



Bruhati

G-Cloud 15

STANDARD TERMS AND CONDITIONS

BRUHATI SOLUTIONS LTD

Standard Terms and Conditions

These terms and conditions are to be read in conjunction with all Bruhati Solutions Limited proposals and/or statements of work.

The Parties:

Bruhati Solutions Limited whose registered office is at 9, Michael Close, Maidenhead, Berkshire, England, SL6 4PD incorporated in England & Wales (registration number 11191291) (“the Company”);

The client who purchases Services from the Company and whose details are set out in the proposals and/or statements of work (“the Customer”).

Now it is hereby agreed as follows:

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 7.

1. Interpretation

1.1 Definitions:

Business Day:	a day other than a Saturday, Sunday, or public holiday in England when banks in London are open for business.
Charges:	the charges payable by the Customer for the supply of the Services in accordance with clause 5.
Conditions:	these terms and conditions as amended from time to time in accordance with clause 17.
Contract:	the contract between the Company and the Customer for the supply of Services in accordance with these Conditions.
Customer:	the person or firm who purchases Services from the Company.
Customer Default:	has the meaning set out in clause 4.2.
Deliverables:	the deliverables set out in the proposals and/or statements of work produced by the Company for the Customer.
Intellectual Property Rights:	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights in any jurisdiction.

Order:	the Customer's order for Services as set out in the statement of work produced by the Company for the Customer.
Order Form:	the Order Form governs the Customer's Cloud software and use of software through the Company.
Services:	the services, including the Deliverables, supplied by the Company to the Customer as set out in the Specification.
Specification:	the description or specification of the Services provided as set out in the statement of work by the Company to the Customer.
Data Protection Legislation:	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
End User Licence Agreement:	the End User Licence Agreement (EULA) governs the Customer's acquisition and use of software through the Company.
Partner:	the Partner provides the Cloud software and use of software through the Company.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** includes email.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 This Contract will be deemed to have come into force on the date that the Customer instructs the Company to undertake the Order and the Company agrees to do so.

- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

- 3.1 The Company shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Company shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and shall notify the Customer in any such event.
- 3.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

- 4.1 The Customer shall:
- (a) Ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - (b) Co-operate with the Company in all matters relating to the Services;
 - (c) Provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (d) Obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
 - (e) Comply with any additional obligations as set out in the Specification;
- 4.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):

- (a) The Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
- (b) The Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

5. Charges and payment

5.1 Condition 5.2 shall apply if the Services are to be provided on a time-and-materials basis. Condition 5.3 and condition 5.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 5 shall apply in either case.

5.2 Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Company's standard daily fee rates as amended from time to time;
- (b) The Company's standard daily fee rates (as published from time to time) are calculated on the basis of an eight-hour day worked between 9.00 AM and 6.00 PM on weekdays (excluding weekends and public holidays);
- (c) The Company shall be entitled to charge its standard daily fee rate (as published from time to time) plus 50% for each hour worked outside the hours referred to in condition 5.2 (b) on a pro-rata basis;
- (d) The Company shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this agreement. Each invoice shall set out the time spent and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

5.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Specification. The total price shall be paid to the Company in instalments as set out in the Specification. All amounts due under this agreement shall be paid by the Customer to the Company or withholding of tax as required by law). The Company shall invoice the Customer for the charges at each relevant stage, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 5.4.

5.4 Any fixed price contained in the Specification excludes:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Company for

the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Company at cost; and

(b) VAT, which the Company shall add to its invoices at the appropriate rate.

5.5 The Customer shall pay each invoice submitted to it by the Company in full, and in cleared funds, within 30 days of receipt.

5.6 Without prejudice to any other right or remedy that the Company may have, if the Customer fails to pay on the due date the Company may:

(a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and

(b) suspend all Services until payment has been made in full.

5.7 Time for payment shall be of the essence of the Contract.

5.8 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

6. Intellectual property rights

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.

6.1 The Company grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables.

6.2 The Customer shall not sub-license, assign or otherwise transfer the rights granted in this clause 6.

6.3 The Customer grants the Company a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Company for the term of the Contract for the purpose of providing the Services to the Customer.

6.4 The Company shall at all times retain ownership of the Software. The Software (and the copyright, and other intellectual property rights of whatever nature in the Software, including any modifications made thereto) are and shall remain the property of the Company. The Company reserves the right to grant licences to use the Software to third parties.

