



G-CLOUD

TERMS AND CONDITIONS



Version 1.7

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Contents

1. Parties	2
2. Background	2
3. Definitions and interpretation	2
4. Change control procedure	4
5. Services and warranties	4
6. Charges and payments.....	4
7. Confidentiality.....	5
8. Staff	5
9. Intellectual property rights.....	6
10. Liability.....	6
11. Termination for breach.....	7
12. Consequences of termination.....	7
13. Non solicitation	8
14. References	8
15. Force Majeure	8
16. Whole agreement	8
17. Company Advice	9
18. Change of address and notices.....	9
19. Proper law and jurisdiction	9
20. Assignment or sub-contracting.....	10
21. Mediation.....	10
22. Waiver.....	10
23. Change control procedure schedule	10

Terms and Conditions

1. Parties

The terms and conditions apply to the products and services offered by Nquiringminds Limited.

1. Nquiringminds Limited is incorporated and registered in England and Wales with company number 07452630 and VAT registration GB 103 053 770, whose registered office is at Engineering Centre, University Parkway, Southampton Science Park, Southampton, Hampshire, SO16 7PT.
2. (Client) is incorporated and registered in (England and Wales/Scotland/Northern Ireland) with company number (company number) and VAT registration (number), whose registered office is at (Registered Address).

2. Background

2.1. Nquiringminds and the Client have agreed that Nquiringminds will provide certain products and /or services to Client.

2.2. The Services (as defined below) ordered by the Client are more particularly detailed on one or more separately stated Service Descriptions

2.3. This Agreement together with the terms and conditions of any applicable Order Form(s) (as defined below) states the terms and conditions under which Nquiringminds will supply and the Client may use the Services or Products.

3. Definitions and interpretation

3.1. In this Agreement the following expressions shall carry the following meanings unless inconsistent with the context:

“Change Control Procedure” means the procedure for agreeing changes to this Agreement or to the Services as set out in the Change Control Procedure Schedule;

“Confidential Information” means information, data and material of any nature which either Party may receive or obtain in connection with this Agreement, which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998), the disclosure of which would or would be likely to prejudice the commercial interests of the relevant Party, constitutes a trade secret or by its nature should reasonably be regarded as confidential;

"Fees" means the fees to be paid by the Client to the Company in consideration for the provision of the Services, which are to be defined in the specific version of these standard Terms and Conditions that will be defined for each appointment;

"Force Majeure" means an event beyond the reasonable control of the relevant Party, including fire, strikes, delays in transportation, inability to obtain supplies, hostilities or regulations of any civil or military authority;

"Intellectual Property Rights" means intellectual property rights, comprising copyright, design rights, patents, trademarks, moral rights, knowhow, confidential information and any other intellectual property rights, including registered and unregistered rights and applications for registration and covers all rights which exist in any part of the world and any related goodwill;

"Services" means the services to be delivered by the Company to the Client in consideration for the Fees, which are to be defined in the specific version of these standard Terms and Conditions that will be defined for each contract.

3.2. Any reference to any law or regulation shall be interpreted as referring to such law or regulation as amended and in force from time to time and/or which re-enacts or consolidates such law or regulation.

3.3. In the event of any conflict or inconsistency between the terms and conditions of this Agreement (excluding the Schedules) and the Schedules the former shall take precedence.

3.4. In this Agreement, references to:

3.4.1. Recitals, Clauses, Sub-clauses, Schedules and Paragraphs are to recitals, clauses and sub-clauses, paragraphs and sub-paragraphs of and schedules, attachments and annexes to this Agreement;

3.4.2. the singular includes the plural and vice versa and use of any one gender includes all genders;

3.4.3. a person includes a natural person, company, corporation, firm, partnership, cooperative company, unincorporated or incorporated association, government, state, statutory authority, foundation and trust;

3.4.4. the words "include", "includes", "including", "in particular" or any similar words or any general words introduced by the word "other" do not limit the words preceding or following.

4. Change control procedure

4.1. In the event that either Party wishes to make any change to the terms of the Agreement (including the scope of the Services), the Parties shall comply with the Change Control Procedure detailed below.

5. Services and warranties

5.1. The Company shall commence on the delivery of the Services on the date of this Agreement or, if later, such date as is specified, and shall endeavour to achieve any timescales required by the Client, but:-

5.1.1. shall not be liable for any failure or delay in so doing where caused by matters outside of its reasonable control; and

5.1.2. the Company shall be entitled to a reasonable period of time to rectify any failure to deliver the Services (where such failure is capable of remedy) prior to the Client exercising any of its rights hereunder.

