



SCOUT CONSULTANCY LTD

BUSINESS TERMS ("Terms of Business")

Scout | G-Cloud 15 Terms and Conditions Pack

Commercial – In Confidence | Subject to Contract

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This pack is designed for publication/use as Scout's standard terms for G-Cloud 15 and for contracting under Services, Support and Cloud Subscription reseller/procurement arrangements.

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Definitions

In these Terms of Business:

(i) "Affiliate" means in relation to a party any company, partnership or other entity which from time to time directly or indirectly Controls, is Controlled by or is under common Control with that party, including any subsidiary or holding company of that party (as those expressions are defined in the Companies Act 2006, as amended).

(ii) "Scout" means Scout [insert full legal entity name] incorporated and registered in England and Wales with company number [insert] whose registered office is at [insert address].

(iii) "Client" means [full legal entity name] incorporated and registered in England and Wales with company number [company number] whose registered office is at [address].

(iv) "Party" and "Parties" means Scout and the Client and may be referred to individually as a "Party" and collectively as the "Parties".

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(v) “Professional” means an individual working for or on behalf of Scout providing billable services to the Client.

(vi) “Services” means the services to be provided by Scout to the Client under these Terms of Business and as set out in the Statements of Work, or as may be amended or added to from time to time by the Parties in writing.

(vii) “Statement of Work” or “SOW” means a statement of work executed by the Parties in accordance with Section 2, setting out or referencing the particular Services to be provided by Scout under the terms of this Agreement.

(viii) “Control” has the meaning given in section 1124 of the Corporation Tax Act 2010, and “Controls/Controlled” shall be construed accordingly.

Section 1. Entire Agreement

1. The Agreement (being these Terms of Business and the applicable Statement of Work) constitutes the entire understanding and agreement between the Parties and supersedes and extinguishes all prior oral and written communications relating to its subject matter. The terms of the Agreement may be amended, modified or changed (including changes in scope) only in writing when signed by both Parties. If there is a conflict between these Terms of Business and the Statement of Work, these Terms of Business shall prevail unless the Statement of Work expressly states that a specific clause in it overrides a clause in these Terms of Business.

2. No antecedent negotiations between the Parties shall be construed as a representation inducing this Agreement or any other agreement.

3. Nothing in this Section 1 limits or excludes either Party’s liability for fraudulent misrepresentation.

Section 2. Services

1. Scout will provide the Services described in the Statement of Work in accordance with and subject to the Agreement.
2. Either Party may request changes to the Services or changes to any other aspect of the Agreement. Requests for changes must be supported by sufficient detail to enable the other Party to assess the impact of the requested change on cost, timetable, dependencies and any other relevant aspect of the Agreement. The Parties agree to work together to consider and, where appropriate, agree changes. Until a change is agreed in writing, both Parties will continue to act in accordance with the most recently agreed version of the Agreement.
3. Scout will use reasonable efforts to carry out its obligations in accordance with any timetable referred to in the Statement of Work or otherwise agreed by the Parties. However, unless the Parties specifically agree otherwise in writing, all dates (including dates contained in any timetable in the Statement of Work) are intended for planning and estimating purposes only and are not contractually binding.
4. Each Party will name a representative (the “Representatives”) responsible for managing issues relating to day-to-day performance of the Agreement, including meeting at regular intervals to discuss and minute progress, risks, actions and decisions. The Representatives are named in the Statement of Work (or otherwise notified in writing).

Section 3. Client Responsibilities

1. Scout’s delivery of the Services and the fees charged are dependent on: (i) the Client undertaking the responsibilities set out in the Statement of Work; (ii) the accuracy of any assumptions set out in the Statement of Work; (iii) the Client performing its obligations under the Agreement; (iv) the Client providing Scout with information that Scout reasonably requests to enable it to perform its obligations; and (v) the Client providing timely decisions and obtaining required management approvals.
2. The Client will provide Scout and its personnel with full and prompt access at reasonable times to the premises, directors and staff of the Client (and its Affiliates where relevant) associated with the Services, and to any other advisers to the Client as reasonably required. Scout will also be given access to data and information as it may reasonably require to perform the Services. The Client will keep Scout promptly informed of any material developments or proposals relating to the Client’s business or operations that may affect the Services.

3. The Client agrees that Scout is entitled to rely on Client decisions and approvals provided in connection with the Services. The Client represents that information supplied by or on behalf of the Client is (and will be) true, accurate and complete. Scout will not be liable for any loss, damage or expense arising from the Client's failure or delay in supplying information or materials, or Scout's reliance on information or materials supplied by or on behalf of the Client, or any inaccuracy or deficiency in them, except to the extent caused by Scout's breach of the Agreement.

