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**G-Cloud**  
**Sample Terms Document**

## GENERAL GUIDANCE ON G-CLOUD SAMPLE TERMS DOCUMENT

These terms and conditions represent a typical sample of the terms and conditions, to be read in conjunction with the customer specific G-Cloud call off contract and G-Cloud framework agreement terms, that shall apply in whole or in part to all transactions between us for any sale of goods or services by us to you, via this framework, unless explicitly superseded by a more specific written and mutually agreed agreement.

Depending on what is purchased, a separate Amazon Web Services (Service Terms) agreement <https://aws.amazon.com/service-terms/> and/or a separate Amazon Web Services (Customer Agreement) <https://aws.amazon.com/agreement/> may be required.

G-Cloud Framework specific documentation, provided by Crown Commercial Service, is available at <https://www.gov.uk/guidance/g-cloud-templates-and-legal-documents>

## PARTIES

- (1) **CirrusHQ Ltd**, a company incorporated in Scotland with registered number SC405771 and having its registered office at 4 Deer Park Avenue, Fairways Business Park, Livingston, West Lothian, EH54 8AF (the '**Consultant**'); and
- (2) the '**Client**'

## OPERATIVE PROVISIONS

### 1 Definitions

- 1.1 The terms "**appropriate technical and organisational measures**", "**controller**", "**data portability**", "**processor**", "**process**", "**data subject**", "**personal data breach**", "**restriction of processing**" and "**supervisory authority**" shall, unless the context otherwise requires, each have the respective meanings given to them in the Regulation.

### 2 Interpretation

- 2.1 The headings to clauses are inserted for convenience only and shall not affect the construction of this Agreement.
- 2.2 In this Agreement, references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions (whether before or after the date of this Agreement) from time to time and shall include references to any provisions of which they are re-enactments (whether with or without modification).
- 2.3 Where any party is more than one person:
  - 2.3.1 that party's obligations in this Agreement shall take effect as joint and several obligations,
  - 2.3.2 anything in this Agreement which applies to that party shall apply to all of those persons collectively and each of them separately, and
  - 2.3.3 the benefits contained in this Agreement in favour of that party shall take effect as conferred in favour of all of those persons collectively and each of them separately.
- 2.4 References to any party shall include, where the context permits, that party's successor in title.
- 2.5 References in this Agreement to anything which any party is required to do shall include, where the context permits, a requirement to comply with and/or observe and perform.

2.6 References in this Agreement to anything which any party is required to do or not to do shall include their acts, defaults and omissions, whether:

2.6.1 direct or indirect,

2.6.2 on their own account, or

2.6.3 for or through any other person, and

those which that party permits or suffers to be done or not done by any other person.

2.7 The obligations and restrictions imposed by this Agreement are in addition to, and not in substitution for, the obligations and restrictions imposed or implied by law.

### 3 **Background**

3.1 The Consultant has specialist skills and expertise in the Field. The duties and responsibilities of the Consultant are defined in the Objective.

3.2 The Consultant is a limited company which has agreed to act as a consultant to the Client providing specialist skills and expertise through its Key Personnel in the manner and on the terms specified below.

### 4 **Appointment**

4.1 The Client appoints the Consultant to be a consultant from the date of delivery of this Agreement until either the Consultant or the Client gives the other 1 month's notice of termination of this Agreement.

### 5 **Key Personnel**

5.1 The Consultant shall provide the Key Personnel to perform the consultancy services. If the Consultant or the Key Personnel is unwilling or unable to perform the consultancy services then it may substitute the Key Personnel at their own cost. The Consultant warrants that the Key Personnel, or his substitute, are competent and have the necessary skills, qualifications and experience to perform the consultancy services to the reasonable satisfaction of the Client.

### 6 **Insurance**

6.1 The Consultant agrees to have and maintain for the duration of this Agreement a policy of Employers' Liability Insurance in relation to the Key Personnel, including liability under any statute and at common law. Upon request the Consultant will provide copies of its certificates of insurance from time to time to the Client. The insurance will include terms and conditions that will cover the Consultant's potential liability,

which will in no event be less than £5,000,000.00 in respect of any one claim.

- 6.2 The Consultant agrees to have and maintain for the duration of this Agreement a policy of Professional Indemnity Insurance policy in connection with the provision of the consultancy services and the Objectives. The insurance will include terms and conditions that will cover the Consultant's potential liability under this Agreement and will in no event be less than £500,000.00 in respect of any one Claim.

