

G-CLOUD 15 TERMS OF BUSINESS

These Terms of Business govern any work conducted by Hunter Healthcare Resourcing Limited, a company registered in England and Wales with company number 07600695 and registered address Berkshire House Floor 2, 168-173 High Holborn, London, England, WC1V 7AA ("Hunter Healthcare") under the G-Cloud framework, and are deemed to be accepted by any Buyer through the signature of a G-Cloud Order Form.

These Terms of Business are subordinate to the G-Cloud Order Form and the clauses of the G-Cloud Framework Agreement and the G-Cloud Call Off Contract.

1. DEFINITIONS AND INTERPRETATION

In these Terms of Business, the following definitions shall apply:

"Consultancy Personnel"	means any individuals employed or engaged by Hunter Healthcare who will carry out the Services;
"Engagement"	means Services performed under these Terms of Business in accordance with a G-Cloud order form;
"G-Cloud"	means the framework RM1557.15 awarded by the Minister for the Cabinet Office represented by Crown Commercial Service;
"G-Cloud Order Form"	means an order form signed by a Buyer and Hunter Healthcare for the provision of services from Hunter Healthcare in accordance with the terms of the G-Cloud Framework Agreement;
"Services"	means the specific services to be provided by Hunter Healthcare to the Buyer in accordance with the G-Cloud Order Form.

2. ORDERING OF THE SERVICES

2.1. The Buyer acknowledges that it is responsible for determining that G-Cloud is an appropriate framework to utilise for its requirements and for conducting appropriate searches on the Digital Marketplace to ascertain which G-Cloud service best meets its needs.

- 2.2. In providing a signed G-Cloud Order Form to Hunter Healthcare, the Buyer confirms that it has determined in accordance with clause 2.1 that the service provided by Hunter Healthcare is the most appropriate for its needs, and that the Services it is purchasing from Hunter Healthcare are in accordance with the G-Cloud Framework Agreement and the service definition provided by Hunter Healthcare.

3. SERVICES

- 3.1. Hunter Healthcare shall engage the Consultancy Personnel to provide the Services on the terms and conditions of these Terms of Business. The Buyer acknowledges that the Consultancy Personnel may be engaged through a third party organisation, but that Hunter Healthcare shall take responsibility for the Services.
- 3.2. The Services shall be delivered at any location specified in the G-Cloud Order Form or at other locations agreed between the parties.
- 3.3. The Services shall be delivered with all due care, skill and ability and the Consultancy Personnel shall promptly give the Buyer all such information and reports as the Buyer may reasonably require in connection with the provision of the Services.
- 3.4. The Consultancy Personnel shall co-operate with the Buyer's reasonable instructions and shall agree to observe and comply with the Buyer's rules, regulations and policies (including without limitation its policies on equal opportunities, harassment and bullying and health and safety) and any relevant legislation affecting or relating to the business of the Buyer.
- 3.5. The Consultancy Personnel shall not engage in any conduct detrimental to the interests of the Buyer, which includes any conduct tending to bring the Buyer into disrepute or which results in the loss of custom or business.
- 3.6. The Buyer acknowledges that this is a contract for the provision of a managed service and not for the provision of individual resources, and accordingly that Hunter Healthcare may determine how to deliver the Services and in particular which Consultancy Personnel to utilise, subject to any Consultancy Personnel being suitably qualified and having the appropriate skills and experience. Whilst Hunter Healthcare shall use reasonable endeavours to ensure continuity of supply, it shall be entitled to change the Consultancy Personnel used at any time.

4. VERIFICATION OF SERVICE DELIVERY

- 4.1. The Buyer agrees verify the satisfactory delivery of the Services on a frequency defined on the G-Cloud Order Form using a manual or electronic system as defined by Hunter Healthcare and to accept invoices generated and sent electronically to the Buyer.
- 4.2. The Buyer shall approve the Services within two working days verifying the number of days worked by the Consultancy Personnel during the applicable week. Approval of the Services by the Buyer constitutes acceptance that the Services have been provided in accordance with these Terms of Business. Failure to approve the Services does not waive the Buyer's obligation to pay any fees in respect of the Services delivered.



