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AdviseInc Terms & Conditions July 2020

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AdviseInc is a HealthTech business that Enables Health and Social Care Spend to Stretch Further

Crown
Commercial
Service
Supplier



Terms and conditions

1. We will perform the Services using reasonable skill and care.
2. We will provide the Services to you as an independent contractor and not as your employee, agent, partner or joint venturer. Neither you nor we have any right, power or authority to bind the other.
3. We may subcontract portions of the Services to other organisations, who may deal with you directly. Nevertheless, we alone will be responsible to you for the Reports (as defined in Section 11), the performance of the Services, and our other obligations under this Agreement.
4. We will not assume any management responsibilities in connection with the Services.

Your responsibilities

5. You shall assign a qualified person to oversee the Services and take responsibility for management decisions in connection with them.
6. You shall provide (or cause others to provide) to us, promptly, the information, resources and assistance (including access to records, systems, premises and people) that we reasonably require to perform the Services.
7. To the best of your knowledge, all information provided by you or on your behalf (Client Information) will be accurate and complete in all material respects. The provision of Client Information to us will not infringe any copyright or other third-party rights. All Client Information you provide will abide by all local Information Governance policies and will not include patient identifiable information where relevant.
8. We will rely on Client Information made available to us and, unless we expressly agree otherwise, will have no responsibility to evaluate or verify it.
9. You shall be responsible for your personnel's compliance with your obligations under this Agreement.
Our applications
10. Any information, advice, recommendations or other content of any reports, presentations or other communications we provide under this Agreement (Reports), other than Client Information, are for your internal use only (consistent with the purpose of the particular Services).
11. You may not disclose a Report (or any portion or summary of a Report), or refer to us in connection with the Services, except:
 - a. to your lawyers (subject to these disclosure restrictions), who may use it only to give you advice relating to the Services,
 - b. to the extent, and for the purposes, required by law (including subpoena or similar legal process) or any professional or regulatory obligation (of which you will promptly notify us),
 - c. to other persons (including your affiliates) with our prior written consent, on terms to be stipulated by us, who may use it only as we have specified in our consent, or If you are permitted to disclose a Report (or a portion thereof), you shall not alter, edit or modify it from the form we provide.
12. You may incorporate into your internal documents any summaries, calculations or tables based on Client Information contained in a Report, but not our recommendations, conclusions or findings. If you then disclose such internal documents to anyone, you shall assume sole responsibility for their contents and you shall not refer to us in connection with them.
13. You may not rely on any draft Report. We shall not be required to update any final Report for circumstances of which we become aware, or events occurring, after its delivery.

Limitations

14. You (and any others for whom Services are provided) may not recover from us, in contract or tort, under statute or otherwise, any amount with respect to loss of profit, loss of data or damage to goodwill, or any consequential, incidental, indirect, or special loss in connection with claims arising out of this Agreement or otherwise relating to the Services, whether or not the likelihood of such loss or damage was contemplated.
15. Our liability to you in respect of breach of contract or breach of duty or fault or negligence or otherwise whatsoever arising out of or in connection with this Agreement and the Services shall be limited in total to £1 million to cover claims of any sort whatsoever (excluding interest and costs) arising out of or in connection with this Agreement and the Services. This is covered off by £1m in Professional Indemnity Insurance which is maintained by AdviseInc.
Where there is more than one party to this Agreement (other than us), the limit of liability will have to be allocated among you. It is agreed that, save where an allocation is expressly agreed between you and stated in the Call off Agreement, the limit of liability will be allocated such that you will each have an equal share of it. You shall not dispute the validity, enforceability or operation of the limit of liability on the ground that no allocation was expressly stated in the Statement of Work.
16. If we are liable to you (or to any others for whom Services are provided) under this Agreement or otherwise in connection with the Services, for loss or damage to which any other persons have also contributed, our liability to you shall be several, and not joint, with such others, and shall be limited to our fair share of that total loss or damage, based on our contribution to the loss and damage relative to the others' contributions. No exclusion or limitation on the liability of other responsible persons imposed or agreed at any time shall affect any assessment of our proportionate liability hereunder, nor shall settlement of or difficulty enforcing any claim, or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the loss or damage or any portion thereof, affect any such assessment.
17. You shall make any claim relating to the Services or otherwise under this Agreement no later than 3 years after the act or omission alleged to have given rise to the claim.
18. The limitations in Sections 14 to 17 will not apply to any liability (including vicarious liability) for death or personal injury or arising as a result of fraud on our part nor to any liability which cannot lawfully be excluded or limited.
19. You may not make a claim or bring proceedings relating to the Services or otherwise under this Agreement against our subcontractors, members, shareholders, directors, officers, partners, principals or employees (AdviseInc Persons). You shall make any claim or bring proceedings only against us.

