



LET US TAKE YOU BEYOND THE CLOUD

G-CLOUD TERMS AND CONDITIONS

SOLVING YOUR PROBLEMS, EMPOWERING YOUR BUSINESS.
WE USE OUR BUSINESS AND TECHNOLOGY EXPERTISE TO HELP
YOU GAIN THE ADVANTAGE, BOOST REVENUES, REDUCE COSTS
AND ACHIEVE CUSTOMER SUCCESS.

Yorkshire House
Greek Street
Leeds
LS1 5SH

www.alscient.com

THIS AGREEMENT is between **Alscient LIMITED** whose registered office is at Yorkshire House, Greek Street, Leeds LS1 5SH and whose registered number is 7252017 (the '**Company**') and the individual, partnership, organisation or company purchasing Goods and/or Services from the Company ('the **Customer**')

The Customer wishes to obtain, and the Company is willing to provide services as may from time to time be agreed by the parties on the terms and conditions below.

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

"Agreement" means the agreement between the Company and the Customer comprising this document and any Work Statements under it;

"Commencement Date" means the date specified in writing by the Company or the first date upon which the Company provides Services to the Customer if earlier;

"Confidential Information" shall mean in respect of any party any information relating to the business and affairs of that party or to the identity, business and affairs of its customers and potential customers which that party regards, or could reasonably be expected to regard, as confidential, whether or not such information is reduced to a tangible form or marked in writing as "confidential", and any and all information which has been or may be derived or obtained from any such information;

"Contract Charges" means all and any monies payable under the Agreement by the Customer to the Company for the performance of the Services in accordance with this Agreement and any Work Statement under it;

"Consultant" means the Company's personnel who are engaged in providing the Services and whose identity shall be agreed from time to time by the parties;

"Consultant Day" means a unit of eight hours;

"Customers Premises" means the premises specified by the Customer and as agreed and recorded in writing by the Company;

"Deliverable" means the documents, reports, the Software, specifications, projects or any items of work and their equivalent to be supplied by the Company or the Consultant under the Agreement and to be agreed between the parties throughout the duration of the Agreement;

"Equipment" means the Customer's computer equipment and operating system located at the Customer's Premises;

"Intellectual Property Rights" means copyrights, patents, utility models, trademarks, service marks, design rights (whether registered or unregistered), database rights, semiconductor topography rights, proprietary information rights and all other similar proprietary rights as may exist anywhere in the world;

"Services" means all the services performed by and all other obligations of the Company and the Consultant hereunder, including any Services agreed to be undertaken in any Work Statement;

"Software" means the computer programs which may be specifically developed by the Company as part of the Services under the terms of this Agreement;

“VAT” means Value Added Tax;

“Work Statement” means any written document provided by the Company setting out the scope of Services to be undertaken, headed ‘Work Statement’ and signed by a director of the Company.

1.2 In this Agreement:

- (a) any reference to a notice is to a written notice;
- (b) headings are for convenience only and do not affect the interpretation of the Agreement;
- (c) words importing the singular include the plural and vice versa;
- (d) expressions in the masculine include the feminine and vice versa and reference to persons shall include corporations unincorporated associations and partnerships and vice versa.

2. DURATION OF THE AGREEMENT

The Company shall provide the Services to the Customer during the term of the Agreement which shall be the period from the Commencement Date until the Agreement is terminated under clause 10.

3. PERFORMANCE OF SERVICES

1. Alscient’s Responsibilities

- 1.1. Alscient will ensure that its Personnel have the skills necessary to enable them to properly perform their duties under each Statement of Work and that the Services will be provided using all reasonable care and skill.
- 1.2. Alscient will use all reasonable endeavours to meet any anticipated timetable contained within the Statement of Work but the Customer accepts that, as the anticipated timetable will be dependent to a large degree upon the Customer (and any third parties appointed by or under the control of the Customer) complying with their respective responsibilities, time shall not be of the essence in this respect.

