

Redbay Terms and Conditions

1. Call off task terms and conditions

1.1. Each call off task shall be agreed in the following manner:

1.1.1. the Client shall provide Redbay with a G Cloud Call Off request, setting out the requirements and specifications of the services which it is requesting from Redbay, including a description of what work is to be done, dates by which it is to be started and finished, deliverables and other such information Redbay may request to allow preparation of the Proposal;

1.1.2. Redbay shall, as is reasonably practicable, provide the Client with a draft Proposal; and

1.1.3. the Client and Redbay shall discuss and agree the draft Proposal. When it has been agreed, they shall both sign a copy of it.

1.2. The Proposal shall not form separate contracts from this agreement and shall be part of this agreement.

1.3. This agreement commences on the date when the Proposal has been signed by the Client and shall continue, unless terminated in accordance with its terms, until either party gives to the other not less than three months written notice, expiring on or after the first anniversary of this agreement.

2. Redbay' Responsibilities

2.1. Redbay shall use reasonable endeavours to provide the Works, and deliver the Deliverables to the Client, in accordance with each Proposal in all material respects.

2.2. Redbay shall use reasonable endeavours to meet any performance dates specified in a Proposal, but any such dates shall be estimates only and time for performance by Redbay shall not be of the essence of this agreement.

2.3. Redbay shall appoint a Redbay Manager, in respect of the Works, who shall have authority under this agreement contractually to bind Redbay on all matters relating to the Works. Redbay shall use all reasonable endeavours to ensure that the same person acts as Redbay Manager throughout the term of this agreement but may replace that person from time to time where reasonably necessary in the interests of Redbay business.

2.4. Redbay shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises and that have been communicated to it under clause 3.1(d) provided that it shall

not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

3. Client's Obligations

3.1. The Client shall:

3.1.1.co-operate with Redbay in all matters relating to the Works and appoint the Client's Manager in relation to the Works, who shall have the authority contractually to bind the Client on matters relating to the Works;

3.1.2.provide, for Redbay, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as reasonably required by Redbay;

3.1.3.provide, in a timely manner, such materials and equipment and other information as Redbay may require and ensure that any information is accurate in all material respects.

3.1.4.inform Redbay of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises.

3.1.5.ensure that all the Client's Equipment (if any) is in good working order and suitable for the purposes for which it is used in relation to the Works and conforms to all applicable standards or requirements.

3.1.6.obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Works, the installation of Redbay Equipment (if any) the use of any Input Material and the use of the Client's Equipment in relation to Redbay Equipment, in all cases before the date on which the Works are to start; and

3.1.7.comply with any additional responsibilities as set out in the relevant Proposal.

3.2. If Redbay' performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, Redbay shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.

3.3. The Client shall be liable to pay to Redbay, on demand, all reasonable costs, charges or losses sustained or incurred by Redbay (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to Redbay confirming such costs, charges and losses to the Client in writing.

- 3.4. The Client shall not, without the prior written consent of Redbay, at any time from the date of this agreement to the expiry of 12 months after the termination or expiry of this agreement, solicit or entice away from Redbay or employ or attempt to employ any person who is, or has been, engaged as an employee or consultant of Redbay in the provision of the Works.
- 3.5. Any consent given by Redbay in accordance with clause 3.4 shall be subject to the Client paying to Redbay a sum equivalent of 20% of the then current annual remuneration of Redbay employee or consultant, or if higher, 20% of the annual remuneration to be paid by the Client to that employee or consultant.
4. Charges and Payments
- 4.1. In consideration of the provision of the Works by Redbay, the Client shall pay the charges as set out in the Proposal.
- 4.2. The Proposal shall specify whether the charges shall be on a time and materials basis, a fixed price basis or a combination of both.
- 4.3. Where the Works are provided on a time and materials basis:
- 4.3.1. the charges payable for the Works shall be calculated in accordance with Redbay' standard daily fee rates, as set out in the G Cloud 13 pricing document and SFIA grades:
- 4.3.2. Redbay standard daily fee rates for each individual person are calculated based on an 8-hour day, worked between business hours on a day in which banks generally, in the jurisdiction in which the Works are performed, are open for business;
- 4.3.3. all charges quoted to the Client shall be exclusive of VAT, which Redbay shall add to its invoices at the appropriate rate;
- 4.3.4. Redbay shall ensure that every individual whom it engages on the Works completes time sheets recording time spent on the Works, and Redbay shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 4.3(e); and
- 4.3.5. unless specified otherwise in the Proposal, Redbay shall invoice the Client 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 clause 4.3 and clause 4.5.
- 4.4. 4.4 Where the Works are provided for a fixed price:
- 4.4.1. The total price of the Works shall be the amount set out in the Proposal.