4. Any surveys, forecasts, projections and recommendations contained in any report, presentation, letter or other materials provided by Scout are provided in good faith and on the basis of information available at the time. Scout does not guarantee their achievement or continuing applicability, as outcomes depend on future events and circumstances outside Scout's control, including the actions of the Client's management and staff. Implementation decisions and subsequent actions are the responsibility of the Client's management (even where Scout assists with implementation).

5. The Client and Scout will each be responsible for ensuring that their respective personnel involved with the Services have appropriate skills and experience. If any personnel fail to perform as required, additional or replacement personnel will be provided as the other Party may reasonably request.

6. Where Professionals are required to work on Client premises, the Client will provide (without charge) a suitable office environment and reasonable facilities, including admin support where available, and IT/network infrastructure access and support as reasonably required.

7. Where the Client uses third parties to provide information, materials or support for the Services, or employs other suppliers whose work may affect Scout's ability to perform the Services, the Client remains responsible for managing such persons, including timeliness and quality of their input and work.

8. Professionals will report to a nominated Client person responsible for providing appropriate management, supervision and quality assurance. Accordingly, Professionals may not be subject to Scout's internal quality control procedures beyond coaching, professional support and

supervision. The Client will honour reasonable holiday, training and other commitments for the Professional, and Scout will use reasonable efforts to notify the Client in advance and minimise impact on the Services.

Section 4. Intellectual Property Rights

1. Scout shall own and retain all ownership and intellectual property rights in its existing reports, materials, documentation, software, system interfaces, templates, methodologies and processes, and ideas, concepts and techniques that Scout uses or makes available in connection with the Agreement (“Scout Background IPR”).

2. Subject to clause 4.1 and full payment of all fees due, ownership in Deliverables (if any) shall be as stated in the Statement of Work. Unless the Statement of Work expressly provides for an assignment, the Client receives a perpetual, worldwide, non-exclusive licence to use the Deliverables for its internal business purposes. No assignment or transfer of ownership is effective unless expressly stated in writing and, where relevant, executed as a deed.

3. The Client grants Scout and its subcontractors a revocable, non-transferable, non-exclusive licence during the term of the Services to use the Client’s intellectual and other property solely to provide the Services and perform obligations under the Statement of Work.

4. The Agreement will not prevent or restrict Scout from providing services to other clients that are the same or similar to the Services, or from using for any purpose Scout considers appropriate any techniques, ideas, concepts or know-how gained or arising from performance of the Services, provided Scout complies with confidentiality obligations and does not infringe the Client’s intellectual property rights.

Section 5. Payment of Fees

1. The Services may be provided on a “Time and Materials” or “Fixed Price” basis. The Statement of Work will state the applicable charging basis. Where the Statement of Work does not expressly state the charging basis, Time and Materials applies.

2. Where Time and Materials applies, charges will be calculated on the basis of time spent by Scout personnel performing the Services at the agreed rates. Charges may include time spent travelling in excess of normal home-to-work journey time where agreed. A normal working day is 7.5 hours between 09:00 and 17:30 on weekdays excluding public holidays. Where weekend

working or being on-call is required and agreed, additional hours may be charged at an uplift stated in the Statement of Work (or, if not stated, at 2.0× the agreed rate divided by 7.5 standard hours).

3. Where Time and Materials applies, prior to invoicing the Parties will agree the time spent for each individual Professional against which fees for the period will be calculated (acting reasonably and in good faith).

4. If Scout incurs extra costs or the scope of the Services increases due to delay, variation, interruption or suspension arising from the default or instructions of the Client and/or persons for which the Client is responsible, and Scout advises the Client of such extra costs or increased scope as soon as reasonably practicable (and where practicable before costs are incurred), Scout may increase the Fixed Price (or agree a Change Request) to reflect such extra costs properly incurred or increased scope, and the Client will pay the increased amount.

5. Any estimate given by Scout is provided in good faith but is not binding. For avoidance of doubt, a Fixed Price (where agreed) is not an estimate.

6. All charges are exclusive of out-of-pocket expenses unless the Statement of Work states otherwise. The Client agrees to pay reasonable, pre-approved expenses incurred on report production, travel and subsistence, and on goods and services purchased on the Client's behalf, billed at cost. Any special expense arrangements will be agreed and set out in the Statement of Work.