2. The Customer’s Responsibilities

- 2.1. The Customer shall, in a timely manner, provide (and shall be responsible for procuring that any third party appointed by or under its control also provides) to Alscient such information and help as is reasonably required by Alscient to enable it to perform its obligations under this Agreement and the Statement of Work.
- 2.2. Alscient shall not be liable for any failure of or delay in the performance of the Services or supply of the Work Product or any defect in the Services or Work Product, which is caused or contributed to by the Customer (or any third party appointed by or under the control of the Customer). In the case of failure or delay, the timetable or any completion date agreed by the Parties for the work specified in that Statement of Work shall be automatically extended to the extent that the failure or period of delay was caused or contributed to by the Customer/third party and the Customer shall be responsible for paying any additional costs incurred by Alscient as a result thereof.

3. Charges

- 3.1. The Customer shall pay for the Services in accordance with the Statement of Work.
- 3.2. Estimates may be agreed in respect of each Statement of Work, but these are estimates only. Alscient shall accrue its time spent against each Statement of Work and invoice such accrued time to the nearest half of a Working Day.
- 3.3. The Customer shall also make additional payments as follows:
 - for Services requested in excess of a Working Day – normal Daily Rates
 - for Services requested at weekends – one and a half times the Daily Rates
 - for Services requested on UK public holidays – twice the Daily Rates
 - the cost of travel, hotel and other expenses reasonably incurred by Alscient or its subcontractors in performing its obligations under each Statement of Work including (without limitation) transportation, accommodation, and subsistence, as detailed within each Statement of Work.
- 3.4. Alscient will raise invoices monthly in arrears and payment of those invoices (in pounds sterling) shall be due within thirty (30) days of the date of invoice. The Customer undertakes to provide details to Alscient of any information which should be included upon the invoices to help expedite payment.

- 3.5. All charges referred to in this Agreement or a Statement of Work are quoted exclusive of VAT and any other similar taxes, duties or levies or other deductions or withholdings in countries outside the United Kingdom, which taxes shall be payable at the rate and in the manner prescribed by law.
- 3.6. if the Customer disputes any part of an invoice, it shall notify Alscient in writing, before the due date of that invoice, of the basis for the dispute and it shall pay any undisputed amount in accordance with clause 3.1. The Parties will promptly negotiate in good faith to resolve the dispute. This clause 3.6 does not prevent Alscient pursuing its legal rights and remedies to enforce payment of its invoices.
- 3.7. If any undisputed charges are not fully paid by the due date, Alscient shall be entitled, in addition to its other rights and remedies, to:
- charge interest thereon at the rate of three percent (3%) per annum above the base rate of Lloyds Bank plc for the time being in force from the due date until the date of payment;
 - and*
 - suspend performance of its duties under this Agreement or the Services under any ongoing Statements of Work until such time as payment has been made in full.

4. Intellectual Property Rights

- 4.1. IPRs means any (and any rights subsisting in any) patents, designs, trademarks and trade names (whether registered or unregistered), copyright and related rights, moral rights, database rights, know-how and confidential information; all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and applications, extensions and renewals in relation to any such matter.
- 4.2. The Customer should note that a Work Product may contain material which constitutes pre-existing proprietary material owned by Alscient (or some other third party, as appropriate).
- 4.3. The Customer understands and accepts that Alscient (or the third party, as appropriate) shall be the owner of and shall at all times retain ownership of the intellectual property rights in such material. However, subject to receipt of payment in accordance with Clause 3, Alscient shall grant (or shall procure the grant to the Customer of) a perpetual but non-exclusive and non-transferable licence to use such material contained within the Work Product for the purposes envisaged by the Statement of Work. The Customer must not modify or amend that material or make any copies of it other than for back-up purposes.
- 4.4. The Customer (or some other third party, as appropriate) is the owner of (and shall at all times retain ownership of) the intellectual property rights in any charts, diagrams, drawings, specifications, studies, reports, computer programs or any other material it provides to Alscient, to enable it to perform the Services. However, it hereby grants (or shall procure the grant to) Alscient of a licence to use the same in the performance of the Services.
- 4.5. The Customer (or some other third party, as appropriate) warrants that all the Customer IPRs vest in and remain with the Customer and/or its sub-contractor(s) as the case may be and the Customer warrants that a) it has the right to use and/or exploit such Customer IPRs; and b) that the Customer IPRs do not infringe the rights of any third party.
- 4.6. Nothing in this Agreement or any Statement of Work shall prevent Alscient from using all of its knowledge and know-how gained in performing the Services in the course of providing services to others, even where those services are the same as or similar to the Services performed under this Agreement or Statement of Work.