- 4.4.2. The Client shall pay the total price to Redbay (without deduction or set-off), as set out in a Proposal.
- 4.5. 4.5 Any fixed price and daily rate contained in a Proposal excludes:
- 4.5.1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Redbay engages in connection with the Works and the cost of any materials and other items identified in the Proposal. Such expenses and materials shall be invoiced by Redbay at cost; and
- 4.5.2. VAT, which Redbay shall add to the invoices at the appropriate rate.
- 4.6. The Client shall pay each invoice submitted to it by Redbay, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by Redbay.
- 4.7. Without prejudice to any other right or remedy that it may have, if the Client fails to pay Redbay on the due date:
- 4.7.1. the Client shall pay interest on the overdue amount at the rate of 4% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount; and
- 4.7.2. Redbay may suspend all Works until payment has been made in full.
- 4.8. All sums payable to Redbay under this agreement shall become due immediately on its termination, despite any other provision. This clause 4.8 is without prejudice to any right to claim for interest under the law, or any such right under this agreement
- 4.9. All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
5. 5. Intellectual Property Rights
- 5.1. As between the Client and Redbay, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by Redbay. Subject to clause 5.2, Redbay licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Works. [Subject to the Client not breaching any material term of this agreement, such licence shall be irrevocable].
- 5.2. The Client acknowledges that where Redbay does not own any of the Pre-existing Materials, the Client's use of rights in Pre-existing Materials is conditional on Redbay obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle Redbay to license such rights to the Client.

6. Confidentiality and the Client's Property

6.1. The Client undertakes that it shall not at any time OR at any time during this agreement, and for a period of three years after the termination of this agreement, disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by Redbay, its employees, agents, consultants or subcontractors or of any member of the group of companies to which Redbay belongs and any other confidential information concerning Redbay business or its products which the Client may obtain, except as permitted by clause 6.2.

6.2. The Client may disclose Redbay confidential information:

6.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. The Client shall ensure that its employees, officers, representatives or advisers to whom it discloses Redbay confidential information comply with this clause 6; and

6.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

6.3. The Client shall not use Redbay confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

6.4. All Materials, Equipment and tools, drawings, specifications and data supplied by Redbay to the Client (including Pre-existing Materials and Redbay' Equipment) shall, at all times:

6.4.1. be and remain as between Redbay and the Client the exclusive property of Redbay;

6.4.2. be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to Redbay: and

6.4.3. not be disposed of or used other than in accordance with Redbay written instructions or authorisation.

Data Protection

6.5. Both parties will comply with all applicable requirements of the Data Protection Legislation. Clause 6.5 to 6.10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

6.6. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and Redbay is the processor. A Schedule which sets out the scope, nature and purpose of processing by Redbay, the duration of the processing and the types of personal data and categories of data subject, is available on request.

- 6.7. Without prejudice to the generality of clause 6.5, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Redbay for the duration and purposes of this agreement.
- 6.8. Without prejudice to the generality of clause 6.5, Redbay shall, in relation to any personal data processed in connection with the performance by Redbay of its obligations under this agreement:
- 6.8.1. process that personal data only on the documented written instructions of the Client unless Redbay is required by Applicable Laws to otherwise process that personal data. Where Redbay is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, Redbay shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Redbay from so notifying the Client;
- 6.8.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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);
- 6.8.3. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 6.8.4. not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
- 6.8.5. the Client or Redbay has provided appropriate safeguards in relation to the transfer;
- 6.8.6. the data subject has enforceable rights and effective legal remedies;
- 6.8.7. Redbay complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

- 6.8.8. Redbay complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
 - 6.8.9. assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 6.8.10. notify the Client without undue delay on becoming aware of a personal data breach;
 - 6.8.11. at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the personal data; and
 - 6.8.12. maintain complete and accurate records and information to demonstrate its compliance with this clause 6.5 to 6.10 and immediately inform the Client if, in the opinion of Redbay, an instruction infringes the Data Protection Legislation.
- 6.9. The Client consents to Redbay appointing third party processors of personal data under this agreement. Redbay confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in these clauses 6.5 to 6.10 and which reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and Redbay, Redbay shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.9.
- 6.10. Either party may, at any time on not less than 30 days' notice, revise these clauses 6.5 to 6.10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
7. Limitation of Liability
- 7.1. Nothing in this agreement shall limit or exclude Redbay liability for:
- 7.1.1. death or personal injury caused by its negligence;
 - 7.1.2. fraud or fraudulent misrepresentation; or
 - 7.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 7.2. Subject to clause 7.1, Redbay shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

- 7.2.1. loss of profits;
 - 7.2.2. loss of sales or business;
 - 7.2.3. loss of agreements or contracts;
 - 7.2.4. loss of anticipated savings;
 - 7.2.5. loss of, or damage to, goodwill;
 - 7.2.6. loss of use or corruption of software, data or information; and
 - 7.2.7. any direct or consequential loss.
- 7.3. Subject to clause 9.1, Redbay total liability to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with each Proposal shall be limited to twice the charges paid by the Client under such Proposal.
- 7.4. The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
8. Termination
- 8.1. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 8.1.1. the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 8.1.2. the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 8.1.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 8.1.4. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 8.1.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 8.1.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- 8.1.7. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 8.1.8. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 8.1.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 8.1.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.1(c) to clause 8.1(i) (inclusive); or
- 8.1.11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

8.2. Without affecting any other right or remedy available to it, Redbay may terminate this agreement with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment.

9. Consequences of Termination

9.1. The termination of this agreement pursuant to clause 8 shall result in the automatic termination of all Works in place at the time of termination.

9.2. On termination or expiry of this agreement:

9.2.1. the Client shall immediately pay to Redbay all of Redbay's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, Redbay may submit an invoice, which shall be payable immediately on receipt; and

9.2.2. all clauses which by expressly or by implication are intended to survive termination shall remain in full force and effect.

10. Force Majeure

10.1. For the purposes of this agreement, Force Majeure Event means an event beyond the reasonable control of a party including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil

commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

10.2. Provided it has complied with clause 10.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

10.3. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

10.4. The affected party shall:

10.4.1. as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

10.4.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

10.5. If the Force Majeure Event prevails for a continuous period of more than 30 days months, either party may terminate this agreement by giving 14 days' written notice to all the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

11. Assignment and other Dealings

11.1. This agreement is personal to the Client and the Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

11.2. Redbay may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that Redbay gives prior written notice of such dealing to the Client.

12. Variation No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13. Waiver

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

13.2. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

14. Rights and Remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15. Severance

15.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

16. Entire Agreement

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

16.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

17. No Partnership of Agency

17.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

17.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. Third Party Rights

- 18.1. No one other than a party to this agreement and their permitted assignees shall have any right to enforce any of its terms.

19. Notices

- 19.1. Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

19.1.1. delivered by hand or by pre-paid first-class post or other next Business Day delivery services at its registered office (if a company) or its principal place of business (in any other case); or

19.1.2. sent by fax to its main fax number sent by email to the address supplied by a party for such purpose.

- 19.2. This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20. Governing Law This agreement 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.

21. Jurisdiction

Each party irrevocably agree 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 this agreement or its subject matter or formation