

NIIT

# Terms & Conditions - Template

G-CLOUD 10

NIIT Technologies Limited

## **1. SUPPLIER'S OBLIGATIONS**

### **1.1 General Duties**

On and from the Start Date, the Supplier, either through itself or its affiliates, must provide the Services and Deliverables to Buyer in accordance with:

- (a) the Project Plan;
- (b) all applicable laws and regulations;
- (c) the relevant Statements of Work/ Order Form/ Call of Agreement ; and
- (d) the Service Levels, as specified in the Statement of Work.

### **1.2 Specific Duties**

- (a) In the discharge of its duties under this Agreement the Supplier will:
  - (i) ensure that each Deliverable passes the Acceptance Tests and Acceptance Criteria, as specified in the relevant Statement of Work by the dates specified in the relevant Statement of Work;
  - (ii) provide reports to Buyer on such occasions and on such matters as Buyer may require from time to time; and
  - (iii) provide the Services and Deliverables to such of Buyer's Affiliates as the Buyer Project Manager may reasonably require.
- (b) The Supplier will appoint as its representative the person denoted as the Supplier Project Manager in the Statement of Work and will ensure that such person has authority to make day to day decisions and to represent the Supplier in the performance of the relevant Statement of Work.

## **2. BUYER'S OBLIGATIONS**

**2.1** During the Term, Buyer will make available to the Supplier adequate information and facilities necessary to perform the Services.

**2.2** Buyer will appoint as its representative the person denoted as the Buyer Project Manager in the Statement of Work and will ensure that such person has authority to make day to day decisions and to represent Buyer in co-ordinating the implementation of the relevant Statement of Work.

## **3. CHARGES AND PAYMENT**

### **3.1 Calculation of Charges**

During the Term Buyer will pay the Supplier in respect of the supply of the Services and Deliverables, in accordance with the rates and terms set out in the Statement of Work.

### **3.2 Expenses**

Unless otherwise specified in the Statement of Work, the Supplier will:

- (a) bear all travel, accommodation, office stationery, computer storage, media and related expenses reasonably incurred by the Supplier in performing the Services, unless otherwise agreed between the parties in writing and approved by Buyer prior to the incurring of the relevant expense; and
- (b) pay all salary, compulsory superannuation and leave payments due to its Representatives under statute or contract and all taxes in respect of such salaries or payments.

### **3.3 Taxes Generally**

The Buyer will pay all taxes, duties and charges imposed or levied in UK or overseas in connection with these terms and conditions and each Statement of Work (subject to the provisions below relating to VAT).

### **3.4 VAT**

Where the provision of Services or the creation of Deliverables are subject to VAT:

- (a) The Price is exclusive of the Suppliers' liability for VAT on a Supply made by the Supplier under the relevant Statement of Work.
- (b) Buyer must pay to the Supplier in addition to the Price, the amount payable by the Supplier as VAT on each Taxable Supply made by the Supplier under these terms. Buyer must pay that additional amount at the same time and in the same manner as the consideration for the Supply to which the additional amount relates.
- (c) The Supplier must give Buyer a tax invoice for each Taxable Supply in a form which complies with the requirements of A New Tax System (Goods and Services Tax) Act 1999.

- (d) Any consideration payable by Buyer in respect of the Deliverables or Services provided after the VAT begins to apply must be decreased by the amount of any corresponding reductions in other taxes, as required under the Competition and Consumer Act 2010 and equivalent State and Territory legislation.
- (e) In this clause 4.4, VAT means goods and services tax under A New Tax System (Goods and Services Tax) Act 1999, and an expression defined in that Act but not defined in these terms has the same meaning as in the Act.