5. Term and Termination

- 5.1. This Statement of Work (which is being performed on a Daily Rates basis) will remain in force until it is terminated by either Party on not less than thirty (30) days written notice.
- 5.2. Either Party shall be entitled to terminate this Statement of Work with immediate effect by notice in writing:
- if the other has committed a material breach of its obligations under the Statement of Work and has failed to remedy that material breach within thirty (30) days of having been requested to do so in writing;
 - or*
 - upon the other Party passing a resolution for winding-up (save for the purposes of amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to this Statement of Work) or suffering a winding-up order being made against it or going into administration;
 - or*

- if a receiver or administrative receiver is appointed or an encumbrancer takes possession of the undertaking or assets (or any part thereof) of the other Party;
or
- if the other Party is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986 or any statutory re-enactment or modification thereof) or ceases to or threatens to cease to carry on its business or enters into a composition with its creditors;
or
- if the other party suffers an event in a country other than the United Kingdom which has a similar effect to the events described in the United Kingdom.

5.3. Termination of this Statement of Work shall be without prejudice to any rights of either Party, which arose on or before its termination or which are expressed to arise upon or continue after termination.

6. Limitation of Liability

- 6.1. This Clause 6 prevails over all other clauses in this Statement of Work save that the limits in Clauses 6.4 and 6.5 do not apply to any charges which are properly due and payable by the Customer to Alscient under this Statement of Work.
- 6.2. Neither Party excludes or limits its liability to the other Party for fraud or for death or personal injury caused by its negligence.
- 6.3. The liability of either Party in respect of loss or damage to tangible property of the other Party caused by its negligence shall be limited to £1,000,000 per event or series of connected events.
- 6.4. Except as provided the total liability of either Party for all claims made by the other in relation to any particular Statement of Work for loss or damage suffered by that Party however that liability arises, including (without limitation) breach of contract, tort, misrepresentation (other than fraudulent misrepresentation) or breach of statutory duty, shall be limited to the total of all sums paid to Alscient pursuant to that Statement of Work.
- 6.5. Neither Party shall be liable to the other Party for any loss of profit, production, anticipated savings, goodwill or business opportunities or any type of indirect, economic or consequential loss even if that loss or damage was reasonably foreseeable or that Party was aware of the possibility of that loss or damage arising. It is the Customer's responsibility to ensure that it takes a back-up copy of any software or data it provides to Alscient under or in connection with any Statement of Work and to keep that back-up copy secure. Alscient shall not be liable for loss or damage suffered by the Customer where the Customer, having taken a proper back-up copy of its software or data, could have avoided that loss or damage.

7. Confidentiality

- 7.1. Neither Party shall disclose to any person (other than with the written authority of the other) any confidential information concerning the products, customers, business, accounts, finance or contractual arrangements or other dealings, transactions or affairs of the other which may come to that Party's knowledge in the course of performing its duties under this Agreement nor may the Customer disclose the Work Product (whether wholly or in part) to any other person.
- 7.2. Nothing contained in Clause 7 shall prevent either Party from disclosing that information:
- to any of its employees or contractors whose work requires the disclosure of that information and who have prior to the disclosure of that information agreed in writing to keep such information confidential;
or
 - to any government department or other authority court or arbitrator having statutory authority or jurisdiction to require the disclosure of that information;
or
 - if that information is at the time of disclosure known to the public through no act or default on the part of the recipient of the information.
- 7.3. Both Parties shall at all times comply with the provisions of the Data Protection Act 1998.