7. Invoices will be issued in accordance with any payment plan set out in the Statement of Work, or otherwise monthly in arrears on the third Friday of the month. Unless the Statement of Work states otherwise, all payments are in Pounds Sterling. Invoices are due for payment within twenty-one (21) days of receipt. If the Client disputes any portion of an invoice it shall notify Scout within seven (7) days of receipt and pay the undisputed portion when due. If any invoice remains unpaid for more than seven (7) days after the due date, Scout may (without prejudice to any other right or remedy) suspend the Services (in whole or part) and/or charge interest on overdue amounts at 4% above the annual base rate of the Bank of England from time to time, calculated daily until payment is received in full.

8. Scout may deliver Services by instalments and render separate invoices for each instalment. Any delay in provision or failure to deliver a further instalment will not entitle the Client to reject other instalments or withhold payment for instalments previously delivered.

9. Unless otherwise stated in the Statement of Work, Scout's day rates shall be subject to annual adjustment on 1 January each year. The increase shall be a maximum of 2% plus the percentage change in the Consumer Price Index (CPI) over the most recent twelve (12) months for which published data is available.

10. Scout may assign by way of security and/or transfer to its bankers or any invoice finance provider its accounts receivable, including those arising from Services supplied by Scout to the Client, provided such assignment does not materially reduce the Client's rights.

Section 6. Confidentiality

1. Subject to clause 6.2, each Party agrees that where it is in possession of information about or relating specifically to the other Party and/or any Affiliate of the other Party (including its/their business) that is by its nature confidential, is designated as such (whether in writing or orally), or ought reasonably to be regarded as such, including the Agreement ("Confidential Information"), it shall: (i) keep it confidential; (ii) use it only in connection with performing its obligations and/or exercising its rights under the Agreement; and (iii) not disclose it to any other person without the other Party's prior written consent. Scout's undertaking under this clause 6.1 applies to information about or relating specifically to the Client and/or its Affiliates comprised in the Deliverables, which shall be deemed Client Confidential Information. Scout shall use Client Confidential Information solely to perform the Services.

2. The undertakings under clause 6.1 will not apply to information to the extent the receiving Party can show it: is or becomes generally publicly available for reasons not due to the receiving Party's default; was possessed without obligation of confidence prior to the Agreement (or prior to being designated Confidential Information); is lawfully acquired from a third party under no obligation of confidence; or is independently developed without reference to Confidential Information.

3. Nothing prevents either Party from disclosing Confidential Information to its legal advisers, to protect its legitimate interests, or to comply with any legal, professional or regulatory requirement. The Client agrees to reimburse reasonable costs Scout incurs in complying with a disclosure requirement relating to Services provided to the Client, where imposed in

proceedings or a regulatory process not involving any substantive claim against Scout, provided Scout notifies the Client promptly and, where reasonably and legally possible, prior to disclosure.

4. The Client agrees Scout may share Confidential Information with subcontractors used to provide the Services (or to support office administration) on the understanding they will treat it as Confidential Information in accordance with the Agreement. Scout shall ensure each subcontractor complies with obligations equivalent to those imposed on Scout under this Section 6.

5. Either Party may disclose Confidential Information where required by law or a competent regulatory body or recognised investment exchange, provided that, so far as practicable and lawful, disclosure is made only after consultation with the other Party and taking into account the other Party's reasonable requirements as to timing, content and manner of communication.

6. Nothing prevents or restricts Scout from providing services to other clients (including services the same or similar to the Services) or from using or sharing knowledge, experience and skills used in, gained or arising from performing the Services, even if those clients' interests compete with the Client's, provided Scout complies with clause 6.1 and does not infringe the Client's intellectual property rights. Equally, the Client acknowledges that to the extent Scout possesses information obtained under an obligation of confidentiality to another client or third party, Scout is not obliged to disclose it to the Client or use it for the Client's benefit.

7. Either Party may reference the other Party's name for marketing purposes, subject always to clause 6.1 and any prior written restrictions agreed by the Parties.

Section 7. Warranty

1. Scout warrants that the Services will be performed with reasonable care in a diligent and competent manner. Scout will, at its option, re-perform any work that is not in compliance with this warranty, without further liability for such non-compliance, provided the Client gives Scout written notice of non-compliance within fourteen (14) days after the Services are performed.

2. Scout does not warrant and is not responsible for third-party products or services. The Client's sole and exclusive rights and remedies in respect of claims relating to third-party

products or services will be against the third party and not Scout. Where Scout receives any assignable warranties from a third party, Scout agrees to assign such warranties to the Client on request (to the extent permitted).

3. The representations, warranties, terms and conditions set out in the Agreement are the Parties' only representations, warranties, terms and conditions relating to the Services and are made expressly in place of and to the exclusion (to the fullest extent permitted by law) of all other representations, warranties, terms and conditions, express or implied, including implied warranties, terms or conditions as to performance, fitness for a particular purpose, merchantability or satisfactory quality.

