

ADVICE CLOUD TERMS AND CONDITIONS OF BUSINESS

THESE TERMS AND CONDITIONS OF BUSINESS are dated as of the date of, or as set out in, the Proposal.

- (1) **ADVICE CLOUD LIMITED** is a company registered in England and Wales (company no. 05776223) and whose registered office is at 15-17 Middle Street, Brighton, East Sussex, England, BN1 1AL (**Advice Cloud**); and
- (2) the entity named in the Proposal (**Client**).

BACKGROUND

Advice Cloud is a public sector procurement specialist and technology framework expert. The Client wishes to obtain, and Advice Cloud wishes to provide, certain services on the terms set out in these ToB.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1. In these ToB:

Advice Cloud Personal Data: the following types of Personal Data relating to Advice Cloud's officers, directors, employees, consultants and subcontractors: Name, contact details and job title;

Background IPRs: for each party, IPRs: (i) owned by that party before the date of these ToB or the Proposal (as may be enhanced and/or modified but not as a consequence of the Services) including IPRs contained in any of the party's know-how, documentation and processes; or (ii) created by the party independently of the Services and/or these ToB. In relation to Advice Cloud, this will include any IPRs contained within its bid libraries, knowledge hub, online tools, templates, documentation, resources, literature, trainings, workshops, guides and guidance;

CCN: has the meaning given in clause 5.1;

Client Materials: all documents, information, items, software and materials in any form (whether owned by the Client or a third party (other than Advice Cloud)), which are provided by the Client to Advice Cloud in connection with the Services, as set out in a Proposal;

Client Personal Data: the following types of Personal Data relating to Client Personnel: Name, contact details and job title;

Client Personnel: all employees, agents, consultants and contractors of the Client and/or of any subcontractors of the Client who Advice Cloud interacts, engages or otherwise works with in connection with the Services and/or these ToB;

Controller and Personal Data: as defined in DP Laws;

Deliverables: any outputs of the Services to be provided by Advice Cloud to the Client as specified in the Proposal (excluding Client Materials);

DP Laws: as applicable to a party: (i) the UK GDPR; (ii) EU Regulation 2016/679 (the General Data Protection Regulation); (iii) EU Directive 2002/58/EC; (iv) any applicable national DP Laws made under or pursuant to (i), (ii) or (iii) in the UK or any European Member State; (v) any other DP Laws which apply to personal data processing as set out under these ToB, whether international, foreign, national, state, and/or local; (vi) any amendments or successor legislation to (i), (ii), (iii), (iv) or (v);

Fees: means the sums payable for the Services as set out in the Proposal;

FM Event: an event beyond Advice Cloud's reasonable control including: (i) strikes, lock-outs or other industrial disputes (whether involving the workforce of Advice Cloud or any other party); (ii) interruption or failure of a utility service or transport network; (iii) act of God, flood, drought, earthquake or other natural disaster; (iv) epidemic or pandemic; (v) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (vi) nuclear, chemical or biological contamination or sonic boom; (vii) any law or any action taken by a government or public authority; (viii) collapse of buildings, fire, explosion or accident; (ix) any labour or trade dispute, strikes, industrial action or lockouts; and (x) non-performance by suppliers or subcontractors;

Insolvency Event: where a party: (i) ceases or threatens to cease to carry on business; (ii) 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 as if the words it is proved to the satisfaction of the court did not appear in sections 123(1)(e) or 123(2); (iii) applies to court for, or obtains, a moratorium under Part A1 of the IA 1986; (iv) has an administrator, receiver, administrative receiver or manager appointed over the whole or any part of its assets, or an application for such is made to court or a notice of intention to appoint is given for such; (v) 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 (otherwise than in furtherance of any scheme for solvent amalgamation or solvent reconstruction); (vi) has a petition filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that party (otherwise than in furtherance of any scheme for solvent amalgamation or solvent reconstruction); or (vii) undergoes any similar or equivalent process in any jurisdiction;