8. Matters Relating to the Personnel (any person provided by Alscient to the Customer for the purpose of performing the Services, regardless of whether that person is an employee, contractor, sub-contractor or otherwise)

- 8.1. The Customer shall not, without the prior written consent of Alscient, actively initiate recruitment of any of the Personnel, for a period of twelve (12) months following expiry of this Statement of Work.
- 8.2. In recognition of the value of the Personnel to Alscient and the inconvenience which would be caused to it as a result of the Customer's breach of Clause 8.1, the Customer agrees that, if it does breach Clause 8.1, the Customer shall pay to Alscient the amount of £250,000.
- 8.3. The Parties hereby expressly agree that the sums referred to in Clause 8.2 represent a genuine pre-estimate of the loss likely to be suffered by Alscient in those circumstances for expenses including, but not limited to, loss of productivity, recruitment fees and training.
- 8.4. Alscient reserves the right to substitute new personnel (with equivalent levels of qualification) for the Personnel assigned to the Statement of Work from time to time. The Customer may not refuse any alternative personnel offered by Alscient unless it can provide valid and objective reasons for such refusal.

9. Force Majeure

- 9.1. Neither Party will be liable for delay in performing obligations or for failure to perform obligations if the delay/failure resulted from circumstances beyond its reasonable control.
- 9.2. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such force majeure event. However, if any such event prevents either Party from performing any material obligation of the Contract for a period in excess of one (1) month, the other Party may terminate the Contract in accordance with clause 5.

10. General

- 10.1. The Parties hereby expressly agree that any person who is not a party to this Statement of Work shall have no right to enforce any term of this Statement of Work against either of the Parties pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 10.2. Each Party shall be obliged to immediately notify the other in writing, if it becomes aware of any legislation, rules or guidance which might impact upon the lawful provision of the Services.
- 10.3. No failure, delay or indulgence on the part of either Party in exercising any power or right under this Statement of Work shall operate as a waiver of such power or right.
- 10.4. If any provision of this Statement of Work shall be held by a court of competent jurisdiction to be invalid or voidable such provision shall be struck out and the remainder shall stand in full force or effect.
- 10.5. The Customer recognises Alscient's objective of building its business and will co-operate with Alscient's reasonable requests in publicising the relationship between the Parties. Alscient agrees that any publicity to be issued in connection with this Statement of Work (including any dispute arising) shall only be issued subject to prior written consent from the Customer, such consent not to be unreasonably withheld.
- 10.6. Neither Party may assign or novate this Statement of Work or any of its rights and obligations thereunder without the prior written consent of the other.
- 10.7. Words in the singular include the plural meaning and words in the plural include the singular meaning. Use of any gender includes the other genders.
- 10.8. Headings are for reference only and do not affect the meaning or interpretation of any terms.
- 10.9. References to any act, regulation, code of practice or statutory order shall be interpreted so as to include any change, re-enactment or extension of the act, regulation, code of practice or statutory order.

11. Entire Agreement and Law

- 11.1. This Statement of Work constitute the entire agreement between the Parties with respect to the subject matter contained therein. All prior agreements, representations, statements, negotiations, understandings and undertakings either written or oral are, unless made fraudulently, superseded hereby and the Parties hereby acknowledge that they have not placed any reliance on any representation made but not embodied in those documents.

- 11.2. Both Parties agree that, unless they expressly provide otherwise in any Statement of Work, all conditions or warranties of any kind (whether expressed or implied, statutory or otherwise) concerning the quality or fitness for purpose of the Services or Work Product are hereby excluded to the fullest extent permitted by law.
- 11.3. No change to this Statement of Work nor any waiver of any of the terms hereof shall be valid unless made in writing and signed by the duly authorised representatives of both Parties.
- 11.4. This Statement of Work shall be subject to English law and, subject to the provisions of Clauses 11.1 and 11.2, the Parties agree to submit to the exclusive jurisdiction of the English courts.