



GCloud 11 Terms & Conditions

EPIMORPHICS SERVICES

Version: 1.0 Epimorphics Ltd

Date: 18th May 2019

Contact: gcloud@epimorphics.com



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THIS AGREEMENT is dated [tbc]

PARTIES

(1) Epimorphics Limited a company incorporated and registered in England and Wales with company number 7016688 whose registered office is at Court Lodge, 105 High Street, Portishead, Bristol BS20 6PT (the "**Consultant**").

(2) [tbc] Limited, a company incorporated and registered in England and Wales with company number [tbc] whose registered office is at [tbc] (the "**Recipient**").

BACKGROUND

(A) The Consultant provides the Services (as defined below).

(B) The Recipient has requested and the Consultant has agreed to provide the Services to the Recipient subject to and on the terms and conditions of this Agreement.

AGREED TERMS

1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

Agreement means these terms and conditions, including any schedules or annexes;

Background Works means all Intellectual Property Rights, Confidential Information, systems and business processes belonging to or under the control of a party or its licensors prior to the Commencement Date;

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

Commencement Date means the [tbc] ;

Confidential Information means any information relating to the subject matter of this Agreement, technical information, know-how, trade secrets, operations, processes, product information, market opportunities, customers, inventions, statistical, financial and personnel matters which is disclosed to the other party;

Deliverables means the deliverables as detailed in the Schedule;

Group means in relation to a company, that company, its subsidiaries, its holding companies, and their subsidiaries;

holding company has the meaning given to it in sections 1159 of the Companies Act 2006;

Intellectual Property Rights means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, source code, database right, topography rights, moral rights, rights in Confidential Information and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and **Intellectual Property Right** means any one of the Intellectual Property Rights;

month means a calendar month;

Personal Data means as set out in section 1(1) of the Data Protection Act 1998;

Recipient Information and Materials means any information or materials supplied by the Recipient to the Consultant for the purposes of this Agreement.

Service Charges means the charges detailed in the Schedule;

Services means the development of the Deliverables;

subsidiary has the meaning given to it in sections 1159 of the Companies Act 2006;

Term means the term of this Agreement; and

VAT means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 Words in the singular shall include the plural and vice versa.

1.5 A reference to one gender shall include a reference to the other genders.

1.6 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of this Agreement and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of this Agreement.

1.7 A reference to **writing** or **written** includes faxes and e-mail.

1.8 Where the words **include(s)**, **including** or **in particular** are used in this Agreement, they are deemed to have the words "without limitation" following them.

1.9 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.

2. Services

2.1 The Consultant shall provide the Services to the Recipient in accordance with this Agreement.

3. Recipient Obligations

3.1 The Recipient shall cooperate with the Consultant and provide it with or procure for it such information, access and assistance as the Consultant shall reasonably require to enable it to provide the Services.

3.2 The Recipient warrants that it has gained all appropriate and necessary consents for the Consultant to process all of the information provided to it by the Recipient that constitutes Personal Data.

3.3 The Consultant shall have no liability for any failure to provide or delay in providing the Services in accordance with the terms of this Agreement to the extent such failure or delay results from the failure of the Recipient to comply with any of its obligations under this Agreement.

4. Charges and payment

4.1 In consideration of the Consultant providing the Services to the Recipient, the Recipient shall pay the Service Charges to the Consultant.

4.2 The Consultant shall invoice the Recipient in accordance with the Schedule.

4.3 The Recipient shall pay invoices in full, without deduction or set-off, within 30 days of date of invoice in cleared funds to the bank account nominated in writing by the Consultant.

4.4 If a party fails to pay any amount due to the other (excluding any amount contested in good faith) by the due date for payment, then that party shall pay interest immediately on demand on any outstanding amount at the rate of four per cent per annum above Barclays Bank base lending rate from time to time from the due date for payment until the payment is made in full, whether before or after judgment, with such interest compounding on the anniversary of the date it became due.

4.5 The Service Charges are exclusive of amounts in respect of VAT. The Recipient shall, on receipt of a valid VAT invoice from the Consultant, pay to the Consultant such additional amounts in respect of VAT as are chargeable on a supply of the Services.

5. Intellectual Property Rights

5.1 The Recipient shall own all Intellectual Property Rights in the Recipient's Background Works and Recipient Information and Materials.

5.2 The Recipient grants to the Consultant a non-exclusive, non-transferable, licence to use any of the Recipient's Background Works and Recipient Information and Materials solely for the purposes of providing the Services during the term of this Agreement. Such licence shall automatically terminate upon the termination or expiry of this Agreement. The Consultant is not licensed to, and shall not, use any of the Recipient's Background Works or Recipient Information and Materials for the benefit of its business outside of this Agreement or any third party.

