

DRAFT FOR AGREEMENT

TERMS AND CONDITIONS – G-CLOUD PROFESSIONAL SERVICES TERMS



G-CLOUD 15

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EVODIA LIMITED

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G-CLOUD PROFESSIONAL SERVICES TERMS

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Contact Us

If you have a Framework related question or query, please find our contact details below.

Our contact details: +0044 (0)1252 722500

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G-CLOUD PROFESSIONAL SERVICES TERMS

1. Application and Interpretation

These terms and conditions apply to the relationship between Evodia Limited ("Supplier") and the Client ("Client") requesting services from the Supplier as outlined in the Statement of Work ("SoW") / purchase order accompanying these terms and conditions, and to all services to be supplied by the Supplier in connection therewith. These terms and conditions and the SoW will, immediately on the SoW being returned from the Client to the Supplier, together form a binding agreement between the parties ("Agreement").

Headings in these terms and conditions are for convenience only and shall not affect their interpretation or construction. Any reference to the singular shall be deemed to include reference to the plural and vice-versa. Any statutory or regulatory reference shall be deemed to include all modifications thereof and replacements thereto from time to time.

2. Services

The Supplier will use reasonable endeavours to provide the services identified in the SoW ("Services") to the Client in accordance with such milestones and/or timelines (including payment timetables) as are set out in the SoW or as the Supplier reasonably specifies from time to time.

Further services in connection with the Services may be requested by the Client and shall be provided by the Supplier subject to agreement on price and performance schedules. Where such further services do not form the subject matter of a separate SoW signed by both parties they shall, save to the extent the parties expressly agree otherwise in writing, be subject to these terms and conditions.

3. Client Obligations

The Supplier will invoice the Client monthly in arrears in accordance with the charging basis set out in the SoW, unless the parties agree otherwise in writing.

The Client will settle each invoice by the due date for payment set out therein. The Client will not be entitled to set off any disputed payments against any debt owed to the Supplier.

The Client shall promptly and free of charge provide the Supplier with all such assistance from time to time in connection with the performance of the Services as the Supplier may reasonably require, including without limitation by way of providing information, materials, documentation, resources (human and otherwise) and facilities directed, owned, managed, controlled, employed, in the possession of or otherwise available to the Client. The Client will procure at all times that its employees, agents, contractors and suppliers cooperate fully with the Supplier and do not delay or inhibit the Supplier from providing the Services in any way. The Client will ensure that at all times when any officer, employee, agent or subcontractor of the Supplier is on premises, owned, managed or otherwise under the control of the Client that it will ensure their health and safety.

The Client warrants that it shall ensure compliance with all applicable rules, regulations, codes of conduct and guidelines issued from time to time by any properly constituted and relevant judicial, quasi-judicial or administrative body in relation to the provision of the Services. The Client agrees to indemnify the Supplier fully from and against any claim, threat,

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proceeding, action, liability, damage, loss, cost and expense arising out of or in connection with any breach by the Client of its warranty hereunder.

The Client undertakes to use and apply the Services only for the purposes and in the ways agreed in writing between the parties. Without prejudice to any other provision of these terms and conditions, the Client agrees that the Supplier shall not be responsible to any person in any way whatsoever for any other use or application of the Services which may be made by the Client at any time, and the Client agrees to indemnify the Supplier fully from and against any claim, threat, proceeding, action, liability, damage, loss, cost and expense arising out of or in connection with any breach by the Client of its undertaking hereunder

4. Ownership

All materials (including without limitation) training course materials, data, information and records (in whatever form, material or otherwise) (collectively "Material") and all intellectual property rights connected with the Services, including without limitation any copyright, registered or unregistered trade marks, service marks, topography rights, patents, registered or unregistered designs, database rights, confidential information or process and know-how, and any applications for any of the above, and any other intellectual property right recognised anywhere in the world, whether or not presently existing, and in each case all goodwill attaching thereto, either vest in the Supplier or are licensed from third parties by the Supplier.

All Material and intellectual property rights in those elements of the Services which the Supplier provides solely and exclusively for and on the instructions of the Client and in respect of which the Supplier has received payment in full from the Client will vest in the Client. The Client agrees that the Supplier will have a perpetual, irrevocable, royalty-free, worldwide license to use, modify and adapt all such Materials and intellectual property in such manner and for such purposes as the Supplier sees fit, taking into account the obligation of confidentiality. In addition, the Supplier shall be entitled to use the knowledge, acquired ideas, concepts and processes acquired in the execution of the Services for other clients unless such involves a business secret of the Client.