Access to our tools / services and permissions

20. Our G-Cloud Analytics Applications (including, but not limited to Price Benchmarking and Procurement Dashboard - referred to as our tools) enables all of our customers to understand purchased product price performance and provide visibility of spend.
21. Our tools contain sensitive commercial information from your and other organisations. Data is for the use of the customer organisation only for the number of user licences purchased. Logins are not to be shared outside of the team / organisations. IP ADDRESSES ARE TRACKED and will be used to trace and provide evidence of misuse. We reserve the right to temporarily suspend or terminate access where we believe a breach has occurred.
22. You are responsible for highlighting defects that affect the analysis within our tools / within your own data. All issues / errors to be notified through <http://support.adviseinc.co.uk> in the first instance.
23. Do not share data / analysis with any third parties. Approval of all 3rd parties is required from AdviseInc. For the avoidance of doubt, third parties include, but are not limited to:
 - > Management consultancies
 - > Audit firms
 - > Outsource providers
 - > Data / Systems providers
 - > Suppliers / Wholesalers
 - > Procurement service providers
 - > Collaborative Procurement Hubs, and
 - > other NHS organisations

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25. The data and analysis is for authorised users only. You are not allowed to extract data from our tools and share it with organisations or individuals outside of your organisation. This includes data exported to Excel and Screenshots of our tools.
 26. However, you do have the right to share your own data from our tools as long it complies with your own internal rules and procedures and no commercial information, e.g. volume / pricing from other trusts is shared.
 27. You can only use the data in our tools for the benefit of your organisation or group of organisations you collaborate with. Permission must be sought prior to sharing or publishing screenshots.
 28. You acknowledge that any and all copyrights, patents, trademarks, database rights, and other intellectual property rights subsisting in or used in connection with all of Adviselnc's tools and categorisation shall be and remain the sole property of Adviselnc Ltd. Adviselnc has the right to use the data and analysis with 3rd parties to provide market, group, regional and national level insight. All data / insight shared will be inline with our data pledge to our customers.
- Indemnity
29. We disclaim all responsibility for any consequence whatsoever should any third party rely on any report, data extra, screenshot or other replication data however so arising unless Adviselnc Ltd. has given its prior written consent. To the fullest extent permitted by applicable law and professional regulations, you shall indemnify us and the Adviselnc Persons against all claims by third parties (including your affiliates) and resulting liabilities, losses, damages, costs and expenses (including reasonable external and internal legal costs) arising out of the disclosure of any Report, or a third party's use of or reliance on any Report. You shall have no obligation hereunder to the extent that we have specifically authorized, in writing, the third party's reliance on the Report. The limitations in sections 14 to 19 are intended to benefit all Adviselnc Persons, who shall be entitled to enforce them. Otherwise a person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

Intellectual property rights

30. We may use data, software, designs, utilities, tools, models, categorisation, mapping, systems and other methodologies and know-how (Materials) that we own or license in performing the Services. Notwithstanding the delivery of any reports, data extracts, one-off or bespoke we retain all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the Services), and in any working papers compiled in connection with the Services (but not Client Information reflected in them). We own all the IP in the process by which raw customer data is transformed into clean data within our applications. None of our applications allow the complete export of data. All classification used within our applications is the intellectual property of Adviselnc. Usage is tracked and will be used to trace and provide evidence of misuse. We reserve the right to temporarily suspend or terminate access where we believe a breach has occurred.
31. Upon payment, which commences upon receipt of your purchase order, for the Services, you may use any Materials included in the Reports that are available to download through our Tools, as well as the Reports themselves as permitted by this Agreement.

Confidentiality

32. Except as otherwise permitted by this Agreement, neither of us may disclose to third parties the contents of this Agreement or any information provided by or on behalf of the other that ought reasonably to be treated as confidential and/or proprietary. Either of us may, however, disclose such information to the extent that it:
 - a. is or becomes public other than through a breach of this Agreement,
 - b. is subsequently received by the recipient from a third party who, to the recipient's knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information,
 - c. was known to the recipient at the time of disclosure or is thereafter created independently,
 - d. was disclosed as necessary to enforce the recipient's rights under this Agreement, or
 - e. must be disclosed under applicable law, legal process or professional regulations. You agree that if you receive any request under the Freedom of Information Act 2000 (where you are subject to it) for disclosure of information provided by us, you will promptly notify us of such request prior to any disclosure.

If circumstances arise such that we disclose information to the National Crime Agency (NCA) Serious Organised Crime Agency (SOCA), due to the restrictions imposed by law we may be prevented from discussing such matters with you or from proceeding with the Services pending consent from NCA. If this arises we shall have no liability to you as a result of any suspension or termination of the Services.

33. Either of us may use electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations under this Agreement. We cannot guarantee the security and integrity of any electronic communications or information sent or received in relation to this Agreement.
34. Unless prohibited by applicable law, we may disclose Client Information to AdviseInc Persons to facilitate performance of the Services, to comply with regulatory requirements, to check conflicts, or for quality, risk management or financial accounting purposes.