5.2. The Company warrants to perform the Services with reasonable care and skill. Such warranty is given in lieu of any other warranty express or implied as to the quality of delivery of Services, all of which are excluded to the fullest extent permitted by law.

5.3. Each of the Parties warrants its power to enter into this Agreement and that it has all necessary approvals to do so.

5.4. The Client agrees to cooperate with the Company in the performance of the Services and to give such support, facilities and information as may be reasonably required.

6. Charges and payments

6.1. The Client agrees to pay the Fees as set out in, and in accordance with the provisions of, this Clause and the specified 'Fees' section of the specified Terms and Conditions. Unless agreed otherwise, Nquiringminds Ltd will be entitled to invoice for all Fees, costs and expenses at the end of the month in which they are incurred.

6.2. All sums invoiced by the Company are payable within 30 days of the invoice. Without prejudice to any other rights under this Agreement, the Company may charge interest on all sums which are not paid within 30 days from the date of invoice to payment date at the greater of the rate prescribed from time to time pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 or 10% per annum.

6.3. The Company may, no more than once per annum, increase any hourly rates (if applicable) by the most recent increase in the Retail Prices Index, subject to providing the Client with at least 30 days' notice of its intention to increase such rates.

6.4. During any period in which any payment from the Client remains unpaid for more than 30 days from the date of invoice, the Company may by notice to the Client immediately suspend all Services.

6.5. Any expenses incurred by the Company and recoverable from the Client in accordance with this Agreement (including travel, accommodation and subsistence) shall be charged at cost plus VAT payable by the Client.

6.6. Whenever a sum of money is owed by the Company to the Client under this or any other contract, the Company may credit that sum towards any invoice raised under this Agreement.

6.7. The Client shall not be entitled to withhold payment of any sum otherwise payable to the Company by reason of any claim, set-off or for damages in relation hereto.

6.8. Where the Company has undertaken a recruitment assignment in circumstances where the Client has absolute discretion as to whether or not to appoint the person or persons sourced by the Company, under no circumstances shall charges or expenses be repayable by the Company to the Client.

7. Confidentiality

7.1. Each Party undertakes to the other not at any time to divulge or allow to be divulged to any person any Confidential Information related to the business or affairs of the other Party other than in accordance with this Agreement, except where the disclosing Party can prove that the Confidential Information was:

7.1.1. already known to it prior to receipt of the other Party;

7.1.2. disclosed by it as required by law; or 7.1.3. already in the public domain other than as a result of breach of the provisions of this clause.

7.2. Any Party who instructs a sub-contractor or agent to perform any part of its obligations under this Agreement must seek the consent of the other Party before disclosing Confidential Information to such sub-contractor or agent and require such sub-contractor or agent to sign an appropriate confidentiality undertaking in similar terms to this clause.

8. Staff

8.1. The Company shall have discretion as to which of its employees or associates are assigned to perform the Services but shall consult with the Client concerning any significant changes.

8.2. The Company shall bear exclusive responsibility for the payment of National Insurance contributions that relate to its employees and for the discharge of any income tax and VAT liability arising out of remuneration for the provision of the Services.

8.3. The Company shall not be subject to directions from the Client as to the manner in which it shall perform any of the Services.

9. Intellectual property rights

9.1. The Company undertakes not to knowingly cause or permit anything, which may damage or endanger the Intellectual Property Rights of the Client or the Client's title to it or assist or allow others to do so.

9.2. All Intellectual Property Rights in materials created or provided pursuant to this Agreement by the Company shall remain vested in the Company, notwithstanding anything to the contrary in this Agreement, and solely to the extent necessary for the proper receipt of the Services the Company licences the Client to use such Intellectual Property Rights on a non-exclusive, non-transferable basis for the duration of this Agreement.

9.3. The Client undertakes to keep all materials, documents and information provided to it by the Company confidential to itself and its employees and not to distribute any product of the Services to any third party without the Company's prior written consent.

9.4. The Client and the Company undertake to each other that they shall not during the duration of this Agreement knowingly infringe the Intellectual Property Rights of any third party.

10. Liability

10.1. The Company shall not be liable to the Client for loss or damage to the Client's property unless due to the negligence or other failure of the Company to perform its obligations under this Agreement or the general law.

10.2. The liability of either Party to the other in respect of fraudulent misrepresentation or death or personal injury caused by its negligence shall not be limited.

10.3. Save as set out in Clause 10.2:

10.3.1. the Company shall have no liability to the Client, whether arising in contract, tort (including negligence and strict liability) or otherwise, for any (i) loss of profit, loss of contracts or opportunities, loss of a bargain, loss of revenue, loss of income, or loss of savings (whether actual or anticipated); (ii) indirect or special loss; or (iii) consequential loss; and

10.3.2. the total aggregate liability of the Company for any other loss of the Client arising under or pursuant to this Agreement (and whether arising in contract, tort (including negligence and strict liability) or otherwise) in respect of any one event or series of connected events shall not exceed the Fees payable by the Client in respect of the Services

10.4. Nothing in this Agreement precludes the Company, or any member of its staff, taking such steps as are necessary in order to comply with the professional and/or ethical rules of any relevant professional body of which a director or employee may be a member or the taking of

any action by the Company or any company of the group of companies of which it is a part from time to time from doing so or in order to comply with the requirements of any recognised investment exchange.

11. Termination for breach

11.1. The Company may by giving written notice to the Client terminate this Agreement with immediate effect in the event of:

11.1.1. failure by the Client to make punctual payment of all sums due to the Company;

11.1.2. the Client committing a breach of its obligations under this Agreement which is capable of rectification, and failing to rectify the breach within 30 days of being notified of it by the Company;

11.1.3. the levying or distress or execution against the Client or making by it of any composition or arrangement with creditors or the presentation of a petition for the Client's liquidation or bankruptcy or administration or the appointment of a receiver over any part of the Client's assets or the Client suffers anything analogous to any of the foregoing in any jurisdiction;

11.1.4. the doing or permitting of any act by the Client which prejudices or puts into jeopardy any Intellectual Property Rights of the Company; or

11.1.5. the Client being in serious or persistent breach of its obligations under this Agreement.

11.2. The Client may by giving written notice to the Company terminate this Agreement with immediate effect if the Company has committed a breach of its obligations under this Agreement (and if such breach is capable of rectification) has failed to rectify the breach within 30 days of being notified by the Client of the breach and the manner in which it should be remedied, has not rectified the breach.

11.3. The Company may, by giving written notice to the Client for a period not exceeding 6 months, terminate this Agreement if in the opinion of the Company the working relationship with the Client has irretrievably broken down.

12. Consequences of termination

12.1. In the event of this Agreement being terminated whether by effluxion of time, notice, breach or otherwise and without prejudice to any other remedy available to the Company the Client shall immediately pay to the Company:

12.1.1. any sums due under or pursuant to this Agreement;

12.1.2. any sums to which the Company is committed in the course of the proper delivery of the Services and which it cannot mitigate; and

12.1.3. in the event of termination pursuant to Clause 11.1, any further sums which would but for the termination have fallen due by the end of the Agreement

13. Non solicitation

13.1. The Client (including for this purpose any subsidiary or associated company) undertakes that it will not, nor will it encourage or assist any other person directly or indirectly to recruit as an employee or engage as an independent contractor any person employed or so engaged by the Company in connection with the Services for a period of six months after such person last provided services to the Client unless agreed in writing in advance by the Company.

13.2. In the event that the Client is in breach of the undertaking in sub-clause 13.1, the Client and the Company agree that the Client will pay liquidated damages of a sum equal to 33% of the annual remuneration or payment and any other benefits payable to the relevant individual by the Company at the rate payable during the week immediately prior to such individual ceasing to provide services to the Company.

14. References

14.1. Subject to clause 5 (Confidentiality), the Company shall be entitled to refer to its provision of Services to the Client for any purpose in connection with the Company's business (or the business of the group of companies of which it is a part) provided that prior to any published reference to the Client, the Company shall give the Client an opportunity to object to such reference and in the event of objection upon reasonable grounds shall not refer to the Client as proposed.

15. Force Majeure

15.1. Neither Party shall be considered in breach of this Agreement or under any liability whatsoever to the other for non-performance, part performance, prospective performance or delay in the performance of any Services or goods supplied or to be supplied which is directly or indirectly caused by a result of any event of Force Majeure.

15.2. If the event of Force Majeure continues for a period in excess of 30 consecutive days either Party shall have the right to terminate this Agreement. In the event of such termination, the Company shall be entitled to be paid for all work performed prior to the date of termination and for any unavoidable commitments entered into prior to the date of termination.

16. Whole agreement

16.1. Each party acknowledges that this Agreement contains the whole agreement between the Parties and has not relied upon any oral or written representations made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

17. Company Advice

17.1. Nothing in this Agreement shall require the Company to include within the Services, the giving of investment advice or the arranging of deals in investments within the meaning of the Financial Services Act 1986.

17.2. This Agreement is between the Company and the Client for the benefit of these Parties and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by anyone else. Accordingly, Nquiringminds Ltd has no duty of care to any party other than the Client (to whom the Company shall only have the duty of care expressly contained in this Agreement, subject to the terms thereof).

18. Change of address and notices

18.1. Each of the Parties shall as part of this Agreement when it is formed and if necessary subsequently give notice to the other of its postal address and electronic mail details and shall notify any change or addition thereto at the earliest possible opportunity but in any event within 24 hours of such change or addition.

18.2. Any notice to be served on either of the Parties by the other shall be sent by prepaid recorded delivery or registered post to the postal address of the relevant Party shown in this Agreement or such other address substituted in writing under clause 18.1 (and if more than one address any such address) or by electronic mail and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by electronic mail to the correct electronic mail address of the addressee (with correct answer back or confirmation of receipt).

19. Proper law and jurisdiction

19.1. This Agreement shall be governed by UK law including formation and interpretation and shall be deemed to have been made in the UK.

19.2. Any proceedings arising out of or in connection with this Agreement may be brought in any court of competent jurisdiction in the UK.

19.3. The submission by the Parties to such jurisdiction shall not limit the right of the Company to commence any proceedings arising out of or in connection with this Agreement in any other jurisdiction it may consider appropriate.

19.4. In the event that the Client is resident outside the UK, its address for service in the UK shall be any address provided in accordance with clause 18.1 and any time limits in any proceedings shall not be extended by virtue only of the foreign residence of the Client.

20. Assignment or sub-contracting

20.1. The Company shall be entitled to assign or sub-contract any of its rights or duties under this Agreement (including the performance of the Services).

21. Mediation

21.1. In the event of any dispute or disagreement arising between the parties out of or in connection with this Agreement (a "Dispute"), the Parties' project directors (which expression includes the person in the nearest equivalent role, if there is no such project director) shall within 10 days of a written request from either party to the other, set out brief details of the Dispute, meet and use their best endeavours to settle the Dispute by good faith negotiation.

21.2. If the project directors cannot resolve the Dispute it will be referred to the chief executives of each party (which expression includes the person in the nearest equivalent role, if there is no such chief executive) who will within 14 days after the meeting of the project directors meet and use their best endeavours to settle the Dispute by good faith negotiation.

21.3. If any of the project directors or chief executives are unable to attend a meeting, a substitute may attend provided he or she has at least the same or reasonably comparable managerial or directorial responsibility and is authorised to settle the Dispute.

21.4. If the Dispute remains unresolved at the conclusion of the meeting of the chief executives either party may propose to the other in writing that the Dispute be referred to mediation. The mediator shall be agreed upon within seven days of the Parties agreeing to mediate, failing which the mediator shall be appointed by mutual consent of both parties. Unless otherwise agreed, the Parties shall bear their own costs and shall share equally the costs of the mediation.

21.5. Nothing in this clause shall prevent either Party seeking a preliminary injunction or other judicial relief at any time if in its judgment such action is necessary, nor shall the Company be precluded from issuing proceedings or taking any other step in relation to the non-payment of monies due.

22. Waiver

22.1. Failure by either Party to enforce at any time or for any period any one or more of the provisions of this Agreement shall not be a waiver of them of the right at any time subsequently to enforce all the provisions of this Agreement.

23. Change control procedure schedule

23.1. The Client may at any time request, and the Company may at any time recommend, a change to the Services or the terms of the Agreement (a "Change") in accordance with this Schedule.

23.2. Until such time as a Change is made in accordance with this Schedule, the Company shall, unless otherwise agreed in writing, continue to supply the Services as if the request or recommendation had not been made.

23.3. Any discussions which may take place between the Client and the Company in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

23.4. Discussion between the Client and the Company concerning a Change shall result in any one of the following:

23.4.1. no further action being taken;

23.4.2. a request to implement a Change by the Client; or

23.4.3. a recommendation to implement a Change by the Company.

23.5. Where paragraph 23.4.2 or 23.4.3 applies, the Company shall prepare a Change Control Notice ("CCN") containing the following minimum information:

- a. the title of the Change;
- b. the originator and date of the request or recommendation for the Change;
- c. the reason for the Change;
- d. full details of the Change;
- e. a timetable for implementation of the Change
- f. the price, if any, of the Change;
- g. details of the likely impact, if any, of the Change on other aspects of the Services;
- h. the date of expiry of validity of the CCN; and
- i. provision for signature by the Client and the Company.

23.6. Following discussion between the Client and the Company if agreement is reached on a Change, two copies of the CCN, in hard copy format, shall be prepared for signature by both parties, each party retaining one signed copy. The CCN will normally be signed by both parties within one month of receipt of the document.

23.7. A CCN signed by both parties shall constitute an amendment to this Agreement.