

VERACITY G-CLOUD 15 TERMS OF BUSINESS

PARTIES:

- (1) VERACITY OSI UK LIMITED, (Company Number **08395304**) whose registered office is at 9th Floor, Peninsular House, 30-36 Monument Street, London, England, EC3R 8LJ (the **Supplier**); and
- (2) The organisation detailed on the G-Cloud 15 Order Form as the Buyer (the **Buyer**)

individually the "Party" and collectively the "Parties" in these Terms of Business

BACKGROUND:

- A The Supplier provides services under the G-Cloud 15 Framework Agreement as detailed on the Digital Marketplace.
- B The Buyer has a requirement for services and has conducted an appropriate search on the Digital Marketplace and determined that a G-Cloud 15 service provided by the Supplier best meets its needs.
- C The Buyer wishes to engage the Supplier to provide the appropriate service to the Buyer as detailed on a G-Cloud 15 Order Form and subject to the G-Cloud 15 Call Off Terms and these Terms of Business.

1. Definitions and interpretation

- 1.1. In these Terms of Business, unless the context requires otherwise, the following words and phrases have the meanings set opposite them:

Digital Marketplace	an electronic system operated by Crown Commercial Service on which services offered by G-Cloud 15 suppliers are described and advertised to potential buyers;
Engagement	the engagement of the Supplier by the Buyer to undertake the Services in accordance with these Terms of Business;
Fee	the meaning given to it in Clause 4.1;
G-Cloud 13	the agreement between the Minister for the Cabinet Office and the Supplier reference RM1557.13;
G-Cloud 13 Call Off Contract	an agreement pursuant to the G-Cloud 15 Framework Agreement for the provision of the Services as defined in a G-Cloud 15 Order Form and subject to the G-Cloud 15 Call Off Terms and these Terms of Business;
G-Cloud 13 Call Off Terms	the standard call off terms defined in the G-Cloud 15 Framework Agreement;

G-Cloud 15 Order Form	an order form substantially in the format defined in the G-Cloud 15 Framework Agreement whereby the Buyer orders G-Cloud 15 services from the Supplier;
Services	the provision of consulting services as defined in the G-Cloud 15 Order Form and in accordance with the Supplier's G-Cloud 15 service definition for the service described on the G-Cloud 15 Order Form.

- 1.2. In the event of any conflict between these Terms of Business and the G-Cloud 15 Order Form, the G-Cloud 15 Framework Agreement or the G-Cloud 15 Call Off Terms, to the extent necessary the G-Cloud 15 Order Form, the G-Cloud 15 Framework Agreement and the G-Cloud 15 Call Off Terms shall take precedence over these Terms of Business.
- 1.3. In these Terms of Business:
 - 1.3.1. any reference to these Terms of Business or to any other document will include its Schedules, appendices and annexes (if any) and any permitted variation or amendment to these Terms of Business or such other document;
 - 1.3.2. any reference to a Clause is, except where expressly stated to the contrary, reference to the relevant Clause of these Terms of Business;
 - 1.3.3. the table of contents, background section and any Clause or other headings and the use of bold type in these Terms of Business are included for convenience only and shall have no effect on the interpretation of these Terms of Business;
 - 1.3.4. a reference to any statute, statutory instrument, order, regulation or other similar instrument (including any EU order, regulation or instrument) will be construed as including references to any statutory modification, consideration or re-enactment of that provision (whether before, on or after the date of the G-Cloud 13 Order Form) for the time being in force, including all instruments, orders or regulations then in force and made under or deriving validity from that legislation;
 - 1.3.5. the words 'include', 'including', 'in particular' or any similar words and expressions will be construed as illustrative only and will not limit the sense of any word, phrase, term, definition or description preceding those words;
 - 1.3.6. the use of the singular includes the plural and vice versa and a reference to one gender includes a reference to the other gender;
 - 1.3.7. a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (excluding email);
 - 1.3.8. a reference to a 'Party' includes that Party's personal representatives, successors and permitted assigns;
 - 1.3.9. a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.3.10. a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established.

