

Brovanture Ltd

Implementation, Consulting, Training and Support

G-Cloud 15 Terms and Conditions



HM Government
G-Cloud
Supplier

ORACLE

Partner

ORACLE NETSUITE
Solution Provider

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ERP & Analytics success

BROVANTURE LIMITED FRAMEWORK AGREEMENT

THIS AGREEMENT is made on the "Insert date".

PARTIES:

- (1) **BROVANTURE LIMITED whose registered office is** The White House, 2 Meadow, Godalming, Surrey, GU7 3HW ("**Brovanture**"); and
- (2) "**Insert Company name**" a company registered in England and Wales with the company registration number 123456789 and having its registered address at "Insert company address" ("**Client**")

WHEREAS:

Brovanture has agreed to provide certain services to the Client on the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Framework Agreement the following words shall have the following meanings:

"Acceptable Use Policy" means any and all acceptable use policies provided to the Client by Brovanture or any third party supplier, as may be modified from time to time by Brovanture or such third party supplier.

"Accepted Order" means an Order that has been accepted by Brovanture in writing or by email, or by commencement of the provision of the Services.

"Agreement" means this Framework Agreement and all Schedules and Appendices executed by both parties hereto or incorporated by reference.

"Charges" means the charges payable by the Client to Brovanture for the provision of the Services, as set out in the Accepted Order(s).

"Documentation" means all operating manuals, user manuals and user documentation and any other documentation provided to the Client by Brovanture or its suppliers which is associated with the use or provision of the Services.

"Force Majeure" means acts of God, war, hostilities, riot, fire, explosion, accident, flood, sabotage, lack of adequate power, failure of telecommunications networks, raw materials or labour, failure of a supplier, strike, lock-out or injunction compliance with governmental laws, regulations or orders, sickness or indisposition of key Brovanture

employees, or any other cause whether or not of the class or kind enumerated which affects performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party affected.

“Infrastructure” means the software and hardware infrastructure, as set out in the Accepted Order(s).

“Order” means either (i) an order for the provision of Services submitted by the Client to Brovanture, or (ii) the acceptance by the Client of a Quotation.

“Quotation” means a quotation order for the provision of Services which has been prepared by Brovanture and delivered to the Client (in hard or electronic copy). Unless otherwise specifically set out to the contrary in a Quotation, all Quotations shall be valid for fourteen (14) days from the date of issue.

“Schedule” means a schedule to this Agreement.

“Services” means the services to be provided by Brovanture as set out in all relevant Accepted Order(s).

- 1.2. The Schedule(s) form part of this Agreement and shall be interpreted accordingly.
- 1.3. The headings are included for convenience only and shall not affect the interpretation or construction of this Agreement.
- 1.4. Any undertaking by the Client not to do any act or thing shall be deemed to include an undertaking that the Client shall not permit or suffer the doing of that act or thing,
- 1.5. The expressions “Client” and “Brovanture” shall be deemed to include their respective successors and permitted assignees and their respective employees and agents.

2. ORDER PROCESS

- 2.1. Each Order shall be deemed to be an offer by the Client subject to the terms set out in the relevant Schedule and/or Appendix and this Agreement. The Client shall procure that each Order is complete and accurate. A binding contract shall not come into existence between Brovanture and the Client until acceptance of the Order by Brovanture.

3. SERVICES

- 3.1. From the Effective Date and for the duration of this Agreement, Brovanture shall provide, or procure the provision of the Services to the Client. The parties may agree amendments to this Agreement by the submission and acceptance of new Orders.
- 3.2. Brovanture will use reasonable endeavours to provide the Services promptly, having regard to the availability of personnel, necessary supplies and facilities and

commitments to other customers. All dates or times quoted for commencement or completion of any part of the Services are estimates only.