## 7 The fee

- 7.1 The Client shall pay the Consultant the fee agreed between the Parties.
- 7.2 All sums payable under this Agreement, unless otherwise stated, are exclusive of VAT and other duties or taxes.
- 7.3 The Consultant shall deliver monthly invoices to the Client. The Client shall pay such invoices within 30 days of receipt.
- 7.4 Any VAT and or similar duty payable in respect of the moneys payable under clause 7.1 shall be paid by the Client in addition.

## 8 Obligations of the Consultant

- 8.1 The Consultant shall:
- 8.1.1 act as a consultant to the Client;
  - 8.1.2 use its best endeavours to achieve the Objective and deliver any Deliverables and promote, develop, maintain and extend the business of the Client and its reputation;
  - 8.1.3 act honestly and in good faith and not do anything which is harmful to the Client;
  - 8.1.4 act jointly with one or more other persons as the Client may from time to time direct;
  - 8.1.5 do all things in the ordinary course of business which the Client reasonably considers necessary or proper in its interests;
  - 8.1.6 deal in an efficient and prompt manner with all requests that emanate from the Client or one of its duly authorised representatives;
  - 8.1.7 both during the duration of this Agreement and after its termination, keep confidential and not divulge, communicate to any person, or make use of, and use best endeavours to prevent the publication or disclosure of all Confidential Information save that this restriction shall not apply to

Confidential Information that is already in the public domain through no fault of the Consultant at the time of the Consultant's disclosure;

- 8.1.8 do all things reasonably required by the Client to give effect to this Agreement and the Objective;
- 8.1.9 at all times comply with:
  - 8.1.9.1 all applicable rules of law that affect or may have an effect upon the Client (including, but not limited to, Part V of the Criminal Justice Act 1993 and the Bribery Act 2010);
  - 8.1.9.2 all regulatory obligations of the Client;
  - 8.1.9.3 any fiduciary duties of the Client;
  - 8.1.9.4 any codes of conduct notified by the Client (as amended from time to time);
- 8.1.10 not act in a way that may result in the Client incurring criminal or civil liability;
- 8.1.11 promptly disclose to the Client any information that comes into the Consultant's knowledge or possession which adversely affects the Client, which includes reporting any wrongdoing or proposed wrongdoing by the Consultant or any other member of the Client's staff including employees, workers, directors or partners of the Client, as soon as the Consultant is aware of it;
- 8.1.12 do all things reasonably required by the Client to perfect or protect the rights of the Client including, without limitation, giving or obtaining confidentiality undertakings or licences acceptable to the Client in relation to:
  - 8.1.12.1 sharing any records or information belonging to the Client;
  - 8.1.12.2 the consultancy services or Objectives or the Deliverables;
  - 8.1.12.3 the Client's Intellectual Property Rights and Background IPR;
  - 8.1.12.4 the New Materials.

## 9 Data Protection

- 9.1 Both parties shall (and shall procure that any of their respective directors, officers, employees, permitted agents, licensees and

contractors shall) comply with all applicable requirements of the Data Protection Legislation. This Agreement is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

- 9.2 The parties acknowledge that, in respect of Client Personal Data, the Client is the controller and the Consultant is a processor acting on behalf of the Client. Part 2 of the Schedule sets out the permitted scope of processing by the Consultant under this Agreement, including the purpose of the processing to be performed by the Consultant on behalf of the Client, the categories of data subjects to whom the Client Personal Data relate and the types of Personal Data that will be processed by the Consultant on behalf of the Client as Client Personal Data.
- 9.3 Notwithstanding clause 9.2 above, the Consultant will be a controller in respect of any Personal Data relating to the Client's staff that it processes for the purposes of entering into and fulfilling the Agreement.
- 9.4 The Consultant acknowledges that the Client shall solely be responsible for the following decisions and determinations:
- 9.4.1 the purpose(s) for which and the manner in which the Client Personal Data will be processed or used;
  - 9.4.2 what Client Personal Data to collect and the legal basis for doing so;
  - 9.4.3 which items (or content) of Client Personal Data to collect;
  - 9.4.4 which individuals to collect Client Personal Data about;
  - 9.4.5 whether to disclose the Client Personal Data, and if so, who to;
  - 9.4.6 whether subject access and other individuals' rights apply including the application of any exemptions;
  - 9.4.7 how long to retain the Client Personal Data; and
  - 9.4.8 whether to make non-routine amendments to the Client Personal Data.
- 9.5 Without prejudice to the generality of clause 9.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Consultant for the duration and purposes of the Agreement. The Client shall confirm to the Consultant the lawful basis of processing any Personal Data which is transferred to the Consultant.

