

ALBA PARTNERS

G-Cloud 15

Terms and Conditions

ALBA
P A R T N E R S

Alba Partners Terms of Business

1. Interpretation

In these Terms and Conditions (including Schedule 1 – Data Protection), the following definitions apply:

"Background IP" means any Intellectual Property Rights owned or licensed by a party prior to the date of the Contract or developed independently of the Services.

"Call-Off Contract" means the contract entered into between the Customer and the Company under the G-Cloud 15 Framework.

"Confidential Information" means all information (whether oral, written or electronic) relating to the business, affairs, operations, plans, intentions, know-how, trade secrets, personnel, customers, suppliers, finances, pricing, Intellectual Property or services of a party which is disclosed in connection with the Services and which is confidential or ought reasonably to be considered confidential.

"Contract" means the Call-Off Contract comprising the Customer order, any agreed Statement of Work or Proposal, and these Terms and Conditions.

"Customer" means the contracting public sector body purchasing Services under the G-Cloud Framework.

"Deliverables" means any reports, documents, software, materials or outputs produced by Alba Partners in the course of providing the Services.

"Force Majeure Event" means any event beyond the reasonable control of a party which prevents or materially delays performance of its obligations, excluding lack of funds or economic conditions.

"Foreground IP" means Intellectual Property Rights created or developed by Alba Partners in the course of providing the Services.

"Intellectual Property Rights" or "IP" means all patents, copyrights, database rights, design rights, trade marks, service marks, trade secrets, know-how and other intellectual property rights, whether registered or unregistered.

"Proposal" or "Statement of Work" ("SOW") means the document agreed between the parties describing the Services, Deliverables, fees and timetable.

"Services" means the consulting, advisory, implementation and/or interim professional services to be provided by Alba Partners as set out in the Call-Off Contract.

2. Contract Formation and Precedence

2.1 These Terms and Conditions apply to the exclusion of any other terms proposed by the Customer, save where expressly overridden by the G-Cloud Call-Off Contract.

2.2 The Contract shall be formed when the Customer issues a valid Call-Off Order and Alba Partners accepts it in writing or commences delivery of the Services.

2.3 No terms endorsed upon, delivered with or contained in any Customer purchase order or similar document shall form part of the Contract.

3. Alba Partners' Obligations

3.1 Alba Partners shall perform the Services with reasonable skill, care and diligence and in accordance with generally accepted professional standards.

3.2 Alba Partners warrants that personnel assigned to the Services shall have appropriate qualifications, skills and experience.

3.3 Alba Partners may use such methods, procedures, tools and personnel as it considers appropriate to achieve the objectives of the Services and may substitute personnel of equivalent skill and experience where reasonably necessary.

3.4 Services may be delivered remotely or at Customer premises within the United Kingdom, as agreed in the SOW.

3.5 Alba Partners shall use reasonable endeavours to meet agreed milestones but time shall not be of the essence unless expressly stated.

4. Customer Obligations

4.1 The Customer shall, at its own cost, provide timely access to all information, systems, premises, equipment and personnel reasonably required for delivery of the Services.

4.2 The Customer shall ensure that all information supplied is accurate, complete and lawful.

4.3 Where Alba Partners' performance is delayed or prevented by the Customer's failure to comply with this clause, Alba Partners shall be entitled to a reasonable extension of time and to recover reasonable additional costs incurred.

5. Fees, Expenses and Payment

5.1 Fees shall be as set out in the Call-Off Contract or applicable SOW and shall accrue on a time and materials or fixed-price basis as agreed.

5.2 Fees are exclusive of VAT unless stated otherwise.

5.3 Alba Partners shall invoice monthly in arrears unless otherwise agreed. Invoices are payable within 30 days of the invoice date.

5.4 The Customer shall reimburse reasonable and pre-agreed expenses incurred in delivering the Services.

5.5 Alba Partners may charge interest on late payments at 3% above the Bank of England base rate.

5.6 Where the Customer pauses the Services, Alba Partners may invoice for all Services performed up to the date of suspension.

6. Confidentiality

6.1 Each party shall keep the other party's Confidential Information confidential and shall not disclose it to any third party except as permitted under the Contract or required by law.

6.2 Confidentiality obligations shall not apply to information which is or becomes public through no fault of the receiving party, is lawfully obtained from a third party, or is required to be disclosed under FOIA, subject to CCS requirements.

6.3 Alba Partners may reuse its own know-how, skills and experience gained during the Services provided it does not disclose Customer Confidential Information.

7. Data Protection

7.1 Each party shall comply with applicable Data Protection Laws, including the UK GDPR and Data Protection Act 2018.

7.2 Where Alba Partners processes Personal Data on behalf of the Customer, Schedule 1 (Data Protection) shall apply.

7.3 All Personal Data processing shall take place within the United Kingdom unless otherwise agreed in writing.

8. Intellectual Property

8.1 Each party retains ownership of its Background IP.

8.2 Foreground IP created by Alba Partners in the course of delivering the Services shall vest in Alba Partners.

8.3 Upon payment in full, Alba Partners grants the Customer a non-exclusive, royalty-free, perpetual licence to use the Deliverables for internal business purposes.

9. Limitation of Liability

9.1 Nothing in the Contract shall limit liability for death or personal injury caused by negligence, fraud, or any liability that cannot be excluded by law.