IPRs: patents, utility models, rights to inventions, copyright, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Prohibited Act: to directly or indirectly offer, promise or give any person working for or engaged by Advice Cloud a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity; (ii) reward that person for improper performance of a relevant function or activity; (iii) commit any offence under legislation creating offences concerning bribery, corruption, fraud or at common law concerning such offences;

Proposal: a quotation or other similar document describing the services to be provided by Advice Cloud, the duration and timetable for their performance, the Fees payable and such other matters related to the Services;

Public Sector Growth Engine: where relevant to the Services, this is the product code for Advice Cloud's annual retainer based service;

Services: the services which are provided by Advice Cloud under, and as set out in, the Proposal;

ToB: the agreement between Advice Cloud and the Client comprising these terms and conditions together with all documents which are to be made a part of this agreement in accordance with clause 5 or 14.1, or are incorporated into this agreement by express reference in this agreement (such documents being part of this agreement to the extent so referenced);

UK Addendum: the Information Commissioner's Office's International Data Transfer Addendum to the EU Commission Standard Contractual Clauses (version B1.0) (utilising the EC's module 1 standard contractual clauses) which is an integral part of these ToB and is incorporated herein by reference; and

UK GDPR: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 1.2. In these ToB, unless the context otherwise requires: (i) clause headings are inserted for ease of reference only and do not affect construction; (ii) references to clauses are to the clauses of these ToB; (iii) references to **writing** or **written** includes a reference to email (but not fax); (iv) an enactment includes that enactment as amended, extended, consolidated, re-enacted or applied by or under any other enactment before or after the date of these ToB and any subordinate legislation made (before or after the date of these ToB) under that or any other applicable enactment; (v) the words **include**, **including** and **in particular** and any similar words or expressions are by way of illustration and emphasis only and do not operate to limit the generality or extent of any other words or expressions; and (vi) words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing bodies corporate, corporations, unincorporated associations and partnerships and vice-versa, words importing the singular shall be treated as importing the plural and vice-versa, and words importing the whole shall be treated as including a reference to any part thereof.

- 1.3. If there is any conflict and/or inconsistency between any of the provisions of these ToB and the

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Proposal, the Proposal shall prevail (but only to the extent of such conflict and/or inconsistency).

- 1.4. These ToB shall be binding on, and endure to the benefit of, the parties to these ToB and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

2. COMMENCEMENT AND DURATION

- 2.1. These ToB shall commence on the last signature date below and shall continue, unless terminated earlier in accordance with clause 12, until either party gives to the other party 7 days written notice to terminate. Such notice shall be served no earlier than the first anniversary of the commencement of these ToB and shall expire on the completion of the Proposal.
- 2.2. Advice Cloud shall provide the Services from the date specified in the Proposal. The duration of the Services to be provided by Advice Cloud under a Proposal shall be set out in that Proposal.

3. ADVICE CLOUD OBLIGATIONS

- 3.1. Advice Cloud shall use reasonable endeavours to:
 - 3.1.1. provide the Services and deliver the Deliverables to the Client in accordance with the Proposal in all material respects;
 - 3.1.2. perform the Services with the care, skill and diligence in accordance with good practice in Advice Cloud's industry, profession or trade; and
 - 3.1.3. meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time for performance by Advice Cloud shall not be of the essence of the Proposal or these ToB.
- 3.2. Advice Cloud shall have the authority to delegate any obligations to other employees or subcontractors but undertakes to notify the Client of any significant changes to personnel.
- 3.3. To the extent that there has been a delay in the performance of the Services (including delivery of any Deliverables) which has been caused by an act or omission of the Client or any Client Personnel, without limiting any other rights or remedies that it has, Advice Cloud shall be entitled to:
 - 3.3.1. an extension of time equivalent to the length of the Client's delay in relation to the performance of the affected Services and/or the delivery of the affected Deliverables, or such other extension of time as Advice Cloud reasonably requires considering its commitments and obligations to other clients;
 - 3.3.2. suspend the performance of any of its obligations to the extent that such act or omission prevents or delays Advice Cloud's performance of any of its obligations; and
 - 3.3.3. be reimbursed by the Client on written demand for (i) any Fees payable for Services that have not or cannot be performed as a result of such delay; and (ii) any costs, expenses or losses sustained or incurred by Advice Cloud arising directly or indirectly from such act or omission.
- 3.4. Advice Cloud shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Advice Cloud's failure or delay in performing any of its obligations as set out in clause 3.3.