The contents of all reports, documents, specifications, presentations, software, materials and documentation prepared, made or written by or on behalf of the Supplier for or to the Client, all advice given by the Supplier to the Client, all the methodologies used by the Supplier in working for the Client and the results of the work done by the Supplier for the Client, in each case howsoever recorded in any form, material or otherwise, are for the use of the Client only

5. Termination

The Supplier may suspend or terminate provision of any or all of the Services forthwith on notice in writing to the Client if (a) the Client fails to pay any sum due to the Supplier from time to time under the terms of the Agreement and that sum remains unpaid for 28 (twenty eight) days following written notice from the Supplier that the sum has not been paid; or (b) the Client commits any material or persistent breach of any term of the Agreement and (in the case of a breach which is capable of being remedied) has failed, within 28 (twenty eight) days after the receipt of a request in writing from the Supplier so to do, to remedy the breach.

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Either party may terminate the Agreement forthwith on notice in writing to the other party if the said other party has a receiver or administrative receiver appointed over it or any of its undertakings or assets, or if it passes a resolution for winding-up (other than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if it becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun, or if it ceases or threatens to cease to carry on any substantial part of its business. The Client may terminate any Services immediately on giving notice in writing to the Supplier if the Supplier commits any breach of any term of the Agreement and (in the case of a breach capable of being remedied) has failed within 28 (twenty eight) days after receipt of a request in writing from the Client to do so, to remedy the breach.

Any suspension or termination of a Service (however it happens) will not affect any accrued rights or liabilities of either party. Nor will it affect the coming into force or the continuing in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after the termination or expiry of that Service.

6. Client Warranties

The Client warrants to the Supplier that it has not been induced to enter into the Agreement by any warranties or representations except those expressly contained in the Agreement. The Client waives any claim for breach of any representation and for any misrepresentation, save in respect of any fraudulent misrepresentation.

The Client warrants to the Supplier that no data, information or material of any kind (including without limitation any software) supplied or made available from time to time by or on behalf of the Client to the Supplier or for the Supplier's use will infringe any intellectual property right of any third party, or contain anything which is obscene or defamatory, or which is a malicious falsehood, or will breach any applicable data protection legislation or guidelines.

The Client warrants to the Supplier that the Client will not at any time do anything or omit to do anything which might put the Supplier in breach of any applicable data protection legislation or guidelines. The Client agrees to indemnify the Supplier fully from and against any claim, threat, proceeding, action, liability, damage, loss, cost and expense arising out of or in connection with any breach by the Client of any of these warranties.

7. Supplier Warranty and Liability

The Supplier will perform the Services with reasonable skill and care. The Supplier gives no representation or warranty that the Services will be uninterrupted or error-free or that all errors, defects or deficiencies can be corrected or remedied.

Save that the limitation and exclusions applicable to the Supplier's liability in the Agreement do not apply in respect of death or personal injury caused by the negligence of the Supplier or its employees acting in the course of their employment or in respect of any fraudulent misrepresentation made by or on behalf of the Supplier, as to each of which the Supplier's liability will be unlimited, the Supplier will not be liable to the Client or any third party in contract or in tort (including without limitation negligence) or in any other way whatsoever for any loss of profit, loss of goodwill, loss of business or revenue, loss of anticipated savings,

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loss of opportunity, loss or spoiling of data, loss of use of any software or equipment or (without prejudice to the specificity of the aforementioned) any special, indirect or consequential loss arising out of or in connection with any defect, deficiency or error in any Service, equipment, software or in any associated material or documentation, or for any failure or interruption of any telecommunications facilities or network systems loss, whether or not of a kind foreseeable by the Supplier.

The Supplier will be liable for direct loss of or damage to the tangible property of the Client to the same extent as has been caused directly by the negligence of the Supplier, its employees or agents acting in the course of their employment or agency, provided that the Supplier's liability for any such loss or damage will be limited in the aggregated to the value of such loss or damage or the sum of the fees paid by the Client to the Supplier under the Agreement (whichever is the lesser). The Client expressly agrees that it shall be the Client's sole responsibility to obtain and maintain in place adequate insurance cover for all loss or damage which may occur and which would fall outside the Supplier's liability under this Clause.

Without prejudice to the generality otherwise of this Clause, the Supplier will not be liable to the Client for any loss or damage arising out of any failure by the Client to keep full and up-to-date backup copies of the computer programs and data which it uses, any failure by the Client to comply with any technical prerequisites specified from time to time by the licensor of any software or the manufacturer of any equipment, any error or incompleteness in the data, information or other material supplied from time to time by the Client, any fault in any media used by the Client, any delay or failure on the part of the Client to provide any data, information or material to the Supplier, any delay or failure on the part of the Client to notify the Supplier of any error in any output or of any actual or suspected failure of, or error or defect in, any equipment, software, network or telecommunications system or any delay or failure on the part of any hardware or software supplier or maintainer to correct any fault or defect or to provide any other service.