5.3 All relevant Recipient Background Works and Recipient Information and Materials shall be treated as Confidential Information and shall be returned to the Recipient on termination or expiry of this Agreement.

5.4 Subject to clause 5.5, in consideration of the Recipient paying the Service Charges in full, the Consultant hereby assigns to the Recipient all rights, title and interest in and to any Intellectual Property Rights in the Deliverables. For the avoidance of doubt, the Consultant is not licensed to, and shall not use any of the Deliverables for the benefit of its business outside of this Agreement or of any third party without the written consent of the Recipient.

5.5 The Consultant and its third party licensors shall own all Intellectual Property Rights in the Consultant's Background Works. The Consultant grants to the Recipient a perpetual, irrevocable, non-exclusive, transferable and royalty free licence (with the right to sub-license) to use the Recipient's Background Works which form part of the Deliverables.

6. Warranties

6.1 The Services shall be provided using all reasonable care and skill

6.2 All individuals who deliver the Services shall be appropriately skilled and qualified.

6.3 The warranties set out above are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this Agreement. Without limitation, the Consultant specifically denies any implied or express representation that the Deliverables will be fit:

- (a) to operate with any hardware items or software products other than with those that are identified in the Schedule as being compatible with the Deliverables; and
- (b) to operate uninterrupted or error-free.

7. Assignment and sub-contracting

7.1 The Recipient may not assign this Agreement or any rights granted under it without the prior written consent of the Consultant.

8. Confidentiality

8.1 Each party undertakes that it shall not at any time during this Agreement and for a period of two years after termination disclose to any person any Confidential Information disclosed to it by the other party, except as permitted by clause 8.2.

8.2 Each party may disclose the other party's Confidential Information:

(a) to its employees, officers, agents, consultants or sub-contractors (Representatives) who need to know such information for the purposes of carrying out the party's obligations under this Agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 8 as though they were a party to this Agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and

(b) as may be required by law, court order or any governmental or regulatory authority.

8.3 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 this Agreement are granted to the other party or to be implied from this Agreement. In particular, no licence is granted directly or indirectly under any patent, invention, discovery, copyright or other Intellectual Property Right held, made, obtained or licensable by either party now or in the future.

9. Term

This Agreement shall start on the Commencement Date and, unless terminated earlier in accordance with clause 10, shall continue until all of the Consultant's invoices have been settled in full.

10. Termination

10.1 Either party may terminate this Agreement at any time on written notice to the other if the other:

(a) is in material or persistent breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or

(b) is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

10.2 Termination by either party in accordance with the rights contained in clause 10 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

10.3 Clauses 5, 7, 8 and 11 shall survive any effective termination of this Agreement.

11. Limitation of liability

11.1 This clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and sub-contractors) to each other in respect of:

(a) any breach of this Agreement;

(b) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

11.2 Nothing in this Agreement shall limit or exclude the liability of either party for: (a) death or personal injury resulting from negligence; or
(b) fraud or fraudulent misrepresentation.

11.3 Subject to clause 11.2 and clause 11.4, the Consultant's total liability arising under or in connection with this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to the sum of the Service Charges received by the Consultant at the time any claim is made.

11.4 Subject to clause 11.2, neither party shall be liable to the other, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for the following types of loss whether direct or indirect and howsoever caused:

- (a) loss of profit; or
- (b) loss of goodwill; or
- (c) loss of business; or
- (d) loss of business opportunity; or
- (e) loss of anticipated saving; or
- (f) loss or corruption of data or information; or
- (g) any special, indirect or consequential damage or loss suffered by the other party.

12. Force majeure

No party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause beyond its control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion.

13. Waiver

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

14. Severability

If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

15. Amendments

Any amendment, waiver or variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the parties.

16. Third party rights

No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.

17. Notices

Any notice required to be given pursuant to this Agreement shall be in writing, and shall be sent to the other party marked for the attention of the signatories of this Agreement at the address set out for such party in this Agreement. Notices may be sent by first-class mail or fax, provided that faxes are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed faxes shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out in this clause 17.

18. Entire agreement

This Agreement and the documents annexed as appendices to this Agreement or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

19. Assignment

Neither party shall assign this Agreement or sub-contract any of its obligations under it without the prior written consent of the other party.

20. Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with the law of England and Wales and each party hereby submits to the exclusive jurisdiction of the courts of England and Wales.

This Agreement has been entered into on the date stated at the beginning of it.

Schedule

Deliverables:

Service Charges:

Timetable:

Signed by
for and on behalf of
Epimorphics Limited

.....
Director

Signed by
for and on behalf of
[tbc] **Limited**

.....
Director