4.3. If the Buyer is unable to provide approval of the Services because the Buyer disputes the number of days claimed, then the Buyer shall notify Hunter Healthcare within two working days from presentation of the claimed days for verification and shall co-operate fully and in a timely fashion with Hunter Healthcare, including providing documentary evidence of the days worked by the Consultancy Personnel, to enable Hunter Healthcare to establish what periods of time, if any, the Consultancy Personnel worked.

5. FEES

5.1. In consideration of Hunter Healthcare performing its obligations under these Terms of Business, the Buyer shall pay Hunter Healthcare the consultancy fees and any expenses as set out in the G-Cloud Order Form.

5.2. All amounts payable pursuant to these Terms of Business are exclusive of any VAT. The Buyer shall pay VAT at the rate for the time being properly chargeable in respect of the Services.

5.3. Hunter Healthcare reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended or replaced from time to time) on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

6. DISSATISFACTION WITH DELIVERY OF SERVICES

If the Buyer reasonably considers that the delivery of the Services is unsatisfactory the Buyer must notify Hunter Healthcare in writing as soon as reasonably possible. Hunter will then have 10 working days, or any other date agreed in writing between the Parties, from the date of receipt of the notice remedy the Services to the reasonable satisfaction of the buyer.

7. RELATIONSHIP OF THE PARTIES

Nothing in these Terms of Business is intended to create a partnership, joint venture or legal relationship of any kind between the parties that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other. Except where otherwise expressly provided in these Terms of Business, neither party shall have authority to make representations, act in the name or on behalf of, or otherwise to bind the other.

8. NON-SOLICITATION

8.1. The Buyer agrees that it shall not during the term of the engagement and for a period of six months following termination (“the Exclusion Period”) engage or employ any of the Consultancy Personnel directly or indirectly other than through Hunter Healthcare, save as provided for in clause 8.2.

8.2. In the event that the Buyer employs or engages any of the Consultancy Personnel directly or indirectly during the Exclusion Period other than through Hunter Healthcare, the Buyer agrees to pay a fee equivalent to the charge for the relevant Consultancy Personnel for a period of 180 working days.

9. CONFIDENTIALITY

- 9.1. "Confidential Information" means information (whether or not recorded in documentary form, or stored on any magnetic or optical disk or memory) relating to the business, products, affairs and finances of the Buyer for the time being confidential to the Buyer and trade secrets including, without limitation, technical data and know-how relating to the business of the Buyer or any of its or their business contacts.
- 9.2. Hunter Healthcare shall and shall procure that the Consultancy Personnel shall keep all Confidential Information secret and confidential and not to disclose or use the same, save for in accordance with the provision of the Services.
- 9.3. All Confidential Information given by the Buyer to Hunter Healthcare, or otherwise obtained or developed by Hunter Healthcare relating to the Buyer, shall be kept secret and confidential by Hunter Healthcare throughout the Term and following its termination or expiry and shall not be used or disclosed other than for the purposes of the proper performance of these Terms of Business or with the prior written consent of the Buyer.
- 9.4. The obligations of confidentiality in this clause 9 shall not extend to any matter which Hunter Healthcare or the Buyer can show:
- 9.4.1. is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under these Terms of Business;
 - 9.4.2. was independently disclosed to it by a third party entitled to disclose the same; or
 - 9.4.3. is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

10. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property licensed or owned by a Party prior to entering into, or developed independently of, the Services remains in the ownership of that Party. All new Intellectual Property developed solely for the purposes of, or in connection with the delivery of the Services will vest in, and is assigned to, the Buyer when the Buyer has made full payment for the Services. If any pre-existing Intellectual Property owned by one Party is incorporated in or attached to any Intellectual Property owned by the other Party, the Party that owns the pre-existing Intellectual Property hereby grants the other Party a limited, worldwide, non-exclusive, royalty free licence to exercise all intellectual property rights in such pre-existing Intellectual Property for the purpose of accessing and using the Intellectual Property owned by the other Party.