Section 8. Risk Allocation and Indemnity

1. Because of the importance to Scout's work of information and representations supplied by the directors, employees and agents of the Client, Scout shall not (save to the extent required by law) be liable for any loss, damage, cost, charge, expense (including interest) or other liability (together "Losses") howsoever caused, incurred, sustained or arising if information material to Scout's work is withheld or concealed from Scout or misrepresented to Scout, except and only to the extent finally determined to have resulted from Scout's knowing disregard of matters of which Scout has actual knowledge, or Scout's bad faith.

2. Nothing in the Agreement excludes or limits liability for death or personal injury resulting from negligence, fraud, or other liabilities which cannot be lawfully excluded or limited.

3. Subject to clauses 8.2 and 8.4, Scout's total liability of whatever nature, whether in contract, tort (including negligence), under statute or otherwise for any and all Losses arising from or in connection with the Agreement shall be limited to the fees paid for the portion of the Services giving rise to the liability.

4. In no event shall Scout be liable (whether in contract, tort (including negligence), under statute or otherwise) for: (i) loss of profit, goodwill, business opportunity or anticipated savings; loss of or corruption to data; loss of revenues; or wasted management or staff time; or (ii) incidental, special, punitive, exemplary, indirect or consequential loss or damage (together "Excluded Losses"), howsoever caused and whether or not Scout knew or ought to have known that the Excluded Losses would be likely to be suffered by the Client.

5. Any action brought by the Client against Scout must be brought within eighteen (18) months after the cause of action arises (to the extent permitted by law).

6. As further consideration for Scout's provision of the Services, the Client agrees to indemnify and hold harmless Scout (for itself and as trustee for its directors and employees) against all claims and proceedings brought by any third party and all losses, damages, costs and expenses relating thereto, whatsoever and howsoever caused, arising from or in connection with the provision of the Services, except and only to the extent finally determined to have resulted primarily from Scout's knowing disregard of matters of which Scout has actual knowledge, or Scout's bad faith.

7. Each Party shall maintain throughout the term of the Agreement, and for six (6) years thereafter, insurance cover with a reputable insurer appropriate to their risks and liabilities under the Agreement.

Section 9. Personnel

1. Whilst Scout will use reasonable efforts to comply with the Client's request for specific individuals, the appointment of all personnel to perform the Services and the nature and duration of their assignment shall be made as Scout considers appropriate. Scout may replace or reassign personnel assigned to the Services, provided replacement personnel will be no less experienced or qualified than those they replace and will be subject to the prior approval of the Client, such approval not to be unreasonably withheld or delayed.

2. During provision of the Services and for twelve (12) months following completion or termination, neither Party will directly or indirectly solicit or employ the personnel of the other Party engaged directly or indirectly in the project. Breach will render the defaulting Party liable to pay the other Party liquidated damages equal to 1.5 times the total annual remuneration of the individual concerned on the date the individual gives notice to its employer, without prejudice to the innocent Party's other rights (including injunctive relief). Each Party should inform the other if a current employee has applied and a breach is likely to occur at the earliest opportunity.

3. The Client agrees that, having regard to Scout's interest in limiting the personal liability and exposure to litigation of employees, the Client will not bring any claim in respect of losses against any of Scout's employees personally.

4. Scout may subcontract provision of the Services (in whole or part) to any person including associated partners and companies, but such subcontracting will not relieve Scout of its obligations under the Agreement and Scout remains responsible for the actions of subcontractors.

Section 10. Termination

1. The Agreement may be terminated by either Party on written notice if: (i) the other Party fails to comply with the terms of the Agreement and the failure, if capable of remedy, is not remedied within thirty (30) days following receipt of written notice specifying the failure; or (ii) the other Party is unable to pay its debts, has a receiver, administrator, administrative receiver or liquidator appointed, calls a meeting of creditors, ceases to carry on business, or (in the reasonable opinion of the terminating Party) any of these events appears likely.

2. If the Services are terminated pursuant to this Section 10 before completion, all fees for time spent and expenses incurred by Scout in accordance with the Statement of Work up to the date of termination will be due and payable within twenty-one (21) days of receipt of an invoice. Where Services are on a Fixed Price basis and the Parties are unable to agree the fees payable in the event of early termination, the Client will pay all sums due at the date of termination in accordance with the payment plan set out in the Statement of Work together with fees on a Time and Materials basis for Services provided during the termination notice period up to the date of termination.

