Customer's other business applications;
- (b) such personnel assistance as reasonably requested by the Supplier from time to time;
- (c) appoint the Customer's project manager (to be notified in writing to the Supplier), who shall have the authority to contractually bind the Customer on all matters relating to this agreement. The Customer shall use reasonable endeavours to ensure continuity of the Customer's project manager;
- (d) comply with all applicable laws and regulations with respect to its activities under this agreement; and
- (e) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance, the Supplier may adjust any timetable set out in this agreement or any Statement of Work as reasonably necessary.

7. Charges and Payment

- 7.1 In consideration of the provision of the Works by the Supplier, the Customer shall pay the SoW Charges.
- 7.2 Where the SoW Charges are calculated on a time and materials basis the Customer acknowledges that any individual the Supplier engages on the Works shall be entitled to take reasonable breaks during the time worked of at least 10 minutes in any hour and this time shall still be recorded as time spent on the Works.
- 7.3 Where the SoW Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in a Statement of Work.
- 7.4 The SoW Charges exclude reasonable travel expenses including, but not limited to, airfare, hotel and meals incurred by the Supplier in performance of any Works. Such travel expenses shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice.
- 7.5 The Supplier shall invoice the Customer for the SoW Charges at the intervals specified in the Statement of Work. If no intervals are so specified, the Supplier shall invoice the Customer at the end of each month for Works performed during that month.
- 7.6 The Customer shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 7.7 If the Supplier has not received payment within five days after the due date, and without prejudice to any other rights and remedies of the Supplier:

- (a) the Supplier shall be under no obligation to provide any or all of the Available Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank PLC from time to time (but at 3% a year for any period when that base rate is below 0%), commencing on the due date and continuing until fully paid, whether before or after judgment.

7.8 The Customer acknowledges that the Supplier is obliged to pay Smartsheet for the Smartsheet Licences which the Customer orders and the Customer hereby indemnifies the Supplier in respect of all claims by Smartsheet against the Supplier whether in respect of non-payment of fees or otherwise for Smartsheet Licences or any other services provided by Smartsheet which the Customer has ordered or benefited from at any time (whether during the term of this agreement or otherwise).

7.9 All sums payable to the Supplier under this agreement:

- (a) are exclusive of VAT; and
- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Change Control

8.1 The Customer's project manager and the Supplier's lead consultant shall meet at least once every fortnight during any period during Works are being provided to discuss matters relating to this agreement. If either party wishes to change the scope of any Works, it shall submit details of the requested change to the other in writing.

8.2 If either party requests a change to the scope or execution of any Works, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the fees arising from the change; and
- (c) any other impact of the change on the terms of this agreement.

8.3 If the Supplier requests a change to the scope of the Works, the Customer shall not unreasonably withhold or delay consent to it.

8.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to do so.

9. Data Protection

9.1 Both parties will comply with all applicable requirements of Applicable Data Protection Laws.

9.2 Without prejudice to the generality of clause 9.1, the Customer will ensure that it has all necessary consents in place to enable lawful transfer of the Customer personal data to the Supplier and lawful collection of the same by the Supplier for the duration and purposes of this agreement.

- 9.3 In relation to any Customer personal data, the parties shall agree the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject for the relevant Works and enter into separate contractual documentation to govern this as required by the Applicable Data Protection Laws.
- 9.4 The Customer provides its prior, general authorisation for the Supplier to appoint processors to process the Customer personal data, provided that the Supplier shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws and shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier and transfer Customer personal data outside of the UK as required in performing any Works provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws.
- 9.5 Either party may, at any time on not less than 30 days' notice, revise clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

10. Confidentiality

- 10.1 Each party may be given access to confidential information from the other party in order to perform its obligations under this agreement. A party's confidential information shall not include information that is or becomes publicly known other than through any act or omission of the receiving party; was in the other party's lawful possession before the disclosure; or is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to clause 10.4, each party shall hold the other's confidential information in confidence and, unless required by law, not make the other's confidential information available to any third party, or use it for any purpose other than the implementation of this agreement.
- 10.3 Each party shall take reasonable steps to ensure that the other's confidential information to which it has access is not disclosed or distributed by its employees or agents in breach of the terms of this agreement.
- 10.4 A party may disclose confidential information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court.
- 10.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of confidential information caused by any third party.
- 10.6 The above provisions of this clause 10 shall survive termination of this agreement, however arising.

11. Limitation of liability

- 11.1 This clause 11 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with this agreement;

- (b) in respect of any use made by the Customer of the Smartsheet Licences, the Cheetah Services, the Deliverables or any part of them; and
- (c) in respect of any representation, misrepresentation (whether innocent or negligent), statement, act or omission (including negligence) in relation to this agreement.

11.2 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Smartsheet Licences, the Cheetah Services and the Deliverables by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Smartsheet Licences or Cheetah Services, or any actions taken by the Supplier at the Customer's direction; and
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement.

11.3 Nothing in this agreement excludes the liability of the Supplier for death or personal injury caused by the Supplier's negligence or for fraud or fraudulent misrepresentation.

11.4 The Smartsheet End User Agreement states the Customer's full and exclusive right and remedy in respect of, the performance and/or availability of the Smartsheet Licences, or their non-performance and non-availability and the Customer acknowledges the Supplier does not have any obligation or liability in relation to the Smartsheet Licences.

11.5 Subject to clause 11.3 and clause 11.4:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under this agreement; and
- (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid for the Cheetah Services during the 12 months preceding the date on which the claim arose.

12. Term and Termination

12.1 This agreement shall commence on the Effective Date and shall continue for the period of 1 year, unless otherwise terminated as provided in this clause 12. The Supplier shall contact the Customer between 60-90 days before the end of the then current term with a renewal quotation and to clarify whether they wish to continue using the Smartsheet Services. The Customer shall confirm to the Supplier at least 30 days before the end of the current term if they wish to renew the Smartsheet service for a further period of 1 year or to reduce licences or to cancel the Smartsheet Service.

12.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due; the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts; steps are taken to wind up the other party or put it into administration or a receiver is appointed; or any analogous event occurs in this or any other jurisdiction.

12.3 On termination of this agreement for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession. The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

12.4 Survival

- (a) On termination or expiry of this agreement, all existing Statements at Work shall terminate automatically.
- (b) Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- (c) Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

13. Force Majeure

Neither party shall be in breach of this agreement nor liable for delay, or failure to perform, any of its obligations under this agreement if such delay or failure results from events beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network or the internet, act of God, war, riot, civil commotion, pandemic,

malicious damage, compliance with any law or governmental order, accident, , fire, flood, storm or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving 30 days' written notice to the other party.

14. General Provisions

- 14.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- 14.2 The Supplier may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement.
- 14.3 Subject to clause 8 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 14.4 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 14.5 The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.6 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement and the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.7 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.8 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 14.9 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 14.10 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

15. Notices

- 15.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes.
- 15.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it is recorded as delivered.

16. Governing Law and Jurisdiction

- 16.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.
- 16.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.



About Cheetah Transformation:

Cheetah Transformation is a multi-award winning Smartsheet Platinum Partner, delivering transformational solutions to clients throughout the world and across many different industries & verticals. The team of consultants are fully Smartsheet Certified and have “real life” experience in industry, so understand real organisational challenges. In addition to great solutions, we also provide support in process mapping & development, solution architecture, change management and project management.

Cheetah Transformation provides detailed insight and guidance to help your organisation minimise the overall operating cost, whilst maximising the total value that your organisation receives from implementing the Smartsheet Collaborative Work Management (CWM) platform.