11. TERMINATION

- 11.1. The Buyer may, without prejudice to its other rights or remedies, terminate the Engagement with immediate effect by written notice to Hunter Healthcare if one or more of the following events occurs:
- 11.1.1. Hunter Healthcare commits a material breach of these Terms of Business which is incapable of remedy or is capable of remedy but has not been remedied within thirty (30) days of receipt of a

written notice specifying both the material breach and the Buyer's intention to terminate these Terms of Business if the material breach is not remedied;

11.1.2. Hunter Healthcare enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them; or passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction); or has a winding-up order or bankruptcy order made against it; or has appointed to it an administrator or administrative receiver.

11.2. Hunter Healthcare may terminate the Engagement upon giving written notice to the Buyer if:

11.2.1. the Buyer is in wilful or persistent breach of its obligations under these Terms of Business and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from Hunter Healthcare to do so; or

11.2.2. the Buyer fails to pay any amount which is due to Hunter Healthcare in full and on the date that the payment falls due; or

11.2.3. the Buyer is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or

11.2.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Buyer; or

11.2.5. an order is made for the winding up of the Buyer, or where the Buyer passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under these Terms of Business).

11.3. Either party may terminate the Engagement by providing a minimum of twenty working days' notice or such shorter period as may be agreed between the parties.

12. CONSEQUENCES OF TERMINATION

12.1. Termination or expiry of the Engagement, however caused, shall be without prejudice to any obligations or rights of either of the parties which may have accrued before termination or expiry and shall not affect any provision of these Terms of Business which is expressly or by implication intended to come into effect on, or to continue in effect after, such termination or expiry.

12.2. Upon the termination or expiry of the Engagement each party shall promptly return any property of the other which it has in its possession or control.

13. LIABILITY

13.1. Each party's liability shall be limited as agreed in the Call-off contract.

13.2. Nothing in these terms limits liability for death, personal injury, fraud, or other liabilities that cannot be excluded by law.

14. FORCE MAJEURE

Neither the Buyer nor Hunter Healthcare shall be liable for any breaches of its obligations under these Terms of Business resulting from causes beyond its reasonable control including but not limited to Acts of God, enemy, fire, flood, explosion or other catastrophe.

15. ENTIRE TERMS OF BUSINESS

15.1. These Terms of Business together with the G-Cloud Framework Agreement, G-Cloud Call Off Terms and G-Cloud Order Form constitute the entire understanding between the parties concerning the subject matter hereof.

15.2. Each of the parties acknowledges and agrees that in entering into these Terms of Business, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in these Terms of Business. The only remedy available to any party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of these Terms of Business.

15.3. If any of the provisions of these Terms of Business are found to be in conflict with the G-Cloud Order Form, G-Cloud Framework Agreement or G-Cloud Call Off Terms, such provision or part of it shall be severed from the remaining provisions, which shall continue to be valid.

16. MISCELLANEOUS

16.1. Hunter Healthcare shall not assign, transfer or otherwise deal with any of its rights or obligations under these Terms of Business or sub-contract the performance of any of its obligations under these Terms of Business without the prior written consent of the Buyer, such consent not to be unreasonably withheld or delayed, save that Hunter Healthcare may engage any of the Consultancy Personnel from third party organisations.

16.2. No variation or alteration of these terms shall be valid unless approved by Hunter Healthcare and the Buyer in writing except where changes to the Services are necessary to comply with applicable safety and other statutory requirements, in which case Hunter Healthcare may make such necessary changes without prior notification to the Buyer.

16.3. Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at its registered office for the time being. Any such notice shall be deemed served when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

17. RIGHTS OF THIRD PARTIES

The Contracts (Rights of Third Parties) Act 1999 shall not apply to any work conducted under these Terms of Business and no person other than the Buyer and Hunter Healthcare shall have any rights under it. These Terms of Business may be varied, amended or modified or this agreement may be suspended, cancelled or terminated by agreement in writing between the parties or this agreement may be rescinded, in each case, without the consent of any third party.

18. LAW AND JURISDICTION

- 18.1. These Terms of Business and any dispute or claim arising out of or in connection with any Engagement under them shall be governed by and construed in accordance with the law of England and Wales.
- 18.2. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with these Terms of Business.