- 3.3. Services may be provided onsite or remotely via the Client's Internet connection or by telephone. Where, in Brovanture's sole and reasonable opinion, it is necessary and/or desirable for the Client to install remote support software, such software will be provided by Brovanture.
- 3.4. Brovanture shall be entitled to make variations and additions to the Services from time to time, acting reasonably, for operational reasons (provided that these do not materially, adversely affect the Services), to comply with any legal or regulatory obligation or for any other reason.
- 3.5. Brovanture does not warrant that its technology will be compatible with any equipment, software or other technology not provided by Brovanture.
- 3.6. Without prejudice to Brovanture's other remedies, Brovanture may suspend all or part of the Services without prior notice if Brovanture reasonably believes the circumstances justify this to protect itself or others, to comply with any law, where the Client has failed to pay any Charges, or if any events occur which would entitle Brovanture to terminate this Agreement. In making the decision to suspend the Services, Brovanture is not obliged to consider the cost or damage to the Client that may be caused by suspension of the Services to the Client. Brovanture may also suspend all or part of the Services to carry out maintenance where, in Brovanture's reasonable opinion, it is necessary or desirable to do so. In such event Brovanture shall provide the Client with as much prior notice as is reasonably practicable.

4. CLIENT'S OBLIGATIONS

- 4.1. At all times, throughout the term of this Agreement, the Client shall comply with all obligations set out herein and, in all Schedules, including but not limited to:
 - 4.1.1. providing reasonable access to the Client's premises and to relevant personnel;
 - 4.1.2. taking decisions and making information available as requested by Brovanture either within the timescales reasonably required by Brovanture or in the absence of a required timescale as soon as reasonably practicable following the request being made;
 - 4.1.3. appointing an authorised person who is able to make binding decisions for the Client with regard to this Agreement, including authorising any change to the Services and/or Deliverables;
 - 4.1.4. providing all materials reasonably required by Brovanture to enable Brovanture to perform its obligations under this Agreement;
 - 4.1.5. ensuring that there is a legitimate licence for every copy of a software programme (e.g. Oracle) in use and that such licences permit use by Brovanture as required to perform the Services and comply with such licence terms and

conditions and providing a copy of such licence to Brovanture and safely storing all disks, manuals, hard copy licence agreements and/or documentation relating to such software;

- 4.1.6. providing reasonable facilities which may be required by Brovanture pursuant to this Agreement, including for the avoidance of doubt all equipment and secretarial services necessary for the performance of the Services and delivery of the Deliverables and so as to enable Brovanture to properly fulfil its obligations hereunder providing access to all personnel and timely decision-making reasonably required by Brovanture in order to provide the Services;
- 4.1.7. notifying Brovanture if it becomes aware of any unauthorised use of all or part of the Services.
- 4.2. The Client shall not, and shall procure that its employees, sub-contractors or any third party shall not:
 - 4.2.1. use the Services in an unlawful manner or in contradiction of published legislation and regulations governing the Internet or accepted Internet practices and practices of any connected networks, or to transfer any illegal material (including but not limited to material which may be deemed to be offensive, abusive, indecent, defamatory, obscene, menacing, in contempt of Court or in breach of copyright, confidentiality, privacy or other rights);
 - 4.2.2. divulge any passwords that allow the Client to have access to the Services to a third party and shall use all reasonable endeavours to keep all passwords confidential and inaccessible to third parties;
 - 4.2.3. use or permit the use of the Services other than in accordance with the relevant Documentation.
- 4.3. The Client shall comply with the Acceptable Use Policy. If, in the opinion of Brovanture, the Client has violated the Acceptable Use Policy, Brovanture may suspend the provision of all or part of the Services to the Client and may restrict or block Internet traffic to or from the Services.
- 4.4. Brovanture shall not be liable for any loss, damage, delay or failure that results from the delay or failure of the Client to comply with its obligations under this Agreement and the time for performance of Brovanture obligations under this Agreement shall be extended by Brovanture a result of any failure or delay by the Client. The Client shall reimburse Brovanture on written demand for any costs or losses sustained as a direct or indirect result of the Client's default under this Agreement.
- 4.5. Brovanture shall not be responsible for products or services supplied which incorporate or are based upon information or materials supplied by the Client or third parties. Responsibility for decisions taken on the basis of advice given by Brovanture will remain with the Client.

5. CHARGES AND PAYMENT

- 5.1. The Client shall pay the Charges set out in each of the Accepted Order(s), and otherwise arising pursuant to the provisions herein. Brovanture reserves the right to increase the Charges at any time on the provision of sixty (60) days written notice to the Client. For the avoidance of doubt, the Client's continued use of the applicable Services following the expiry of such notice period shall be deemed to be the Client's acceptance of the variation to such Charges.
- 5.2. Brovanture will issue invoices to the Client in accordance with the terms set out in the relevant Schedule(s) and/or Accepted Order(s), or otherwise monthly in arrears.
- 5.3. The Client shall pay the Charges in accordance with the terms of the relevant Schedule and/or Accepted Order or, where no payment terms are set out in a Schedule or Accepted Order, within thirty (30) days of invoice date.
- 5.4. Unless otherwise expressly set out to the contrary in the applicable Schedule, the Client shall pay all expenses reasonably incurred by Brovanture that are attributable to the provision of the Services. Such expenses shall include without limitation the cost of travel outside normal business hours to and from supported sites and any overnight stays where cost of travel may be offset by an overnight stay. Brovanture reserves the right to invoice the Client in advance in respect of all fees payable as disbursements to third parties such as hardware or software vendors. In such cases, all monies paid by the Client shall be held on account by Brovanture on behalf of the Client.
- 5.5. All Charges are exclusive of VAT and all other taxes which shall be payable by the Client.
- 5.6. Brovanture reserves the right to charge the Client interest on any payment not made by the due date as set out in the relevant Accepted Form(s). Interest will be calculated on a daily basis, both before and after any judgement, at the rate of 8% (in accordance with the Late Payment of Commercial Debts (Interest) Act 1998) for the period from the date such payment is due until the date on which it is actually paid. Such payment shall be compounded quarterly and payable on demand.
- 5.7. The acceptance of any monies by Brovanture shall not be construed as an acceptance of such monies as the correct and full amount due and owing to Brovanture or as a waiver by Brovanture of any claims it may have against the Client.
- 5.8. In the event of a bona fide dispute regarding any invoice or other request for payment, the Client shall immediately notify Brovanture in writing and the parties shall attempt promptly and in good faith to resolve any dispute regarding amounts owed. The Client shall pay all undisputed amounts on the due date. Brovanture reserves the right to suspend performance of the Services until the dispute has been resolved.

6. WARRANTIES AND LIABILITIES

- 6.1. All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Agreement or the Schedules whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by law.
- 6.2. Subject to clause 6.3, 6.4 and 6.5 and any contrary provisions set out in any Accepted Order, the maximum aggregate liability of Brovanture (including its respective agents and sub-contractors) arising from or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, shall not exceed the total Charges paid by the Client under the relevant Accepted Order (or where there is no relevant Accepted Order the total Charges paid by the Client under this Agreement) in the 12 months prior to the date on which the liability first arose.
- 6.3. In no event shall Brovanture (including its respective agents and sub-contractors) be liable for:
- 6.3.1. any loss of profits, anticipated savings, loss of data, business interruption, loss of use, loss of contracts, loss of management time, loss of goodwill and reputation (whether direct or indirect);
 - 6.3.2. any special, indirect, incidental, punitive, exemplary, or consequential damages arising out of or in connection with this Agreement, even if Brovanture has been advised of the possibility of such damages;

whether or not caused by or resulting from its negligence or a breach of its statutory duties or a breach of its obligations howsoever caused even if it is advised of the possibility of such loss.

- 6.4. In no event shall Brovanture (including its respective agents and sub-contractors) be liable for:
- 6.4.1. any defect or default arising from or caused by any unapproved changes made to the Services or Infrastructure or resulting from abnormal usage;
 - 6.4.2. any unauthorised access to the Infrastructure and/or Services, unless the parties have agreed in writing that Brovanture is responsible for the security of such networks and/or systems;
 - 6.4.3. any failure of the Infrastructure and/or Services which results from interference (including inappropriate use, maintenance, development, modification, repairs or adaptation) by the Client or any third party not authorised by Brovanture which is not in accordance with standard use of the Infrastructure and/or Services or Brovanture's specific instructions; or

- 6.4.4. any failure of the Infrastructure and/or Services that is due to any integration or interoperability issues arising with any third party or Client systems or legacy systems.
- 6.5. Nothing in this Agreement shall limit or exclude Brovanture's liability for:
 - 6.5.1. death or personal injury caused by the negligence of its employees in the performance of this Agreement;
 - 6.5.2. fraud or fraudulent misrepresentation;
 - 6.5.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;
 - 6.5.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 6.5.5. any matter for which it would be unlawful to exclude or restrict liability.
- 6.6. In the event that Brovanture fails to comply with its obligations under this Agreement then it shall be entitled to be given a reasonable opportunity to correct any errors and re-perform its obligations and provide the Services hereunder.
- 6.7. Both parties accept that the limitations and exclusions set out in this Agreement are reasonable having regard to all the circumstances.

7. TERM AND TERMINATION

- 7.1. This Agreement shall come into force on the Effective Date and shall remain in force until terminated by either party on the provision of not less than thirty (30) days notice in writing (save that no termination may take effect until all Services to be provided pursuant to all Accepted Orders have been provided and all payments received by Brovanture), unless terminated earlier in accordance with clause 7.3.
- 7.2. The provision of Services may be terminated only in accordance with the terms of the relevant Accepted Order or Schedule or, where no terms are set out in the relevant Accepted Order or Schedule, on the provision of ninety (90) days written notice to the other party.
- 7.3. In any event the Agreement may be terminated immediately on written notice:
 - 7.3.1. by either party if the other party is in material breach of its contractual obligations and has not remedied such breach within thirty (30) days after receipt of a written notice of default from the other party;
 - 7.3.2. by either party if the other party is declared bankrupt, is granted a suspension of payments or begins negotiations for a composition with its creditors or is otherwise insolvent; or

7.3.3. by Brovanture if there is a change of control (as defined in Section 416 of the Income and Corporation Taxes Act 1988) in the Client or the Client's parent company.

7.4. Termination of this Agreement shall be without prejudice to any rights of either party arising on or before termination, which includes without limitation, all sums due to Brovanture for Services supplied (including for the avoidance of doubt any Charges incurred in respect of work in progress) prior to the date of termination.

7.5. The provisions of clauses 5 (to the extent of any unpaid obligations), 6, 7.4, 7.5, 8, 9, 11 and 12 and any clauses required for their interpretation shall survive the termination of this Agreement and shall remain in full force and effect.

8. CONFIDENTIALITY

8.1. Neither party will during the term of this agreement or after it has ended (except as required by law) disclose to any person any confidential information or trade secrets relating to the other's business. Such matters include, without limitation, information or secrets relating to: corporate and marketing strategy, business development and plans, sales reports and research results, business methods and processes, technical information and know-how relating to the other's business and which is not in the public domain, including inventions, designs, programmes, techniques, database systems, formulae and ideas; business contacts, lists of customers and suppliers and details of contracts with them; and any document marked "confidential".

8.2. During the term of this agreement and for a period of five (5) years after its termination, the parties will use all reasonable endeavours to prevent the publication or disclosure of any such information or secrets. These restrictions will not apply during or after this agreement has terminated to information which has become available to the public generally, otherwise than through unauthorised disclosure.

9. DATA PROTECTION

9.1. The Client shall act in accordance with the provisions of the Data Protection Act 1998 and all other applicable data protection legislation at all times.

9.2. The Client and Brovanture acknowledge and agree that the Client is the data controller and that Brovanture is a data processor in respect of all personal data of Client personnel (as such terms are defined in the Data Protection Act 1998). The Client therefore confirms that it is solely responsible for ensuring that any data processing and security obligations that arise from the provision of the Services comply with applicable data protection law.

9.3. Brovanture will only process personal data for the purposes of providing the Client with the Services. Brovanture has in place and will maintain for the duration of these terms and conditions appropriate technical and organisational measures against the accidental, unauthorised or unlawful processing, destruction, or disclosure of personal

data and adequate security programmes and procedures to ensure that unauthorised persons do not have access to any equipment used to process personal data.

10. NON-SOLICITATION

- 10.1. During the period this Agreement is in effect and for a period of six (6) months thereafter, the Client agrees not to solicit or to offer employment to any employees of Brovanture or any sub-contractors used by Brovanture hereunder without the prior written consent of Brovanture.
- 10.2. In the event that the Client breaches clause 10.1, it shall be liable to pay, immediately on demand, and without prejudice to any other remedy that Brovanture may have, the equivalent of twelve (12) months gross salary of the employee so solicited and/or employed. This provision shall be without prejudice to the right to seek injunctive relief.

11. FORCE MAJEURE

- 11.1. If Brovanture is prevented or delayed from or in performing any of its obligations under this Agreement by Force Majeure, then:
 - 11.1.1. its obligations under this Agreement (or, where the Force Majeure only affects some of the Services, such obligations as relate to those Services) shall be suspended for so long as the Force Majeure continues and to the extent that that party is so prevented, hindered or delayed;
 - 11.1.2. the parties shall, without prejudice to the other provisions of this clause 10.1.2 consult with a view to taking such steps as may be appropriate to mitigate the effects of such Force Majeure;
 - 11.1.3. Brovanture shall use all reasonable endeavours to mitigate the effects of the Force Majeure upon the performance of its obligations under this Agreement.
- 11.2. If any Force Majeure prevails for a continuous period in excess of two (2) months, either party shall be entitled to terminate this Agreement in its entirety (if the provision of all Services are affected by Force Majeure) or in part (insofar as it relates to the Services affected by Force Majeure) by giving not less than ten (10) days' notice in writing to the other party.

12. THE USE OF SUB-CONTRACTORS AND AGENTS

- 12.1. Unless otherwise expressly set out to the contrary in the relevant Accepted Order(s), Brovanture may engage any person, company or firm as its agent or sub-contractor to perform all or any of its obligations or duties under this Agreement.

13. GENERAL

- 13.1. This Agreement hereto constitutes the entire agreement and understanding of the parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement.
- 13.2. Each of the parties acknowledges that in entering into this Agreement on the terms set out herein it has not relied on or been induced to enter into this Agreement by any representation, warranty, undertaking, promise or assurance made or given by any other party or any other person, whether or not in writing, at any time prior to the execution of this Agreement other than those expressly set out in this Agreement or any applicable Statement of Work.
- 13.3. If any part of any provision of this Agreement shall be invalid or unenforceable, then the remainder of such provision and all other provisions of this Agreement shall remain valid and enforceable.
- 13.4. Save as otherwise set out in any Schedule, no amendment or variation of the terms of this Agreement shall be effective unless it is made or confirmed in a written document signed by both parties.
- 13.5. No delay in exercising or non-exercise by either party of any of its rights under or in connection with this Agreement shall operate as a waiver or release of that right. Rather, any such waiver or release must be specifically granted in writing signed by the party granting it.
- 13.6. Nothing in this Agreement or any document referred to in it or any arrangement contemplated by it shall be construed as creating a partnership between the parties for any purpose whatsoever and neither party shall have the power or authority to bind the other party or impose any obligations on it to the benefit of any third party.
- 13.7. The parties do not intend any term of this Agreement to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 13.8. The Client shall pay to Brovanture all costs and expenses (so that any legal fees shall be based on an indemnity basis) incurred by Brovanture in enforcing any of this Agreement or exercising any of its other rights and remedies under the Agreement, including (without prejudice to the generality) all costs incurred in tracing the Client in the event that legal processes cannot be enforced at the address last notified to Brovanture.
- 13.9. The Client may not assign any of its rights under this Agreement without the prior written consent of Brovanture and may not permit any third party to use any of the Services other than with Brovanture's written consent.
- 13.10. This Agreement shall be construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts to settle any disputes, which may arise in connection with this Agreement.

13.11. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: delivered in person; sent by registered mail return receipt requested; sent by overnight air courier; transmitted by facsimile; or transmitted by email in each case forwarded to the appropriate address set forth herein. Either Party may change its address for notice by written notice to the other Party. Notices will be considered to have been given at the time of actual delivery in person, or three (3) business days after posting, or one (1) day after (i) delivery to an overnight air courier service or (ii) the moment of transmission by facsimile or email with receipt of such facsimile or email confirmed.

13.12.

For and on behalf of

For and on behalf of

BROVANTURE LIMITED

" Insert Client name"

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: Director

Title: _____

Date: _____

Date: _____