2. **Ordering, Commencement and Duration of the Engagement**

- 2.1. The Buyer shall be responsible for developing a statement of requirements, conducting an appropriate search on the Digital Marketplace and identifying the service that best matches its needs. By submitting a completed G-Cloud 15 Order Form to the Supplier, the Buyer confirms that it has complied with the G-Cloud 15 Framework Agreement Ordering Procedure and determined that the service provided by the Supplier best matches its needs.
- 2.2. Subject to these Terms of Business, the Supplier's Engagement will commence on date defined on the G-Cloud 15 Order Form and continue until the end date defined on the G-Cloud Order Form unless terminated earlier in accordance with the G-Cloud 15 Order Form or the G-Cloud 15 Call Off Terms or unless agreement is given in writing by both Parties (which may include by way of email) to extend the duration.

3. **Provision of Services**

- 3.1. During the Engagement the Supplier will provide the Services with all due care, skill and diligence.
- 3.2. The Buyer acknowledges that this is a contract for the provision of professional consultancy services and not for the provision of specific individuals, and that the Supplier has the right at its discretion to use any suitably qualified individuals at any time in the provision of the Services.
- 3.3. The Supplier will not, and will procure that the Individual will not:
- 3.3.1. hold itself out as having authority to bind the Buyer; nor
- 3.3.2. have any authority to incur any expenditure in the name of or on behalf of the Buyer,
- unless the Supplier has obtained the prior written consent of the Buyer.
- 3.4. The Supplier warrants that any individual engaged to provide the Services will at all times comply with the Buyer's health and safety policies and procedures as are notified to the Supplier from time to time.
- 3.5. The Supplier warrants that any individual engaged to provide the Services will at all times comply with any security policies of the Buyer.
- 3.6. Where the Supplier is obliged to provide personal instruments and/or equipment and/or computer equipment for the provision of the Services, it will be liable, at its own cost, to keep any such personal instruments and/or equipment and/or computer equipment in a safe and proper operating condition.
- 3.7. Where the Supplier is obliged to provide computer equipment for the provision of the Services it is a condition of these Terms of Business that:

- 3.7.1. such computer equipment is free of any virus either in hard disk, floppy disk, memory or other associated storage media; and
 - 3.7.2. the Supplier will, and will procure that the Individual will upon reasonable request make such computer equipment available for audit by the Buyer's information technology department, or equivalent person.
- 3.8. The Buyer shall not either during the term of the G-Cloud 15 Call Off Contract or for a period of six months following the termination of the G-Cloud 15 Call Off Contract engage or seek to engage directly or indirectly any individual supplied by the Supplier in the provision of the Services other than by way of contract with the Supplier, save with the express written consent of the Supplier.
- 3.9. The Buyer acknowledges that in consideration for the Supplier agreeing to provide consent in accordance with clause 3.8 it shall be entitled to charge the Buyer a fee equivalent to the maximum rate that would be charged under the G-Cloud 15 rate card for the appropriate individual for a period of one hundred days (together with Value Added Tax), and that the Supplier shall also be entitled to charge this fee to the Buyer in the event of a breach of clause 3.8. Any such fee shall be due within 30 days of the date of a corresponding invoice.

4. **Fees**

- 4.1. The Buyer will pay to the Supplier in consideration of the provision of the Services a consultancy fee as defined on the G-Cloud 15 Order Form (the Fee) within 30 days of the date of the invoice submitted.
- 4.2. The Supplier will keep time sheets showing the days worked by each individual engaged in the provision of the Services and will produce them to the Buyer if requested.
- 4.3. On a monthly basis the Supplier shall create an invoices in respect of the fees due to the Supplier based on the G-Cloud 15 Order Form and, where appropriate, time sheets completed pursuant to clause 4.2, above together with any expenses pursuant to clauses 5.1 and 5.2.
- 4.4. If any invoice (or any part of an invoice) remains unpaid at the due date for payment, the Supplier reserves the right to claim interest and fees in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

5. **Expenses**

- 5.1. The Supplier will be responsible for all out-of-pocket expenses and normal overhead expenditure incurred by it in the performance of the Services under these Terms of Business at the location agreed on the G-Cloud 15 Order Form and at any alternative location within the M25. In the event of any element of the delivery of the Services being required to be undertaken at any alternative location outside the M25 leading to additional expenses for travel and subsistence, the Buyer shall reimburse all reasonable additional costs, such costs to be in accordance with the Buyer's standard travel and subsistence policy.

- 5.2. The Buyer shall reimburse any additional exceptional expenses incurred in the provision of the Services provided that the Buyer has consented to such expenses prior to their being incurred and the Supplier produces such receipt or other evidence as the Buyer may reasonably require.