4. CLIENT OBLIGATIONS

- 4.1. The Client shall:
 - 4.1.1. co-operate with Advice Cloud in all matters relating to the Services, including complying with its obligations set out in these ToB and any additional responsibilities of the Client as set out in the Proposal;
 - 4.1.2. carry out all Client responsibilities set out in these ToB in a timely and efficient manner

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- and ensure that Client Personnel act in a professional and respectful manner when working with Advice Cloud;
- 4.1.3. provide Advice Cloud, its agents, subcontractors, consultants and employees in a timely manner and at no charge, access to Client Personnel, and (if applicable) its premises, office accommodation, equipment, software, systems, data and other facilities as reasonably required by Advice Cloud including any such access as is specified in the Proposal;
 - 4.1.4. provide to Advice Cloud in a timely manner all documents, information and materials in any form (whether owned by the Client or a third party) required under the Proposal or otherwise reasonably required by Advice Cloud in connection with the Services and ensure that they are accurate and complete;
 - 4.1.5. where the Services are to be provided at the Client's premises: (i) inform Advice Cloud of all health and safety and security requirements that apply at any of the Client's premises and such requirements shall be set out in the Proposal; and (ii) ensure that all the Client's equipment is in good working order and suitable for the purposes for which it is to be used in relation to the Services and conforms to all relevant UK or EU standards or requirements;
 - 4.1.6. ensure that it has the authority to grant any rights to be granted to Advice Cloud under these ToB;
 - 4.1.7. obtain and maintain all necessary licences, consents and permissions and comply with all relevant legislation as required to enable Advice Cloud to provide the Services, including in relation to use of all Client Materials, the Client's Background IPRs, any Client or third party software, system and/or tools and the Client's equipment, in all cases before the date on which the Services are to start;
 - 4.1.8. ensure that Advice Cloud's use in the provision of the Services or otherwise in connection with these ToB of any third party software, tools, systems, equipment, documentation, information or materials shall not cause Advice Cloud to infringe the rights, including any IPRs, of any third party; and
 - 4.1.9. ensure that it does not do, or allow to be done, anything which would hinder or restrict Advice Cloud from performing any of its obligations under these ToB or the Proposal, or from exercising any of its rights or remedies.
- 4.2. An obligation on the Client to do, or to refrain from doing, any act or thing shall include an obligation upon the Client to procure that Client Personnel also do, or refrain from doing, such act or thing.
- 4.3. During the term of these ToB and for a further period of 6 months after the termination or expiry of these ToB, the Client shall not (except with the prior written consent of an authorised signatory of Advice Cloud) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment or service of Advice Cloud any person employed or engaged by Advice Cloud in the provision of the Services other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of Advice Cloud.

5. CHANGES TO THE SERVICES

- 5.1. Either party may propose changes to the scope or execution of the Services under the Proposal, but no proposed changes shall come into effect until a relevant "**CCN**" has been signed by both parties. A CCN shall be a document (which may be in the form of an additional Proposal) setting out the proposed changes and the effect those changes will have on the Services, the Fees, the timetable for the Services and any of the other terms of the Proposal.
- 5.2. If the Client wishes to make a change to the Services:
- 5.2.1. it shall notify Advice Cloud in writing, providing as much detail as is reasonably necessary to enable Advice Cloud to prepare the draft CCN; and
 - 5.2.2. Advice Cloud shall as soon as reasonably practicable after receiving the Client's request provide a draft CCN to the Client.
- 5.3. If Advice Cloud wishes to make a change to the Services, it shall provide a draft CCN to the

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Client.