All terms, conditions, representations and warranties, express or implied, not set out in the Agreement are, to the fullest extent permitted by law, excluded from applying to the Agreement, including without limitation implied warranties, terms and conditions as to performance, fitness for purpose, merchantability and satisfactory quality. Without prejudice to the generality of the foregoing, the Client agrees that the responsibility for ensuring that any Service provided by the Supplier is adequate for the Client's purposes rests entirely with the Client.

The Client acknowledges that the exclusions and limitations on the Supplier's liability in the Agreement have been drawn to the Client's attention and that the Supplier is in principle willing to discuss undertaking greater liability than that mentioned above, provided that the Supplier is able to obtain insurance to cover such further potential liability and the Client bears the cost of that insurance.

8. Confidentiality

Each party agrees not, without the written consent in each case of the other party, to disclose any Confidential Information regarding the said other party to any third party or use Confidential Information for any purpose whatsoever other than the purpose for which

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such Confidential Information was provided and as contemplated by the Agreement. Each party will procure that each of its employees and agents who may be exposed to such Confidential Information is aware of their obligations to keep such information confidential. Notwithstanding the aforementioned, each party may disclose such Confidential Information pursuant to any applicable law or court order or governmental or regulatory request; and to its legal, accounting and other professional advisors to whom the provision of such information is necessary to ensure the proper performance of this Agreement, provided in each instances that the parties to whom such disclosure is made undertake that they shall abide by confidentiality obligations no less restrictive than those set out herein. For the purposes of the Clause, "Confidential Information" means all non-public information in any form obtained by a party pursuant to the Agreement, including without limitation any trade secrets, processes, data, information, material or documents in whatever form (material or otherwise) relating to the administration, business, finances, operations, plans or intentions of the other party, but will not include information which is publicly known, or which becomes publicly known, otherwise than as a result of breach of this Clause, known to the receiving party without an obligation of confidentiality attaching to it, independently developed by the receiving party (as to which the burden of proof shall be on the party claiming such independent development), or rightfully obtained by the receiving party from a third party free lawfully to disclose the information to the receiving party without any obligation of confidentiality attaching to its further disclosure.

9. General

During the time of the Agreement and for a time period of twelve months after the completion thereof, the Client and Supplier hereby declare and agree that they will not mutually canvass any persons in the service or occupation of the other party who contributed to the Services and will not employ or occupy such persons either directly or indirectly. The Supplier shall be entitled to sub-contract its obligations hereunder in whole or in part in its sole discretion, provided that it shall at all times remain directly and personally liable to the Client for the performance of all such subcontracted obligations.

Any notice permitted or required to be provided pursuant to the Agreement may be delivered personally, by registered mail or by facsimile, in each case to the address of the recipient set out in the SoW, unless that information has been updated by written notice from one party to the other in accordance with this Clause. Any notice delivered by hand shall be deemed to have been delivered when received. Any notice delivered by registered mail shall be deemed to have been delivered on the day its receipt is acknowledged by signature by or on behalf of the intended recipient. Any notice delivered by facsimile shall be deemed to have been delivered on the day of transmission (in the jurisdiction of the recipient), as evidenced by a duly completed facsimile transmission report sheet.

The Client may not assign, sublicense or otherwise transfer, in whole or part, any of its rights or obligations under the Agreement without the prior written consent of the Supplier. The Supplier may assign, sub-license or otherwise transfer in whole or part any of its rights or obligations under the Agreement without the prior written consent of the Client.

This agreement and any documents to which it refers contains and sets out the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement.

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Neither party will be liable for any delay or failure in performing its obligations under the Agreement (except an obligation to make payment) if that delay or failure is caused by circumstances beyond its reasonable control, and the party so delaying will be entitled to a reasonable extension of time for the performance of its obligations. The Supplier will endeavour to comply with any timetable or dates which the Supplier has given to the Client for the performance of the Services, but any such timetable or dates are estimates only, and the Supplier will not be liable for any delay or failure to perform in accordance with that timetable or those dates.

No failure by either party to enforce any rights hereunder shall constitute a waiver of such right then or in the future. Any waiver of any term of this Agreement shall be effective only in the instance and for the purpose for which it is given. No breach of any provision of this Agreement shall be effective only in the instance and for the purpose for which it is given. No breach of any provision of this Agreement shall be waived or discharged except with the express written consent of the breaching party. The rights and remedies herein provided are cumulative with, and not exclusive of any rights or remedies provided by law.

If any provision of the Agreement for any reason is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability under the law of that (and that of any other) jurisdiction of any other provision, shall not be affected or impaired in any way thereby.

The Agreement may be varied, amended or replaced only by a document signed by both of the parties.

The Agreement shall be governed by and construed in accordance with English law, and the parties irrevocably submit it the exclusive jurisdiction of the English Courts.

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