## **4. INDEMNITIES AND LIABILITY**

### **4.1 Indemnity**

The Supplier must indemnify, and must at all times keep indemnified, Buyer, Buyer's Affiliates and their Representatives (Indemnified Parties) against loss, damage and expenses (including legal costs) arising from any claim, demand, action, suit or proceeding that may be made or brought by any person against the Indemnified Parties for or in respect of:

- (a) personal injury to or death of any person as a consequence of any wrongful act or omission or any negligence by the Supplier, or its Representatives

### **4.2 Limitation of Liability**

- (a) each Party:
  - (i) excludes all liability to the other party for any indirect or consequential loss or damages (excluding the costs of re-entering lost data which the parties agree is a direct loss); and
  - (ii) limits its liability to the other party for any direct loss or damages arising out of a Statement of Work (whether that liability arises in contract, tort, equity or under statute) to the value of the Price of the Services and Deliverables ordered under the Statement of Work to which the relevant breach relates.

## **5. GENERAL**

### **5.1 Severability**

If a provision of these terms and conditions or a Statement of Work or a right or remedy of a party under these terms and conditions or a Statement of Work is invalid or unenforceable in a particular jurisdiction:

- (a) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.

### **5.2 Non-solicitation**

- (a) Neither party may, without the prior express written consent of the other party, employ or engage the services of the other party's Personnel during their participation in the Term or it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
- (b) This clause does not apply in respect of an approach for employment by a party arising from an employment vacancy advertisement made by it to the public at large where that party has:
  - (i) not persuaded the relevant personnel to apply for the position; and
  - (ii) not offered incentives to the relevant personnel in relation to that employment greater than would be offered in the party's normal employment practice for that or a similar or equivalent position.

### **5.3 Relationship between the Parties**

The Supplier acknowledges that it is not a partner, agent, representative or employee of Buyer and has no authority or power to bind, or enter into any agreement in the name of, or create any liability against, Buyer, in any way or for any purpose.

### **5.4 Governing Law and Jurisdiction**

These terms and conditions and all Statements of Work issued under it are governed by the laws in force in England and Wales, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of England and Wales.

### **5.5 Notices**

- (a) A notice, consent, request or any other communication under these terms and conditions must be in writing and must be left at the addressee, sent by pre-paid post (airmail if posted to or from a place outside UK) or facsimile or sent by electronic mail to the electronic mail address of the addressee set out in the Statement of Work.
- (b) A notice, request or other communication is deemed to be received:
  - (i) if by delivery, when it is delivered;
  - (ii) if a letter, of three days after posting (seven, if posted to or from a place outside UK);
  - (iii) if a facsimile, at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the recipient's facsimile number; and
  - (iv) if by electronic mail, on receipt by the sender of an electronic acknowledgment of receipt from the recipient's electronic mail address.
- (c) Either party may change its notice address or facsimile number by notice in writing to the other party.

**5.6 Waiver and Variation**

A provision or a right under these terms and conditions may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.

**5.7 Entire Agreement**

These terms and conditions supersede all prior or contemporaneous representations, negotiations, or other communications between the parties relating to the subject matter of this agreement.

**5.8 No Merger**

The covenants, conditions, provisions and warranties in these terms and conditions do not merge or terminate on completion.

**5.9 Stamp Duty**

The Supplier must pay any stamp duty payable on these terms and conditions and any agreement or instrument contemplated by this agreement.

**5.10 Assignment and Subcontracting**

The Supplier must not sub-contract the whole or any part of the work or assign any of its rights and obligations under these terms and conditions or a Statement of Work except with the consent of Buyer (which must not be unreasonably withheld).

**5.11 Force Majeure**

Subject to each party's obligation to mitigate loss and comply with any disaster recovery plans, neither party will be liable for delay in performing obligations or for failure to perform obligations if the delay or failure resulted from unforeseeable circumstances beyond its reasonable control including but not limited to, act of God or governmental act, flood, fire, explosion, accident, civil commotion, industrial dispute, transportation or communications problems, or impossibility of obtaining materials.

**5.12 Execution of Counterparts**

This Agreement and each Statement of Work may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.