- 5.4. If the parties agree to a CCN, they shall sign it and that signed CCN shall amend the Proposal.

6. WARRANTIES

- 6.1. The Client warrants that:

- 6.1.1. it has the full capacity and authority to enter into and perform its obligations under these ToB and that these ToB are executed by a duly authorised representative of the Client;
- 6.1.2. it will comply with and use the Services in accordance with these ToB and all applicable laws, and shall not do any act that shall infringe the rights, including any IPRs, of any third party;
- 6.1.3. in entering into these ToB it has not committed and will not commit or agree to commit a Prohibited Act; and
- 6.1.4. at the start of these ToB and the Proposal, all information, statements and representations it has made to Advice Cloud are accurate and not misleading.

- 6.2. Advice Cloud warrants that it has the full capacity and authority to enter into and perform its obligations under these ToB and that these ToB are executed by a duly authorised representative of Advice Cloud.

7. CHARGES AND PAYMENT TERMS

- 7.1. In consideration of the provision of the Services by Advice Cloud, the Client shall pay the Fees to a bank account designated in writing by Advice Cloud. Advice Cloud shall be entitled to vary, and notify to Client of such variation of, the Fees to take account of any additional:

- 7.1.1. services requested by the Client which were not included in the Proposal; and
- 7.1.2. work required to complete the Services which was not anticipated at the time of the Proposal.

- 7.2. If the Client cancels a workshop or training less than 7 working days before the event, payment must be made to Advice Cloud in full and in accordance with clause 7.4.

- 7.3. Advice Cloud shall invoice the Client for the Fees at the intervals specified in the Proposal. If no intervals are specified in the Proposal, Advice Cloud shall invoice the Client in advance.

- 7.4. The Client shall pay each invoice submitted to it by Advice Cloud within the time period set out in the Proposal. If no time period is set out in a Proposal, payment shall be made by the Client within 30 days of the date of Advice Cloud's invoice.

- 7.5. Unless stated otherwise in the Proposal, the Fees shall be exclusive of, and the Client shall pay:

- 7.5.1. VAT or other relevant taxes and the Client will pay Advice Cloud any VAT or other relevant taxes properly chargeable on the Services provided pursuant to these ToB;
- 7.5.2. out-of-pocket expenses which may be incurred by Advice Cloud in connection with the provision of the Services, including hotel, travel, subsistence and any other ancillary expenses reasonably incurred by the individuals whom Advice Cloud engages in connection with the Services; and
- 7.5.3. the cost to Advice Cloud of any materials or services procured by Advice Cloud from third parties for the provision of the Services as such items and their costs are set out in the Proposal and/or approved by the Client in advance from time to time.

- 7.6. Advice Cloud shall be responsible for the payment of National Insurance contributions as a self-employed person and for the payment of any Income Tax, VAT or other liabilities arising out of remuneration for providing the Services.

- 7.7. If the Client fails to make any payment due to Advice Cloud by the due date for payment, then,

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without limiting Advice Cloud's other rights and remedies:

- 7.7.1. the Client shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%. Such interest shall accrue daily 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;
 - 7.7.2. Advice Cloud may suspend performance of the Services until payment has been made in full; and/or
 - 7.7.3. Advice Cloud is entitled to recover all reasonable expenses incurred in obtaining payment from the Client.
- 7.8. All payments due to Advice Cloud under these ToB must be paid in full without any set-off, counterclaim, deduction, withholding or further government restriction (except for any deduction or withholding required by applicable law). The Client shall be solely responsible for the payment of such withholding tax or further government restriction that the Client is required to withhold or deduct by law. The Client shall indemnify Advice Cloud against all claims in respect of the same as may be imposed on the amounts payable under these ToB. The Client shall give to Advice Cloud evidence as to the payment of such tax or sum withheld, if requested. Advice Cloud may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Advice Cloud to the Client
- 7.9. Advice Cloud may increase the Fees on an annual basis with effect from each anniversary of the date of these ToB by giving written notice to the Client.
- 7.10. If a payment due from the Client under these ToB is subject to tax (whether by way of direct assessment or withholding at its source), Advice Cloud shall be entitled to receive from the Client such amounts as shall ensure that the net receipt, after tax, to Advice Cloud in respect of the payment is the same as it would have been were the payment not subject to tax.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. Notwithstanding anything to the contrary in these ToB or the Proposal, neither party shall acquire any right, title or interest in the other party's Background IPRs. Where either party acquires, by operation of law, title to the other party's Background IPRs (or any part thereof), such Background IPRs shall be promptly assigned by it to the other party on the request of the other party, whenever that request is made. Neither party shall have a right to use the other party's Background IPRs other than as set out in (as applicable) clause 8.3 or 8.4.
- 8.2. Unless expressly stated otherwise in the Proposal, in relation to the Deliverables:
- 8.2.1. materials used by Advice Cloud contained within Deliverables comprise materials designed by or on behalf of Advice Cloud which may be used for other clients, materials designed by or on behalf of Advice Cloud for use with a specific client and/or materials designed by third parties for use by Advice Cloud. In some instances, IPRs to such materials belongs to Advice Cloud; in others the IPRs belong elsewhere and are used by Advice Cloud by agreement or under license. Advice Cloud is unable to assign IPRs in such materials used under licence;
 - 8.2.2. Advice Cloud and its licensors shall retain ownership of all IPRs in the Deliverables;
 - 8.2.3. in consideration of payment of the Fees by the Client in accordance with these ToB and the Proposal, Advice Cloud grants the Client or shall (subject to clause 8.5) procure the direct grant to the Client of, a non-exclusive and royalty-free licence during the term of these ToB to use the Deliverables for the purpose of receiving and using the Services and the Deliverables in its internal business purposes. Any replication of the Deliverables by the Client must carry the statement '*created by Advice Cloud for [the Client]*'; and
 - 8.2.4. the Client shall not sub-license, assign or otherwise transfer the rights granted in clause 8.2.3 unless permitted otherwise in the Proposal.

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- 8.3. Client hereby grants to Advice Cloud a non-exclusive and non-transferable licence during the term of these ToB to use the Client's Background IPRs and Client Materials solely for the purposes of providing the Services and to carry out its obligations under these ToB including the right to develop, modify, enhance and copy the Client's Background IPRs and/or Client Materials.
- 8.4. Unless expressly stated otherwise in a Proposal and in consideration of payment of the Fees by the Client in accordance with these ToB and subject to clause 8.5, Advice Cloud hereby grants to the Client a non-exclusive and non-transferable licence during the term of these ToB to use Advice Cloud's Background IPRs solely for the purposes of receiving the Services.
- 8.5. In relation to third party IPRs contained within Advice Cloud's Background IPRs and/or the Deliverables, the Client agrees that its use of any such IPRs is conditional on Advice Cloud obtaining a written licence from the relevant licensor on such terms as will entitle Advice Cloud to license such rights to the Client.
- 8.6. Upon request, the Client agrees to provide a case study/testimonial relating to Advice Cloud and the Services it has provided (**Testimonial**). The Client hereby grants Advice Cloud a perpetual, irrevocable, non-exclusive, royalty-free licence to use (i) the Client's name and/or logo; and (ii) the Testimonial, on Advice Cloud's website and within other promotional material (including on social media and within its portfolio).

