

Cloud Support

Terms and conditions

Issue 0.2

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THIS CONSULTANCY AGREEMENT

is made the day of 20XX

BETWEEN:

- (1) **Aire Logic Limited**, incorporated and registered in England and Wales with company number **6233174** whose registered office is at **Aireside House, Aire Street, Leeds, England, LS1 4HT** (the “**Consultancy**”) and
- (2) **[Client Name]** incorporated and registered in England and Wales with company number **[xxx]** whose registered office is at **[address]** (the “**Client**”).

THE PARTIES agree as follows:

1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement (unless the context requires otherwise).

“**Board**” the board of directors of the Client (including any committee of the board duly appointed by it).

“**Client Operations**” the **[details of Client business]**

“**Opportunities**” any opportunities which the Consultancy becomes aware of during the Engagement which relate to the Client Operations or which the Consultancy reasonably considers might be of benefit to the Client.

“**Capacity**” as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

“**Commencement Date**” **[date]**

Consultant: **[name of individual contractors]** or any Substitute appointed under Clause 3.3.

“**Confidential Information**” information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Client for the time being confidential to the Client and trade secrets including, without limitation, technical data and know-how relating to the Client Operations or any of its

suppliers, customers, agents, distributors, shareholders, management or business contacts and including (but not limited to) information that the Consultancy creates, develops, receives or obtains in connection with this Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

“Engagement” the engagement of the Consultancy by the Client on the terms of this Agreement.

“Pre-Contractual Statement” any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the Engagement other than as expressly set out in this Agreement or any documents referred to in it.

“Services” the services described in the Schedule.

“Substitute” a substitute for the Consultant appointed under the terms of Clause 3.3.

“Termination Date” the date of termination of this Agreement, however arising.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6 The Schedules to this Agreement form part of (and are incorporated into) this Agreement.
- 1.7 Where this agreement and those outlined in the G-Cloud 15 Framework Agreement conflict, terms and conditions described in the framework agreement will take precedence.

2 TERM OF ENGAGEMENT

- 2.1 This Agreement is effective from the Commencement Date and shall continue until (Date) or until terminated in accordance with clause 10 or 16 of this Agreement. This Agreement may only be extended, amended or renewed by the mutual written agreement of the Parties.

3 CONSULTANCY'S OBLIGATIONS

- 3.1 The Consultancy shall procure that the Consultant(s) act with all proper skill, care and diligence in accordance with accepted standards and guidelines and any of The Client's specifications. The Consultancy's (which includes the Consultant(s)) method of working (including devising work strategies) will be its own, and the Consultancy (which includes the Consultant(s)) shall exercise initiative as to the technical performance of its activities.
- 3.2 The Consultancy shall procure that the Consultant(s) shall keep detailed records of all things done by it or them pursuant to this Agreement and shall procure that the Consultant(s), at the Client's request, shall make the detailed records available for inspection by the Client.
- 3.3 The Consultancy shall procure that the Consultant(s) comply with any and all policies in force from time to time whilst on Client premises and/or any other premises (including the premises of Client customers), including, without limitation, health and safety, smoking and e-mail policies.
- 3.4 The Consultancy shall procure that Consultant(s) have at all relevant times such immigration and work clearances and permissions as may be necessary to enable the Consultant(s) to enter the United Kingdom and remain in the United Kingdom for the duration anticipated by the relevant Schedule.
- 3.5 The Consultancy shall procure that all Consultant(s) complete timesheets in accordance with the procedure set out in Annex C hereto.
- 3.6 If the Consultancy is unable to provide one or more of the Consultant(s) for any reason, it may substitute the Consultant(s), subject to any substitute having the same or better skills than the Consultant(s) being replaced.

4 FEES

- 4.1 The Client shall pay the Consultancy a fee of:

4.1.1 [Details of fee. E.g. £xxx plus VAT for delivery of Phase 1 of the Services]

4.1.2 £xxx plus VAT for the delivery of Phase 2 of the Services;

4.1.3 £xxx plus VAT per day for each and any day providing any other services to the Client (not being the Services) as may be agreed between the parties.]

Such costs are to be aligned with the SFIA Definitions and rate card document G-Cloud 15 as per the framework agreement.

4.2 The Client shall pay each invoice submitted by the Consultancy in accordance with Clause 4.1, within 30 days of receipt.

5 EXPENSES

5.1 The Client shall reimburse all reasonable travel expenses properly and necessarily incurred by the Consultancy in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment.

6 OTHER ACTIVITIES

6.1 Nothing in this Agreement shall prevent the Consultancy from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement, provided that:

6.1.1 such activity does not cause a breach of any of the Consultancy's obligations under this Agreement;

7 CONFIDENTIAL INFORMATION AND CLIENT PROPERTY

7.1 The Consultancy acknowledges that in the course of the Engagement, it will have access to Confidential Information. The Consultancy has therefore agreed to accept the restrictions in this Clause 7.

7.2 The Consultancy shall not, and shall procure that its Consultant(s) shall not (except in the proper course of its or his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use its best endeavours to prevent the publication and disclosure of) any Confidential Information. This restriction does not apply to:

7.2.1 any use or disclosure authorised by the Client or required by law; or

7.2.2 any information which is already in, or comes into, the public domain otherwise than through the Consultancy's or Consultant's unauthorised disclosure.