9.2 Subject to clause 9.1, Alba Partners' total aggregate liability arising under or in connection with the Contract shall not exceed the total fees paid or payable under the relevant Call-Off Contract.

9.3 Alba Partners' liability for breaches of data protection obligations shall be capped at £1,000,000 per contract year.

9.4 Alba Partners shall not be liable for any indirect or consequential loss, including loss of profit, revenue or anticipated savings.

10. Termination

10.1 Either party may terminate the Contract on 30 days' written notice.

10.2 Either party may terminate immediately for material breach not remedied within 30 days of notice.

10.3 Either party may terminate immediately upon the insolvency of the other party.

10.4 On termination, the Customer shall pay all fees due for Services delivered up to termination.

10.5 Clauses intended to survive termination shall do so.

11. Personnel and Non-Solicitation

11.1 The Customer shall not solicit or employ Alba Partners' personnel involved in the Services during the Contract and for six months thereafter without prior written consent.

12. Assignment and Subcontracting

12.1 Alba Partners may subcontract parts of the Services but shall remain responsible for performance.

12.2 The Customer may not assign the Contract without written consent, subject to CCS requirements.

13. Force Majeure

13.1 Neither party shall be liable for failure or delay caused by a Force Majeure Event.

14. General

14.1 The Contract constitutes the entire agreement between the parties.

14.2 If any provision is unenforceable, the remainder shall continue in force.

14.3 The Contract shall be governed by the laws of England and Wales and subject to the exclusive jurisdiction of the English courts.

Schedule 1 – Data Protection

This Schedule forms part of the Contract and sets out the obligations required by Article 28 UK GDPR and applicable controller-to-controller data sharing obligations.

Definitions

Terms used in this Schedule have the meanings given in the UK GDPR and Data Protection Act 2018, including *Controller*, *Processor*, *Personal Data*, *Processing*, *Data Subject* and *Personal Data Breach*.

Part A – Controller to Processor (Article 28 UK GDPR)

1. Roles of the Parties

1.1 For the purposes of the Data Processing Services, the Customer is the Controller and Alba Partners is the Processor.

1.2 Alba Partners shall process Personal Data solely for the purpose of providing the Services and in accordance with the documented instructions of the Customer.

2. Processor Obligations

2.1 Alba Partners shall:

process Personal Data lawfully, fairly and transparently;
ensure that Personal Data is adequate, relevant and limited to what is necessary;
implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including access controls, encryption where appropriate, and staff training;
ensure that all personnel processing Personal Data are subject to confidentiality obligations;
maintain records of processing activities in accordance with Article 30 UK GDPR.

2.2 Alba Partners shall not transfer Personal Data outside the United Kingdom without the prior written consent of the Customer and without ensuring appropriate safeguards are in place.

3. Sub-processing

3.1 Alba Partners may engage sub-processors provided that:
such sub-processors are subject to written contracts imposing data protection obligations materially equivalent to those in this Schedule; and
Alba Partners remains fully liable for the acts and omissions of its sub-processors.

4. Data Subject Rights

4.1 Alba Partners shall assist the Customer, by appropriate technical and organisational measures, to respond to requests from Data Subjects exercising their rights under Data Protection Laws.

5. Data Protection Impact Assessments and Audit

5.1 Alba Partners shall provide reasonable assistance to the Customer in conducting Data Protection Impact Assessments and consulting with the ICO where required.

5.2 Alba Partners shall make available to the Customer all information reasonably necessary to demonstrate compliance with this Schedule and shall allow for reasonable audits, subject to confidentiality and security requirements.

6. Personal Data Breaches

6.1 Alba Partners shall notify the Customer without undue delay and in any event within 48 hours of becoming aware of a Personal Data Breach.

6.2 Alba Partners shall provide all reasonable assistance required to enable the Customer to comply with its obligations under Articles 33 and 34 UK GDPR.

7. Return and Deletion of Data

7.1 Upon termination or expiry of the Contract, Alba Partners shall, at the Customer's choice, return or securely delete all Personal Data unless retention is required by law.

Part B – Controller to Controller (Shared Personal Data)

8. Shared Data Purpose

8.1 The parties may share Personal Data as independent Controllers where necessary for contract management, invoicing, regulatory compliance, security and communications relating to the Services.

9. Controller Obligations

9.1 Each party shall:
process Shared Personal Data lawfully and fairly;
provide appropriate privacy information to Data Subjects;
implement appropriate security measures;
respond independently to Data Subject rights requests relating to its own Processing.

10. Data Retention and Breach Management

10.1 Each party shall retain Shared Personal Data only for as long as necessary for the Shared Data Purpose.

10.2 Each party shall notify the other without undue delay of any Personal Data Breach affecting Shared Personal Data.

15. IR35 and Off-Payroll Working

15.1 The parties acknowledge that the off-payroll working rules under Chapter 10, Part 2 of the Income Tax (Earnings and Pensions) Act 2003 ("IR35") may apply to certain Services.

15.2 Where IR35 applies, the parties shall cooperate in good faith to provide accurate information necessary to determine employment status and comply with applicable tax obligations.

15.3 Where IR35 requirements conflict with any provision of this Contract, the statutory requirements shall take precedence.