9. CONFIDENTIALITY AND DATA PROTECTION

- 9.1. Each party undertakes that it shall not at any time during these ToB, and for a period of 3 years after termination or expiry of these ToB, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.2. Neither party shall use or exploit the other party's confidential information in any way except for the purposes of providing or receiving the Services and to carry out its obligations under these ToB.
- 9.2. Each party may disclose the other party's confidential information:
 - 9.2.1. to its employees, officers, representatives, contractors, subcontractors 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 these ToB. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors and advisers to whom it discloses the other party's confidential information comply with this clause 9; and
 - 9.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3. Information is not confidential information if:
 - 9.3.1. it is, or becomes, generally available to the public other than as a direct or indirect result of its disclosure by the receiving party in breach of this clause 9;
 - 9.3.2. it was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - 9.3.3. it was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not under any confidentiality obligation in respect of that information;
 - 9.3.4. it was lawfully in the possession of the receiving party before the information was disclosed to it by the disclosing party;
 - 9.3.5. it is developed by or for the receiving party independently of the information disclosed by the disclosing party; or
 - 9.3.6. the parties agree in writing is not confidential or may be disclosed.
- 9.4. Each party reserves all rights in its confidential information. No rights or obligations in respect of a party's confidential information, other than those expressly stated in these ToB, are granted to the other party, or are to be implied from these ToB.

- 9.5. While Advice Cloud performs its obligations and exercising its rights and remedies under these ToB, Advice Cloud must necessarily process Client Personal Data as an independent Controller. Advice Cloud shall comply with DP Laws when processing Client Personal Data. Notwithstanding the foregoing, the Client is also an independent Controller of Client Personal Data. Notwithstanding that it is a Controller of Client Personal Data, Advice Cloud shall process Client Personal Data only for the purposes of performing its obligations and exercising its rights and remedies and shall not process Client Personal Data for any other purposes.
- 9.6. While the Client performs its obligations and exercising its rights and remedies under these ToB, the Client must necessarily process Advice Cloud Personal Data as an independent Controller. The Client shall comply with DP Laws when processing Advice Cloud Personal Data. Notwithstanding the foregoing, Advice Cloud is also an independent Controller of Advice Cloud Personal Data. Notwithstanding that the Client is a Controller of Advice Cloud Personal Data, the Client shall process Advice Cloud Personal Data only for the purposes of performing its obligations and exercising its rights and remedies and shall not process Advice Cloud Personal Data for any other purposes.
- 9.7. To the extent that Advice Cloud Personal Data is transferred by Advice Cloud to you outside the UK to a third country for which there is no valid adequacy decision pursuant to the UK GDPR, the parties shall comply with the UK Addendum. For the purpose of the UK Addendum, the parties agree as follows:
- 9.7.1. Data Exporter: Advice Cloud.
 - 9.7.2. Data Importer: Client.
 - 9.7.3. Data Subject types: Advice Cloud's officers, directors, employees, consultants and subcontractors.
 - 9.7.4. Purposes/Description of transfer: As set out in Clause 9.7 of these ToB.
 - 9.7.5. Categories of data and sensitive data transferred: Advice Cloud Personal Data.
 - 9.7.6. Frequency of transfer: Ongoing basis.
 - 9.7.7. Retention period: No longer than is necessary for the purposes of the transfer.
 - 9.7.8. Optional clauses 7 and 11 of the UK Addendum shall not apply.
 - 9.7.9. Table 4: Neither party.
 - 9.7.10. Governing law: As set out in Clause 14.11 of these ToB.
 - 9.7.11. Technical and organisational measures: As required under the UK's Data Protection Act 2018.
 - 9.7.12. Contact points: Each party's signatory to the Proposal or as otherwise notified.

10. INDEMNITY

The Client shall indemnify Advice Cloud against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Advice Cloud arising out of or in connection with any breach of these ToB and/or claim made against Advice Cloud for actual or alleged infringement of a third party's IPRs arising out of or in connection with the Client's Background IPRs and/or any Client Materials.