3. Except for matters relating to confidentiality or intellectual property rights, the Parties will first attempt to resolve disputes or alleged breach internally by escalating through management and, prior to pursuing litigation, use a mutually acceptable alternative dispute resolution process.

4. Unless the Statement of Work provides otherwise, the Agreement may also be terminated by either Party giving a minimum of two (2) weeks' written notice to the other Party.

5. Termination will not affect rights and obligations that have already accrued prior to termination.

Section 11. Data Protection

1. Each Party shall comply with its respective obligations under Data Protection Legislation in respect of personal data processed by it in connection with the Services ("Personal Data").
2. "Data Protection Legislation" means (without limitation) the United Kingdom General Data Protection Regulation (UK GDPR), the Data Protection Act 2018, and the Privacy and Electronic Communications Regulations 2003 (as amended) (PECR), together with all other applicable legislation relating to privacy or data protection, including any statute or statutory provision which amends, extends, consolidates or replaces the same. The terms "personal data", "data subject", "controller", "processor" and "process" (and derivatives) have the meanings given in Data Protection Legislation.
3. The Client shall collect any necessary permissions, provide any necessary notices, and do all things required under Data Protection Legislation to disclose Personal Data to Scout for purposes required to perform the Services as set out in the Statement of Work.
4. The Client acknowledges Scout processes Personal Data as a controller for: (i) applicable legal, professional or regulatory requirements; (ii) requests and communications from competent authorities; and (iii) administrative, financial accounting, risk analysis and client relationship purposes.
5. Where acting as a controller, Scout shall process Personal Data as reasonably required to provide the Services, meet legal or regulatory obligations or for other reasonable business purposes (including administration) and may disclose Personal Data to third parties (including subcontractors, regulators and competent authorities) where reasonably required and at all times in compliance with Data Protection Legislation.
6. Where acting as a processor, Scout shall only process Personal Data: (a) to the extent necessary to provide the Services; (b) in accordance with the documented instructions of the Client (save where Scout reasonably considers instructions infringe Data Protection Legislation, in which case Scout shall notify the Client); or (c) as required by applicable law or a competent authority.

Section 12. Compliance with Legislation

1. Each Party shall comply with the Bribery Act 2010 and all other applicable UK legislation, regulations and codes relating to bribery and corruption (the “Bribery Laws”), including maintaining adequate procedures to ensure compliance with Bribery Laws. Each Party shall ensure its personnel and subcontractors involved in performing the Services comply with Bribery Laws.
2. Each Party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any requirement in clause 12.1.
3. Each Party shall comply with all applicable law relating to slavery and human trafficking including the Modern Slavery Act 2015 and shall not take or knowingly permit any action that would or might cause or lead the other Party to be in violation of any modern slavery legislation.
4. Each Party represents, warrants and undertakes that neither it nor any person in its supply chain uses trafficked, bonded, child or forced labour or has attempted to use such labour within its supply chain.
5. Each Party shall perform its obligations under the Agreement in accordance with the Equality Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to equality and diversity and shall take all necessary steps to prevent unlawful discrimination.

Section 13. General

1. Neither Party shall be liable for delays or failures in performance due to circumstances beyond its reasonable control.
2. The benefit of the Agreement may not be assigned or otherwise transferred without the prior written consent of the other Party, save that Scout may assign the benefit of the Agreement to an Affiliate and may use subcontractors to provide the Services.
3. Any notices given pursuant to the Agreement shall be in writing, addressed to the relevant contact at the address of the relevant Party set forth in the Agreement (or as otherwise notified). Notices may be sent by email to [insert Scout legal notices email] (and for the Client to

[insert Client email]) and shall be deemed received at the time the email was sent or the following Business Day if sent after business hours or during non-working days (weekends, public holidays), subject to evidence of transmission.

4. No term shall be deemed waived, and no breach excused, unless the waiver or consent is in writing signed by the Party granting it.

5. The Agreement does not make either Party an agent or legal representative of the other and does not create a partnership or joint venture. The Parties are independent contractors.

6. If any provision or part of the Agreement is determined to be illegal or unenforceable, it will be severed and the remainder remains in full force and effect to the fullest extent permitted by law.

7. Any provision which by its nature extends beyond expiry or termination will survive such expiry or termination.

8. Save in respect of any assignee of Scout pursuant to clause 13.2, nothing in the Agreement confers rights on any third party. Any rights conferred pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

9. The Agreement shall be governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the English courts to settle disputes arising out of or in connection with the Agreement.

For and on behalf of

Client: Scout:

Name: Name:

Signature:

Signature:

Title:

Title:

Date:

Date: