

Services Contract

CDG (Scotland) Limited ("Supplier")
3 Crawford Road, Edinburgh, EH16 5PQ;

and

[Insert customer name] (the "Customer")
[Insert Customer address]

[Insert date]

Framework Reference: RM1557.10 G-Cloud 10 Framework Agreement

Call-Off Contract Reference: [insert Call-Off contract reference]

Services Contract Reference: [insert Services contract reference]

Document Reference: CDG Services Contract Issue 3.0.docx

PART A: SIGNATURE PAGE

This Services Contract comprises:

- Part A: this Signature Page;
- Part B: Terms and Conditions of the Services Contract;
- Schedule 1 - Statement of Services [to be attached];
- Schedule 2 - Statement of Charges [to be attached]; and
- Schedule 3 - any other documents, which are expressly stated and agreed by the parties to be part of this Service Contract [to be attached].

The Supplier shall perform the Services as specified in Schedule 1 - Statement of Service.

The Customer shall pay to Supplier the sums specified in Schedule 2 - Statement of Charges and all other sums payable under the Services Contract.

The Start Date of the Services Contract is [insert date] and the Term of the Services Contract is [insert term].

By signature of this page, CDG (Scotland) Limited ('Supplier') and [insert customer name] ('Customer') agree to be bound by this Services Contract.

SIGNED BY

[Print name]

duly authorised for and on behalf of

CDG (Scotland) Ltd

.....

Signature

.....

Date

SIGNED BY

Print name]

duly authorised for and on behalf of

[insert customer name]

.....

Signature

.....

Date

PART B: TERMS AND CONDITIONS OF THE SERVICES CONTRACT

1. Interpretation

- 1.1. In these Terms and Conditions and any resulting Services Contract, the following terms have the following meanings:
- 1.1.1. "Call-Off Contract" means a contractually binding document established by Crown Commercial Service (hereafter referred to as CCS) for the provision of G-Cloud 10 Services, as populated and signed by both CDG and the Customer in accordance with the Framework Arrangement;
 - 1.1.2. "CCS" means the Crown Commercial Service; a trading fund of the Cabinet Office who is managing the G-Cloud 8 procurement. It's office is on the 9th floor, The Capital, Old Hall Street, Liverpool, L3 9PP;
 - 1.1.3. "CDG" means CDG (Scotland) Limited, whose registered number is SC263129 and whose registered office is at 3 Crawford Road, Edinburgh, EH16 5PQ;
 - 1.1.4. "CDG Personnel" means the CDG personnel who will carry out the Services on behalf of CDG;
 - 1.1.5. "Charges" means CDG's charges for the Services as stated in the Statement of Charges [to be attached];
 - 1.1.6. "Confidential Information" in relation to each party, means all information in respect of the business and financing of that party including any ideas, business methods, finances, prices, business, financial, marketing, development or manpower plans, customer lists or details, computer systems and software, know how or other matters connected with the products or services manufactured, marketed, provided or obtained by that party, and information concerning either party's relationships with actual or potential customers and the needs and requirements of such persons;
 - 1.1.7. "Customer" means [insert customer name], whose registration number is [insert registration number] and whose registered office is [insert address];
 - 1.1.8. "Force Majeure Event" means acts of God, fire, explosion, flood, earthquakes, war, riots, acts of terrorism, acts of Government, sabotage, civil commotion or severe weather conditions (save that industrial action taken by the employees, agents or sub contractors of a party or failure of agents or sub contractors of a party claiming that they have suffered such an event or any other circumstance within the reasonable control of such party will not be considered to be a "Force Majeure Event");
 - 1.1.9. "Framework Arrangement" means the contractually binding document between CDG and the CCS for the provision of the Services;

- 1.1.10. "IPR" means all intellectual and industrial property rights including patents, know how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;
- 1.1.11. "Services" means the services to be provided by CDG for the Customer as specified in the Statement of Services [to be attached];
- 1.1.12. "Services Contract" means this contractually binding document comprising Part A: a valid countersigned Signature page [to be attached]; Part B: Services terms and conditions; Schedule 1: Statement of Services [to be attached]; Schedule B: Statement of Charges [to be attached]; and Schedule 3 any other documents [to be attached] expressly agreed by the parties to be part of this document (in accordance with the Call-Off Contract and the Framework Arrangement) and referred to in the Signature Page.
- 1.1.13. "Signature Page" means Part A of the Services Contract which has been countersigned on behalf of both CDG and the Customer;
- 1.1.14. "Start Date" means the date on which the Services Contract will commence, as given in the Signature Page of this Services Contract or, in the absence of any such entry, the date on which the Services relevant to this Services Contract is executed by the second of the two parties;
- 1.1.15. "Term" means the term of the Services Contract as set out in the Signature Page of this Services Contract; and
- 1.1.16. "Terms and Conditions" means the terms and conditions as set out in Part 2 of this Services Contract.
- 1.2. Throughout the Services Contract:
- 1.2.1. the singular includes the plural and vice versa and references to persons include bodies corporate, unincorporated associations and partnerships;
- 1.2.2. any reference to a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision for the time being in force and all statutory instruments, orders or regulations made under it;
- 1.2.3. general words will not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things; and
- 1.2.4. if there is any conflict between the terms detailed in various elements of the Services Contract, the arrangements set out in the Statement of Services and Statement of Charges will be given primacy. If there is any conflict between the Terms and Conditions and any other attached documents in Schedule 3, the Terms and Conditions will be given primacy.

2. Duration

The Services Contract will commence on the Start Date and will continue for the Term unless terminated earlier in accordance with its term.

3. CDG's Obligations

- 3.1. CDG will provide the Services during the Term in accordance with the terms of this Services Contract and any plans, specifications or timetables, which CDG agrees with the Customer.
- 3.2. CDG agrees to provide the Services with reasonable skill and care and in a workmanlike manner in accordance with generally accepted standards within the IT industry.
- 3.3. CDG will use reasonable endeavours to meet any performance dates agreed with the Customer but any such dates will be estimates only and time will not be of the essence of the Services Contract. Notwithstanding this, CDG agrees to advise the Customer of any significant delays or anticipated delays in the provision of the Services including providing information as to the cause of the delay.
- 3.4. CDG is willing to give consideration to any variations to the Services that the Customer may propose and/or to the provision of any additional services by CDG from time to time during the Term, subject to the parties agreeing any appropriate variation(s) to the terms of the Services Contract, including without limitation any requirements for additional personnel, equipment or other resources, and any required or likely variation(s) to the Charges. Such varied and/or additional services (if any) will be deemed to be included in the Services for the purposes of the Services Contract. No variation or addition to the scope or terms of any Services will be binding on the parties unless and until agreed in writing by both parties.

4. Personnel

- 4.1. CDG will be solely responsible for the selection and allocation of the CDG Personnel. CDG is entitled to replace any of the CDG Personnel at any time for any reason (including, without limitation, due to illness or injury) and will, where possible, notify the Customer of this in advance. CDG accepts responsibility for the provision of the Services by the CDG Personnel.
- 4.2. CDG will procure that any CDG Personnel who provide any Services at the Customer's premises will comply with all reasonable health and safety, security and other procedures applicable at such premises and notified to CDG by the Customer in advance.

5. Customer's Obligations

- 5.1 The Customer will:
 - 5.1.1. co-operate with CDG in all matters relating to the Services;
 - 5.1.2. to the extent that any Services are provided at its premises, be responsible (at its own cost) for preparing its premises for the provision of the Services;

- 5.1.3. to the extent that any Services are provided at its premises, provide in a timely manner such access to its premises and other facilities, as is reasonably requested by CDG for the provision of the Services; and
- 5.1.4. provide in a timely manner such information and data in relation to the Services as CDG may request, and ensure that such information is accurate in all material respects.
- 5.2. The Customer will not, without the prior written consent of CDG, at any time from the Start Date until twelve (12) months after the expiry of the Term or earlier termination of the Services Contract, solicit or entice away from CDG or employ or attempt to employ any person who is, or has been, engaged as an employee of CDG (including, without limitation, the CDG Personnel).
- 5.3. Any consent given by CDG in accordance with paragraph 5.2 will be subject to the Customer paying to CDG a sum equivalent to 20% of the then current annual remuneration of CDG's employee or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee.

6. Charges

- 6.1. In consideration of the Services to be provided by CDG, the Customer will pay the Charges to CDG at the time and in the manner specified in the Statement of Charges included in Schedule 2 of this Services Agreement.
- 6.2. Without prejudice to any other right or remedy that CDG may have, if payment of any sums due to CDG is not made on the due date for payment (other than as a result of an act or omission of CDG or its employees), CDG may:
 - 6.2.1. charge interest on any such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of accruing on a daily basis and being compounded quarterly until payment is made, whether before or after judgment and such interest will be paid on demand; and
 - 6.2.2. suspend all Services until payment has been made in full.

7. Relationship Manager

- 7.1. CDG and the Customer will each appoint a relationship manager to assume overall responsibility for their respective roles and obligations under the Services Contract. Without limitation, the parties' respective relationship managers will be responsible for:
 - 7.1.1. co-ordinating the provision of the Services;
 - 7.1.2. regular liaison between the parties;
 - 7.1.3. arranging and attending any progress and review meetings which the parties may organise from time to time; and

- 7.1.4. using all reasonable endeavours to resolve issues arising under the Services Contract (but they will refer all problems which are outside their ordinary authority to resolve to appropriate members of the parties' respective senior management).

- 7.2. Any replacement of either party's relationship manager will be notified to the other party in writing. Each party reserves the right to request, on reasonable grounds, the replacement of the other party's relationship manager.

8. Status

CDG's relationship with the Customer will be that of independent contractor and nothing in this Agreement will render the CDG Personnel employees, workers, agents or partners of the Customer and CDG will procure that the CDG Personnel will not (a) hold themselves out as employees, workers, agents or partners of the Customer; (b) contract on behalf of the Customer; or (c) bind the Customer in any way in relation to third parties; unless the Customer specifically authorises the CDG Personnel to do so.

9. Customer's Property

- 9.1. If the provision of any Services requires use of the Customer's equipment, the Customer will ensure that the CDG Personnel are given such access to the equipment as is reasonably necessary to facilitate the provision of the Services.
- 9.2. CDG will keep safe and secure and will take all reasonable care of any equipment belonging to the Customer while in the possession or control of CDG. Any equipment, which belongs to the Customer and which is used by CDG will remain at the Customer's risk and CDG will not assume any responsibility or liability for the safety or security of such equipment.

10. Intellectual Property

- 10.1. All Intellectual Property Rights and all other rights resulting from the provision of the Services will be owned by CDG. CDG hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services as is envisaged by the parties. If the Customer or CDG terminates the Services Contract under paragraphs 11.1 or 11.2, this license will automatically terminate.

11. Termination

- 11.1. The Customer or CDG may immediately at any time by notice in writing terminate the Services Contract (in whole or in part) from the date of such notice if the other:
 - 11.1.1. is unable to pay its debts or becomes insolvent;
 - 11.1.2. enters into or proposes to enter into any compromise or arrangement with its creditors, or convenes any meeting of its creditors, commits any act of bankruptcy or is subject to an order or a resolution for its liquidation, administration, winding up or dissolution (other than for the purposes of a solvent amalgamation or reconstruction);

- 11.1.3. has a liquidator, receiver, administrator, investigator, statutory manager or similar officer appointed over any or all or any substantial part of its assets; or
- 11.1.4. ceases to carry or threatens to cease to carry on all or substantially all of its business or is deemed to be unable to pay its debts.
- 11.2. The Customer or CDG may at any time by notice in writing to the other terminate the Services Contract (in whole or in part) immediately if the other is in:
 - 11.2.1. material or persistent breach of the Services Contract where such breach is incapable of remedy; or
 - 11.2.2. material or persistent breach of the Services Contract where such breach was capable of remedy and the defaulting party will have failed to remedy such breach within 30 days of receiving written notice of such breach (such request to contain a warning of such party's intention to terminate); where "persistent breach" is interpreted to include a series of related or unrelated breaches of the Services Contract which, taken together are material.
- 11.3. Either party may terminate the Services Contract by giving at least three (3) months' written notice on the other party at any time.

12. Consequences of Termination

- 12.1. On termination of the Services Contract for any reason, each party will within thirty (30) days of the termination date return to the other party (or at the other party's request, destroy or erase) any materials incorporating any Confidential Information of that other party.
- 12.2. Any termination of the Services Contract for any reason, will not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision of the Contract, which is expressly or by implication intended to come into or continue in force on or after such termination.

13. Liabilities

- 13.1. The following provisions set out the entire financial liability of CDG (including any liability for the acts or omissions of its employees (including, without limitation, the CDG Personnel), agents and sub-contractors) to the Customer in respect of:
 - 13.1.1. any breach of the Services Contract;
 - 13.1.2. any use made by the Customer of the Services or any part of them; and
 - 13.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Services Contract.
- 13.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Services Contract.

13.3. Nothing in the Services Contract will serve to limit either party's liability in respect of death or personal injury caused by or arising from that party's negligence, or fraud.