11. LIMITATION OF LIABILITY

- 11.1. Neither party excludes or limits liability to the other party for:

- 11.1.1. fraud or fraudulent misrepresentation;
- 11.1.2. death or personal injury caused by its negligence; or
- 11.1.3. any other liability (including statutory liability) to the extent it is not lawfully permitted to limit or exclude it.

- 11.2. Subject to clause 11.1, Advice Cloud shall not in any circumstances have any liability for any losses or damages which may be suffered by the Client (or any person claiming under or through the Client), whether the same are suffered directly or indirectly or are immediate or consequential,

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and whether the same arise in contract, tort (including negligence), for breach of statutory duty, misrepresentation (whether innocent or negligent), restitution or otherwise howsoever, which fall within any of the following categories:

- 11.2.1. loss of profits, contracts or bids;
- 11.2.2. loss of anticipated savings;
- 11.2.3. loss of revenue or business opportunity;
- 11.2.4. loss of or damage to goodwill;
- 11.2.5. loss of or damage to property;
- 11.2.6. loss or corruption of software, data (including Client Personal Data) or information; or
- 11.2.7. damage to reputation,

in each case, whether or not such losses or damage were within the contemplation of the parties at the date of these ToB.

- 11.3. Subject to clauses 11.1, 11.2 and 11.4, Advice Cloud's total aggregate liability in contract, tort (including negligence), for breach of statutory duty, misrepresentation (whether innocent or negligent), restitution or otherwise howsoever arising in connection with the performance, non-performance or contemplated performance of these ToB shall in all circumstances be limited to an amount equal to the total Fees paid by the Client during the 12 month period immediately before the date on which the cause of action first arose.
- 11.4. Advice Cloud shall not be liable to the Client because of any delay or failure to perform its obligations under these ToB because of an FM Event. If an FM Event prevents Advice Cloud from providing any or part of the Services under the Proposal for more than 30 days, Advice Cloud shall, without limiting its other rights or remedies, have the right to terminate the Proposal immediately by giving written notice to the Client.
- 11.5. Unless the Client notifies Advice Cloud that it intends to make a claim in respect of an event within the notice period, Advice Cloud shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred (as opposed to it becoming aware of its having grounds to make a claim in respect of it) and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 11.6. Except where expressly stated in the Proposal, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these ToB or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the extent permitted by law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 11.7. The parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 11 is held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted in accordance with clause 14.1. Furthermore, if any of the exclusions in clause 11.2 are found to be invalid, illegal or unenforceable by a court of competent jurisdiction, Advice Cloud's aggregate liability to the Client for such shall be subject to the financial limit set out in clause 11.3.

12. TERMINATION AND CONSEQUENCES OF TERMINATION AND EXPIRY

- 12.1. Without limiting either party's other rights or remedies, either party may terminate these ToB (including any Proposal) with immediate effect by giving written notice to the other party if the other party:
 - 12.1.1. commits a material breach of any term of these ToB and (if that breach is remediable) fails to remedy that breach within a period of 2 weeks after being notified in writing to do so;
 - 12.1.2. repeatedly breaches any of the terms of these ToB in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to

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- give effect to the terms of these ToB; or
- 12.1.3. undergoes an Insolvency Event.
- 12.2. Without limiting Advice Cloud's other rights and remedies, or prejudicing any other termination rights that Advice Cloud has under these ToB, Advice Cloud may terminate these ToB or suspend provision of the Services with immediate effect by giving the Client written notice if the Client fails to pay any amount due under these ToB on the due date for payment and fails to pay all outstanding amounts within 2 weeks after being notified in writing to do so.
- 12.3. Under Public Sector Growth Engine, the Client can only terminate (for convenience) giving 90 days' notice after a minimum period of 3 months service from Advice Cloud.
- 12.4. On termination (however arising) or expiry of these ToB:
- 12.4.1. the Client shall immediately pay to Advice Cloud all outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Advice Cloud may submit an invoice, which shall be payable by the Client immediately on receipt;
 - 12.4.2. all rights to use Advice Cloud's IPRs shall automatically cease (including Advice Cloud's Background IPRs and the Deliverables), unless agreed otherwise by Advice Cloud in the Proposal;
 - 12.4.3. Advice Cloud shall on request return any of the Client Materials not used up in the provision of the Services;
 - 12.4.4. all accrued rights, remedies, obligations and liabilities of the parties as at termination (however arising) or expiry shall be unaffected, including the right to claim damages in respect of any breach of these ToB which existed at or before the date of such termination or expiry; and
 - 12.4.5. clauses which expressly or by implication survive termination (however arising) or expiry shall continue in full force and effect including this clause 12 and clauses 1, 4.3, 7, 8.1, 8.2, 8.5, 8.6, 9 to 11 (inclusive), 13 and 14.

13. DISPUTE RESOLUTION

- 13.1. If any dispute arises in connection with these ToB, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 working days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR Notice**) to the other party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 13.2. If there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, on which the parties cannot agree within 14 working days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them.
- 13.3. Unless otherwise agreed by the parties, the mediation will start not later than 28 days after the date of the ADR Notice. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

14. GENERAL

- 14.1. Subject to clause 5, no modification, amendment or variation of these ToB shall be effective or binding on the parties unless made in writing and signed by authorised signatories of each party.
- 14.2. If any provision or part-provision of these ToB 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 shall not affect the validity and enforceability of the rest of these ToB. If any provision or part-provision of these

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ToB is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is valid, legal and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 14.3. The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under these ToB without the prior written consent of Advice Cloud. Advice Cloud may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under these ToB.
- 14.4. The failure to exercise or delay in exercising a right or remedy provided to a party under these ToB shall not constitute a waiver of that right or remedy, and no waiver by a party of any breach of these ToB shall constitute a waiver of any subsequent breach of the same or any other provision.
- 14.5. Any notice given under these ToB shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid first-class post or other next working day delivery service to the relevant party at the address as set out in these ToB or the Proposal. Notices shall be deemed to have been received if delivered and received personally, at the time of delivery and in the case of pre-paid first-class post or other next working day delivery service, at 9am on the second business day after posting. This clause 14.5 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 14.6. Nothing in these ToB 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 representations, act in the name of, or on behalf of, or to otherwise bind the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 14.7. Except as expressly provided in these ToB, the rights and remedies provided under these ToB are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.8. A person who is not a party to these ToB has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term of these ToB. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under these ToB are not subject to the consent of any other person.
- 14.9. The Proposal, which incorporates these ToB, may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of the Proposal or the executed signature page of a counterpart of the Proposal by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed wet-ink counterpart of the Proposal. If either method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the wet-ink hard copy original of their counterpart. No counterpart shall be effective until each party has executed and delivered at least one counterpart.
- 14.10. These ToB constitute the entire agreement between the parties relating to the subject-matter covered and supersedes any previous agreements, arrangements, representations, undertakings or proposals, written or oral, between the parties in relation to such matters. Each party acknowledges that, in entering into these ToB, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in these ToB. Each party agrees that its only liability in respect of those representations and warranties that are set out in these ToB (whether made innocently or negligently) shall be for breach of contract. Nothing in this clause 14.10 shall limit or exclude any liability for fraud.
- 14.11. These ToB and any disputes or claims arising out of or in connection with them or their subject

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matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. Each party irrevocably agrees the English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these ToB or their subject matter or formation (including non-contractual disputes or claims). Nothing in these ToB shall prevent, restrict or hinder Advice Cloud from taking proceedings to recover any sums due to it, or protect its or its third party licensor's IPRs, in any jurisdiction.