- 9.6 Without prejudice to the generality of clause 9.1, the Consultant shall, in relation to any Client Personal Data processed in connection with the performance by the Consultant of its obligations under the Agreement:
- 9.6.1 process that Client Personal Data only on the written instructions of the Client unless the Consultant is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Consultant to process such Client Personal Data (“**Applicable Data Processing Laws**”). Where the Consultant is relying on Applicable Data Processing Laws for processing such Client Personal Data, the Consultant shall promptly notify the Client of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit the Consultant from so notifying the Client;
  - 9.6.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Client Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Client Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 9.6.3 not cause the Client to be in breach of the Data Protection Legislation and shall use all reasonable endeavours to assist the Client to comply with any obligations imposed on the Client by the Data Protection Legislation;
  - 9.6.4 ensure that all personnel who have access to and/or process Client Personal Data are obliged to keep the Client Personal Data confidential;
  - 9.6.5 not transfer any Client Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

- 9.6.5.1 the Client or the Consultant has provided appropriate safeguards in relation to the transfer;
  - 9.6.5.2 the data subject has enforceable rights and effective legal remedies;
  - 9.6.5.3 the Consultant complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Client Personal Data that is transferred; and
  - 9.6.5.4 the Consultant complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Client Personal Data;
- 9.6.6 assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 9.6.7 notify the Client without undue delay on becoming aware of a personal data breach;
- 9.6.8 at the written direction of the Client, delete or return Client Personal Data and copies thereof to the Client on termination of the Contract unless required by Applicable Data Processing Law to store the Client Personal Data;
- 9.6.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 9; and
- 9.6.10 indemnify the Client against any loss or damage suffered by the Client in relation to any breach by the Consultant of its obligations under this clause 9.
- 9.7 The Client consents to the Consultant appointing sup-processors as third-party processors of Client Personal Data under the Agreement. The Consultant confirms that it has entered, or (as the case may be) will enter, into a written agreement incorporating terms which are substantially similar to those set out in this clause 9 with any such third-party sub-processor. As between the Client and the Consultant, the Consultant shall remain fully liable for all acts or omissions of any third-party sub-processor appointed by it pursuant to this clause 9.

## 10 Intellectual property rights

- 10.1 Each party retains ownership of its own Background IPR. The Consultant grants the Client a non-exclusive, royalty free, perpetual, non-terminable licence to its Background IPR to the extent required to allow the Client to enjoy the output of the Objective including the Deliverables. The Client grants the Consultant a non-exclusive, royalty-free (without the right to sublicense), licence to its Background IPR to the extent necessary (if at all) to allow the Consultant to achieve the Objective and deliver the Deliverables.
- 10.2 The Consultant shall consider whether and if so by what means New Material can be invented and/or developed.
- 10.3 All New Material shall become the sole property of the Client and the Consultant hereby irrevocably assigns all rights, title and interest in and to the New Material to the Client upon creation. Where appropriate, the Consultant waives any moral rights in the New Material in accordance with the Copyright, Designs and Patents Act 1988.
- 10.4 The Consultant shall:
- 10.4.1 promptly communicate full particulars of all New Material to the Client, and
  - 10.4.2 where appropriate execute all documents and do all things at the Client's cost which the Client requires to obtain protection for the New Material in any country or to vest the New Material in the Client.
- 10.5 The Consultant will indemnify and hold harmless the Client against any loss, injury or damage (including any legal costs and expenses and any compensation costs and disbursements paid by the Client to compromise or settle any claim) suffered by the Client in consequence of any claim made against the Client in respect of any Intellectual Property Infringement provided that the Consultant shall be entitled at its option and strictly at its own expense within a reasonable time (time being of the essence) either to:
- 10.5.1 procure the right for the Client to continue using the New Material as appropriate;
  - 10.5.2 to make such alterations, modifications or adjustments to New Material so that it becomes non-infringing without incurring a material diminution in performance, value or function; or
  - 10.5.3 replace the New Material with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance, value or function;

provided that in the event of a claim of Intellectual Property Infringement:

- 10.5.4 the Client shall notify the Consultant of any claim in respect of which the Client wishes to be indemnified as soon as reasonably possible upon becoming aware of the same;
- 10.5.5 the Client shall give the Consultant sole conduct of the defence or settlement of any claim;
- 10.5.6 the Client shall not at any time admit liability or otherwise settle or compromise any claim except upon the express instructions of the Consultant; and
- 10.5.7 the Client shall provide such assistance as the Consultant shall reasonably require in respect of the conduct of the defence or settlement of the claim provided that the Consultant shall meet the reasonable costs of the Client incurred in providing such assistance.

## 11 Not a partnership or an agency

- 11.1 The Consultant is an independent contractor for all purposes of this Agreement.
- 11.2 The Consultant and the Client declare that they are not partners and nothing in this Agreement shall be construed as creating a partnership between them.
- 11.3 Nothing in this Agreement shall be construed as creating the relationship of principal and agent between the Client and the Consultant.

## 12 Termination

- 12.1 Without limitation either party may, by notice in writing, terminate this Agreement if the other party shall be in breach of any of the terms of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the party in breach within 21 days of receipt by the party in breach of a written notice specifying the breach and requiring its remedy;
- 12.2 Either party can terminate this Agreement with immediate effect if
  - 12.2.1 the other gives notice to its creditors or any of them that it has suspended or is about to suspend trading; or
  - 12.2.2 the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or if an order shall be made or resolution passed for the winding up of the other (otherwise than for the purpose of and followed by a solvent reconstruction or amalgamation), or if an administration order shall be made in respect of the other or if the other shall become insolvent or shall make any assignment for the benefit of creditors generally, or has a receiver appointed

over all or any part of its assets, or takes or suffers any similar action in consequence of debt.

- 12.3 If the Client does not pay the Consultant the fees set out in clause 7.1 within 30 days of them becoming due, the Consultant may immediately end this Agreement.
- 12.4 Without limitation, the Client may, by notice in writing, immediately terminate this Agreement if the Consultant (or the Key Personnel, where relevant):
- 12.4.1 is incompetent or guilty of serious or persistent negligence in the provision of the Deliverables or the services hereunder;
  - 12.4.2 fails or refuses after written instruction to provide the Deliverables or the services reasonably and properly required from it;
  - 12.4.3 fails to resolve a conflict of interest under clause 144;
  - 12.4.4 conducts itself in any manner which, in the reasonable opinion of the Client, brings or is likely to bring, the Client into disrepute by association;
  - 12.4.5 materially breaches any of its obligations under clause 8;
  - 12.4.6 is, in the reasonable opinion of the Client, guilty of serious misconduct, such as, but not limited to:
    - 12.4.6.1 theft, fraud and deliberate falsification of records such as time-sheets, expense forms and documents or information regarding qualifications and immigration status provided either when applying for a role or after recruitment;
    - 12.4.6.2 fighting, assaulting, bullying, harassing, victimising or discriminating against another person;
    - 12.4.6.3 deliberate and serious damage to the Client's property;
    - 12.4.6.4 being convicted of a criminal offence which the Client reasonably believes will detrimentally affect the Consultant's ability to perform their obligations under this agreement or provide the Deliverables or the services, its relationship with the Client's customers, business partners or staff; or the business relationship the Client

- has with its customers, suppliers or business partners;
- 12.4.6.5 a breach of the Client's health and safety policy which caused injury to others or put others at risk of injury;
- 12.4.6.6 making an offensive, false or defamatory comment about any individual or organisation, whether orally or in writing (such as through use of social networking websites or internet blogs);
- 12.4.6.7 being concerned or interested in action which is damaging to or in competition with the Client's business;
- 12.4.6.8 serious incapability through alcohol or being under the influence or in possession of illegal drugs.
- 12.5 Notwithstanding the foregoing, the Client may not terminate this Agreement solely by reason of the absence through illness or injury of the Key Personnel unless such illness or injury prevents same from providing any services to the Client for a consecutive period of four weeks or for an aggregate period of 4 weeks in any 12 calendar months.
- 12.6 Upon termination of this Agreement for any reason, the Consultant shall, at the request of the Client, deliver up to the Client all records in any medium including documents, drawings, notes, working papers, computer disks and tapes or other material and copies provided to or prepared by the Consultant pursuant to this Agreement and all other property belonging to the Client in its possession or control including, without limitation, the Confidential Information, Client Background IPR and a copy of any New Material not already delivered to the Client.

### 13 Effect and consequence of termination

- 13.1 The Consultant's engagement shall not continue at any time after it has been terminated by the Client notwithstanding that the termination is without prior notice or by shorter notice than provided for in this Agreement.
- 13.2 The expiration or earlier termination of this Agreement shall not affect:
- 13.2.1 such of its provisions as are expressed to operate or have effect afterwards, or
- 13.2.2 any right of action already accrued to either party in respect of any breach of this Agreement by the other party.

### 14 Conflict of interest

The Consultant warrants that, to the best of its knowledge, there is no conflict of interest nor is there likely to be any conflict of interest affecting its performance of this Agreement. If a conflict or risk of a conflict of interest arises, the Consultant will immediately give notice of the conflict of interest, or the risk of it, to the Client and will demonstrate measures to ensure the situation is managed to avoid any adverse effect. If the Client notifies the Consultant that the conflict of interest is unacceptable (whether at the time the conflict is first notified or subsequently) and the Consultant does not resolve the matter forthwith (time being of the essence) to the satisfaction of the Client, then the Client shall be entitled to terminate this Agreement with immediate effect under clause 12.

## 15 Entire agreement

- 15.1 The Client and the Consultant acknowledge that this Agreement contains the whole agreement and understanding between them and neither has relied upon any oral or written representations made by the other.
- 15.2 Both the Client and the Consultant have entered into this Agreement as a result of their own independent investigations into all matters relevant to this Agreement.
- 15.3 This Agreement supersedes any previous agreements between the Client and the Consultant whether written or oral.

## 16 Severance and invalidity

- 16.1 In the event that any provision of this Agreement shall be found by a court to be unreasonable or unenforceable or void, that part shall be severed and the remainder of this Agreement shall be enforceable with such deletion or modification as may be necessary to make it effective. If any period is held to be unreasonable or unenforceable or void, that period shall be reduced and the remainder of this Agreement shall be enforceable with such period as is found to be reasonable and valid in substitution for any period or periods contained in this Agreement.

## 17 Force majeure

- 17.1 Neither party shall be in breach of this Agreement, nor liable for any failure or delay in performance of its obligations under this Agreement if such breach or failure is due to an event of Force Majeure. Where either party is prevented or delayed in the performance of any of its obligations under this Agreement by an event of Force Majeure it shall promptly give written notice to the other party giving details of such event of Force Majeure and the extent and likely duration whereupon such obligations shall be suspended due to the event of Force Majeure.
- 17.2 A party affected by an event of Force Majeure shall make every reasonable effort to minimise the effects thereof and shall promptly

resume performance as soon as reasonably possible after termination of the event of Force Majeure.

- 17.3 Where the period of non-performance in relation to any event of Force Majeure exceeds 60 days from the date of notice of such event of Force Majeure, either party may by serving written notice on the other terminate this Agreement with immediate effect.

## 18 **Notice**

If any notice is required or authorised to be given by the Client or Consultant to the other, it must be in writing and must be hand delivered or sent by first class recorded delivery post to the other party at the address given in this Agreement or such other address as notified in writing by the parties from time to time.

## PART 1: OBJECTIVES

Populated based on G-Cloud Service purchased and/or the G-Cloud Call Off Contract

## PART 2 - DATA PROCESSING INFORMATION

1. **Subject matter** Processing under this Agreement shall be limited to such processing activities as the Consultant is reasonably required to undertake in connection with its performance under this Agreement.
2. **Duration** The duration of the processing under this Agreement will be the term of this Agreement.
3. **Nature and purpose** The nature and purpose of the processing of Client Personal Data will be:
  - TBC
4. **Type of Personal Data** The types of Personal Data processed under this Agreement will be:
  - TBC
5. **Categories of Data Subjects** The categories of data subject whose Personal Data will be processed under this Agreement will be:
  - TBC
6. **Sub-Processors** The following Sub-Processors have been authorised as at the date of this Agreement:
  - TBC