7.3 At any stage during the Engagement, the Consultancy will promptly, on request, return to the Client all and any Client Property in its or the Personnel's possession.

8 DATA PROTECTION

8.1 The Consultancy (and supplied staff) agree to comply with all applicable data protection legislation, including but not limited to the Data Protection Act 2018 and any amendments thereto.

9 LIABILITY AND INSURANCE

9.1 The Consultancy shall have liability for and shall indemnify the Client for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultancy of the terms of this agreement including any negligent or reckless act, omission or default in the provision of the Services up to a maximum of £5,000,000 or the value of the contract, whichever is less, and shall accordingly maintain in force during the Engagement a full and comprehensive professional indemnity insurance policy (the "**Insurance Policy**").

9.2 The Consultancy shall, on request, supply to the Client a copy of the Insurance Policy and evidence that the relevant premiums have been paid.

9.3 The Consultancy shall comply (and shall procure that the Consultant and any Substitute complies) with the terms and conditions of the Insurance Policy at all times. If cover under the Insurance Policy shall lapse or not be renewed or be changed in any material way or if the Consultancy is aware of any reason why the cover under the Insurance Policy may lapse or not be renewed or be changed in any material way, the Consultancy shall notify the Client without delay.

10 TERMINATION

10.1 Notwithstanding the provisions of Clause 2.1, the Client may terminate the Engagement with immediate effect without notice and without any liability to make any further payment

to the Consultant Company (other than in respect of amounts accrued before the Termination Date) if at any time:

- 10.1.1 the Consultancy or Consultant commits any fundamental breach of this Agreement affecting the Client Operation which is not capable of being rectified (and is not so rectified) by the Consultancy or Consultant within a reasonable time period;
 - 10.1.2 the Consultancy or Consultant commits any repeated or serious breach of this Agreement which has not been rectified by the Consultancy or Consultant PROVIDED THAT the Client must first give written notice to the Consultancy allowing it opportunity to rectify such breach at its or own costs within a reasonable time period;
 - 10.1.3 The Consultancy makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to the Consultancy; or
 - 10.1.4 the Consultancy or Consultant commits any fraud or dishonesty or acts in any manner which, in the reasonable opinion of the Client brings or is likely to bring the Client into disrepute or is materially adverse to the interests of the Client.
- 10.2 The rights of the Client under Clause 10.1 are without prejudice to any other rights that any of the parties may have at law to terminate the Engagement or to accept any breach of this Agreement on the part of the other party as having brought the Agreement to an end. Any delay by a party in exercising its rights to terminate shall not constitute a waiver of those rights.

11 OBLIGATIONS UPON TERMINATION

- 11.1 On the Termination Date the Consultancy shall:
 - 11.1.1 immediately deliver to the Client all Client Property which is in its or his possession or under its or his control;
 - 11.1.2 irretrievably delete any information relating to the Client Operation stored on any magnetic or optical disk or memory and all matter derived from such

sources which is in its or his possession or under its or his control outside the premises of the Client; and

- 11.1.3 provide upon request from the Client a signed statement that it or he has complied fully with its or his obligations under this Clause 11.

12 STATUS

- 12.1 The relationship of the Consultancy (and the supplied staff) to the Client will be that of independent contractor and nothing in this Agreement shall render it (nor the supplied staff) an employee, worker, agent or partner of the Client, and the Consultancy shall not hold itself out as such and shall procure that the Consultant shall not hold himself out as such.
- 12.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly, the Consultancy shall be fully responsible for:
 - 12.2.1 any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Consultant in respect of the Services, where such recovery is not prohibited by law. The Consultancy shall further indemnify the Client against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Client in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Client's negligence or wilful default;
 - 12.2.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant or any Substitute against the Client arising out of or in connection with the provision of the Services.
- 12.3 The Consultancy warrants that it is not nor will it prior to the cessation of this Agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

13 ENTIRE AGREEMENT

- 13.1 Each party on behalf of itself acknowledges and agrees with the other party that:

- 13.1.1 this Agreement together with any documents referred to in it, constitutes the entire agreement and understanding between the Consultancy and the Client and supersedes any previous agreement between them relating to the Engagement (which shall be deemed to have been terminated by mutual consent);
- 13.1.2 in entering into this Agreement neither party has relied on any Pre-Contractual Statement; and
- 13.1.3 the only remedy available to it or arising out of or in connection with any Pre-Contractual Statement shall be a freestanding breach of contract claim. Nothing in this Agreement shall, however, operate to limit or exclude any liability for fraud.

14 VARIATION

No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

15 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument.

16 THIRD PARTY RIGHTS

- 16.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists, or is available, apart from under that Act.
- 16.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

17 GOVERNING LAW AND JURISDICTION

- 17.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 17.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof the parties have signed this document the day and year first before written.

SIGNED by

(print name)

(signature)

duly authorised for and on behalf of

[CLIENT COMPANY]

SIGNED by

(print name)

(signature)

duly authorised for and on behalf of

Aire Logic Limited.

THE SCHEDULE

Services

[Include reference to Phases deliverables and timescales]