6. Confidentiality

- 6.1. Except to the extent set out in Clause 6.2 or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:
- 6.1.1. treat the other Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
 - 6.1.2. not disclose the other Party's Confidential Information to any other person except as expressly set out in these Terms of Business or the G-Cloud 15 Call Off Terms without the other Party's prior written consent.
- 6.2. Clause 6.1 shall not apply to the extent that:
- 6.2.1. such disclosure is a requirement of Law or any competent regulatory body placed upon the Party making the disclosure provided that the receiving Party shall as soon as reasonably practicable and to the extent permitted by Law notify the other Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply; or
 - 6.2.2. such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; or
 - 6.2.3. such information was obtained from a third party without obligation of confidentiality; or
 - 6.2.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 6.2.5. it is independently developed without access to the other Party's Confidential Information.
- 6.3. The Supplier may disclose the Buyer's Confidential Information on a confidential basis only to individuals employed or engaged by the Supplier who:
- 6.3.1. are directly involved in the provision of the Contract Services; and
 - 6.3.2. need to know the Buyer's Confidential Information to enable performance of the Supplier's obligations under this Contract.
- 6.4. Where the Supplier discloses the Buyer's Confidential Information pursuant to Clause 6.3, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 6.5. The Supplier shall not use or exploit any of the Buyer's Confidential Information received otherwise than for the purposes anticipated under the Contract.

- 6.6. Upon written notice of the Buyer, the Supplier shall procure that those individuals identified in the Buyer's notice sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.
- 6.7. Nothing in this Clause 6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of intellectual property rights.
- 6.8. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of good industry practice.

7. **Notices**

- 7.1. All notices, requests, demands or other communications required or permitted by these Terms of Business will be given in writing and delivered to the Parties at the addresses defined in the G-Cloud 15 Order Form.
- 7.2. Notices may be given and shall be deemed received:
 - 7.2.1. by first class post: two Business Days after posting
 - 7.2.2. by hand: on delivery
 - 7.2.3. by email: two working hours after sending save that any message sent after 4pm shall be deemed received at 10am the following Business Day, and that no email shall be deemed received if a message is received indicating a failure of delivery.

8. **Entire agreement**

- 8.1. The Parties agree that the G-Cloud 15 Order Form, the G-Cloud 15 Call Off Terms, the G-Cloud 15 Framework Terms and these Terms of Business constitutes the entire agreement between them relating to the Engagement and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 8.2. Each Party acknowledges that it has not entered into the G-Cloud 15 Call Off Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the G-Cloud 15 Order Form.
- 8.3. Nothing in these Terms of Business purports to limit or exclude any liability for fraud.

9. **Further assurance**

Each Party shall at the request of the other, and at the cost of the requesting Party, do all acts and execute all documents which are necessary to give full effect to these Terms of Business.

10. Variation

No variation of these Terms of Business shall be valid or effective unless it is in writing, refers to these Terms of Business and is duly signed or executed by, or on behalf of, each Party.

11. No partnership or agency

Nothing in these Terms of Business constitutes, or shall be deemed to constitute, a partnership between the Parties nor make any Party the agent of another Party.

12. Remedies and waiver

Any remedy or right conferred upon the Supplier for breach of these Terms of Business will be in addition to and without prejudice to all other rights and remedies available to it. No failure or delay by the Supplier in exercising any remedy, right, power or privilege under or in relation to these Terms of Business will operate as a waiver of that or any other right, power, remedy or privilege of the Supplier, nor will any single or partial exercise of any right, power, remedy or privilege preclude any other or further exercise of that or any other right, power, remedy or privilege.

13. Equitable relief

Each Party recognises that any breach or threatened breach of these Terms of Business may cause the other Party irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the other Party, each Party acknowledges and agrees that the other Party is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

14. Severance

If any provision of these Terms of Business (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of these Terms of Business shall not be affected.

15. Third Party rights

The Contracts (Rights of Third Parties) Act 1999 will not apply to these Terms of Business and no person other than the Buyer and the Supplier will have any rights under them.

16. Governing law

These Terms of Business and any dispute or claim arising out of, or in connection with, them, their subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.

17. Jurisdiction

The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, these Terms of Business, their subject matter or formation (including non-contractual disputes or claims).