7. Limitation of liability THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

7.1 Nothing in the Contract shall limit or exclude the Company's liability for:

- (a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) Fraud or fraudulent misrepresentation; or
- (c) Any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, the Company shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of damage to goodwill; and
- (g) any indirect or consequential loss.

7.3 Subject to clause 7.1, the Company's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.

7.4 This clause 7 shall survive termination of the Contract.

8. Data Protection

8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Clause 8, Applicable Laws means (for so long as and to the extent that they apply to the Company) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Company is the processor.

8.3 Without prejudice to the generality of Clause 8.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Company for the duration and purposes of the Contract.

8.4 Without prejudice to the generality of Clause 8.1, the Company shall, in relation to any personal data processed in connection with the performance by the Company of its obligations under the Contract:

- (a) process that personal data only on the documented written instructions of the Customer unless the Company is required by Applicable Laws to otherwise process that personal data. Where the Company is relying on Applicable Laws as the basis for processing personal data, the Company shall promptly notify the Customer of this before performing the processing

required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Customer;

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Company has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Company complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

9. Termination

- 9.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 1 months' written notice.
- 9.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - (a) The other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) The other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) The other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- (d) The other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than [14] days after being notified to make such payment.

10. Consequences of termination

On termination of the Contract for any reason:

- 10.1 The Customer shall immediately pay to the Company all of its outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 10.2 The Customer shall return all of any Deliverables which have not been fully paid for.
- 10.3 The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 10.4 Clauses which expressly or by implication survive termination shall continue in full force and effect.

11. General

11.1 Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

12. Assignment and other dealings

- 12.1 The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 12.2 The Customer shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 12.3 The Customer and the Company do not wish to create or imply any mutuality of obligation between themselves either in the course of, or between, any performance of the Services.
- 12.4 Each party solely retains all the responsibilities and rights of an employer towards and in relation to its own employees.

- 12.5 The Customer and the Company will NOT employ, engage, or otherwise solicit any person who during the previous 12 months was an employee or sub-contractor of the other and with whom such party had material contact in connection with Services performed under the Specification, until 6 months after this Contract has terminated unless otherwise agreed in writing.
- 12.6 The Consultancy will comply with all applicable anti-bribery and anti-corruption laws, regulations, codes and sanctions including but not limited to the UK Bribery Act 2010 and will not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the UK Bribery Act 2010.

13. End User License Agreement

- 13.1 The Company grants the Customer a non-transferable, non-exclusive licence to use the Cloud software on the Customer's devices in accordance with the standard terms and conditions.
- 13.2 The Customer is permitted to load the Cloud software (for example a PC, laptop, mobile or tablet) under your control. The Customer is responsible for ensuring it's device meets the minimum requirements of the Cloud software.
- 13.3 The Customer is not permitted to:
- a) Edit, alter, modify, adapt, translate or otherwise change the whole or any part of the Software nor permit the whole or any part of the Software to be combined with or become incorporated in any other software, nor decompile, disassemble or reverse engineer the Software or attempt to do any such things
 - b) Reproduce, copy, distribute, resell or otherwise use the Software for any commercial purpose
 - c) Allow any third party to use the Software on behalf of or for the benefit of any third party
 - d) Use the Software in any way which breaches any applicable local, national or international law
 - e) Use the Software for any purpose that the Company considers is a breach of these standard terms and conditions.

14. Maintenance & Support Services

- 14.1 The Company provides licenses & support services in accordance with their Partner's Cloud Software terms and conditions that will be detailed on the Order Form.
- 14.2 On purchase of purchase of such licenses or support services, the Customer signs the Order Form.

15. Confidentiality

- 15.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.2.

15.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

16. Entire agreement

This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17. Variation

The Company may revise these terms and conditions at any time and shall notify the Customer in any such event.

18. Waiver

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

19. Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.

20. Notices

20.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office.

20.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include email.

21. Third parties

No one other than a party to the Contract shall have any right to enforce any of its terms.

22. Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

23. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

NEXT STEPS

Please feel free to get in touch so we can see if we can help your organisation in anyway. We are happy to offer a free one-hour initial assessment / consultancy for any of our services as we believe in the value we can bring to your organisation.

Please email us at gcloud@bruhati.com or call us at 01628 272658 to discuss your needs further.