13.4. Subject to paragraphs 14.2 and 14.3

13.4.1. CDG will not be liable to the Customer whether in contract, tort (including negligence) or for breach of statutory duty or in any way for (in each case whether direct or indirect) loss of profit, loss of business, loss of opportunity or of corruption to software or data, loss of anticipated savings or for any other indirect or consequential losses whatsoever;

13.4.2. CDG's total liability to the Customer in contract, tort (including negligence) or for breach of statutory duty or otherwise arising in connection with the Services Contract will be limited to a sum equal to the total Fees paid by the Customer to CDG.

14. Confidentiality

14.1. The parties agree to treat the other party's Confidential Information as confidential and safeguard it accordingly. Save as permitted by the Services Contract, neither party shall use or disclose to any third party any of the other party's Confidential Information without the prior written consent of that other party.

14.2. The provisions of paragraph 14.1 shall not apply to:

14.2.1. any information which is or becomes public knowledge otherwise than through any breach of the Services Contract of any other undertaking of confidentiality addressed to the party to whom the information relates;

14.2.2. any information which can be demonstrated by documentary evidence to have been in the possession of the receiving party thereof before being divulged to it by the other (disclosing) party;

14.2.3. any information obtained from a third party who is free to divulge it without breaching any duty of confidentiality; or

14.2.4. any information which is ordered to be disclosed by a court or tribunal of competent jurisdiction.

14.3. The provisions of this paragraph 14 shall continue in force notwithstanding the termination of the Services Contract for any reason.

15. Notices

15.1. All notices shall be given in writing and sent to the other party at its registered address, or to any subsequently notified address, and be delivered by hand or recorded delivery post (but not by email). Any notice delivered or sent as the case may be by:

15.1.1. hand shall be deemed to have been served at the time of delivery;

- 15.1.2. post shall be deemed to have been served two working days after the signing of the acceptance of the recorded delivery, provided that where in the case of delivery by hand such delivery occurs either after 4.00 pm on a working day or on a day other than a working day service will be deemed to have occurred at 10.00 am on the following working day (such times being local time at the address of the recipient).

- 15.2. Where a notice is not delivered in accordance with this paragraph 15 it shall be invalid.

16. Waiver

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Services Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Service Contract.

17. Rights Cumulative

The provisions of the Services Contract, and the rights and remedies of the parties under the Services Contract, are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity.

18. Assignment and Subcontracting

The Customer shall not assign, sub-contract, transfer, charge or deal in any other manner or otherwise dispose of any or all of its rights or obligations under the Services Contract or purport to do any of the same without the prior written consent of CDG. CDG may at any time assign, transfer, charge or deal in any manner with all or any of its rights or obligations under the Service Contract.

19. Publicity

- 19.1. Subject to paragraph 19.2, CDG may disclose that it is undertaking work for the Customer and use the Customer's name and logo in marketing activities and materials.
- 19.2. CDG will only disclose the general nature of the relationship between it and the Customer and any details that have properly entered the public domain. CDG will not disclose any other details about the Customer or the relationship between the parties without consulting and agreeing this with the Customer first.

20. General

- 20.1. Neither party shall be liable for delay or failure to perform any of its obligations under the Services Contract where caused by a Force Majeure Event, provided that nothing in this paragraph 20.1 shall excuse the Customer from any payment obligations under the Services Contract.
- 20.2. No failure or delay by either party in exercising any right or remedy (in whole or in part) under the Services Contract shall operate as a waiver of those rights or remedies.

- 20.3. No amendment to the Services Contract will be effective unless it is agreed in writing and signed by the authorised representatives of both parties.
- 20.4. The Services Contract and any documents expressed or referred to in them contains the entire agreement between the parties regarding its subject matter and supersedes all prior communications, representations, warranties, stipulations, undertakings and agreements between the parties. Nothing in this paragraph 20.4 will exclude any liability which one party would otherwise have to the other party in respect of any statement made fraudulently.
- 20.5. This Services Contract is governed by the law of England, and the parties submit to the exclusive jurisdiction of the English Courts.

SCHEDULE 1 - STATEMENT OF SERVICES [TO BE ATTACHED]

SCHEDULE 2 - STATEMENT OF CHARGES [TO BE ATTACHED]

**SCHEDULE 3 - ANY OTHER DOCUMENT WHICH ARE EXPRESSLY
STATED AND AGREED BY THE PARTIES TO BE PART OF THIS
CONTRACT [TO BE ATTACHED].**