Data protection

35. We may collect, use, transfer, store or otherwise process (collectively, Process) Client Information that can be linked to specific individuals (Personal Data). In the course of routine delivery of our tools and services we do not currently request, nor want to receive, Personal Data. Any personal data collected will be for the purposes of issuing logins to user staff or in our CRM system unless otherwise specified. We will Process Personal Data in accordance with applicable law and professional regulations including (without limitation) the Data Protection Act 1998 and GDPR. We will require any service provider that Processes Personal Data on our behalf to adhere to such requirements.
36. You warrant that you have the authority to provide the Personal Data to us in connection with the performance of the Services and that the Personal Data provided to us has been Processed in accordance with applicable law.

Fees and expenses generally

37. You shall pay our fees upfront and on an annual basis as well as any specific expenses in connection with the Services as detailed in the Call-off Agreement. Our fees are exclusive of taxes or similar charges, as well as customs, duties or tariffs imposed in respect of the Services, all of which you shall pay (other than taxes imposed on our income generally). You will not withhold payment of our invoices due to the non-provision of data where access is pending due to Buyer data issues.
38. We may charge additional professional fees if events beyond our control (including your acts or omissions) affect our ability to perform the Services as originally planned or if you ask us to perform additional tasks.
39. If we are required by applicable law, legal process or government action to produce information or personnel as witnesses with respect to the Services or this Agreement, you shall reimburse us for any professional time and expenses (including reasonable external and internal legal costs) incurred to respond to the request, unless we are a party to the proceeding or the subject of the investigation.

Force majeure

40. Neither you nor we shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond your or our reasonable control.

Term and termination

41. This Agreement applies to all Services performed at any time (including before the date of this Agreement).
42. This Agreement shall terminate on the completion of the Services or as stated in the Call-off Agreement. Upon the expiration of the notice the contract shall terminate without prejudice to the rights of the parties accrued to the date of termination.
43. You shall pay us for any license period commenced (for our G-Cloud Applications this is one year) plus any work in progress. Services already performed, and expenses incurred by us up to and including the effective date of the termination of this Agreement. Payment is due within 30 days following receipt of our invoice for these amounts. For the avoidance of doubt, if you serve notice part way into a license period, you will be liable for the full amount. No refunds for days unused will be provided.
44. Our respective confidentiality obligations under this Agreement shall continue for a period of a year following the termination of this Agreement. The other provisions of this Agreement that give either of us rights or obligations beyond its termination shall continue indefinitely following the termination of this Agreement.

Governing law and dispute resolution

- 45. This Agreement, and any non-contractual obligations arising out of this Agreement or the Services, shall be governed by, and construed in accordance with, the laws of England and Wales.
- 46. If at any time you would like to discuss with us how our service to you could be improved, or if you are dissatisfied with the service you are receiving, you may take the issue up with your director contact. We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you.

Any dispute relating to this Agreement or the Services shall be subject to the exclusive jurisdiction of the English courts, to which each of us agrees to submit for these purposes.

Miscellaneous

- 47. This Agreement constitutes the entire agreement between us as to the Services and the other matters it covers, and supersedes all prior agreements, understandings and representations with respect thereto, including any confidentiality agreements previously delivered.
- 48. Both of us may execute this Agreement (and modifications to it) by electronic means and each of us may sign a different copy of the same document. Both of us must agree in writing to modify this Agreement. Such agreement in writing may be conducted by electronic means.
- 49. You represent that the person signing this Agreement on your behalf is expressly authorised to execute it and to bind you and any of your affiliates or others for whom Services are performed to its terms.
- 50. You agree that we, subject to professional obligations, act for other clients, including your competitors.
- 51. Neither of us may assign any of our rights, obligations or claims under this Agreement.
- 52. If any provision of this Agreement (in whole or part) is held to be illegal, invalid or otherwise unenforceable, the other provisions shall remain in full force and effect.
- 53. If there is any inconsistency between provisions in different parts of this Agreement, those parts shall have precedence as follows (unless expressly agreed otherwise): (a) the Call-off Agreement and any annexes thereto, (b) these General Terms and Conditions, and (c) other annexes to this Agreement.
- 54. We may use your name publicly to identify you as a client, but we may refer to you in connection with the Services only if it is a matter of public knowledge that we are providing them (or have provided them).
- 55. Our applications are provided through a Software as a Service agreement (SaaS). This agreement does not provide the customer with any rights over the application, process or data within our applications - all of which form part of our intellectual property.
- 56. All customer data should be provided through our secure file transfer service, upload.adviseinc.co.uk. At the time of writing this service is provided through mailbigfile.com. We have many automated services behind the scenes that rely on this service, hence no other file transfer process will be considered.
- 57. Customers will be invoiced immediately upon receipt of an order. The SaaS agreement period starts on the date stated in the Call-off Agreement. If the customer is unable to provide the data to feed any application for a period of time it will be at its own cost. AdviseInc will not be able to provide refunds for delays in onboarding caused by a lack of customer data. To that affect it is worth checking you can provide the data prior to commencing the service.

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Data Pledge

58. We take our role of custodians of your data seriously. We look after it as if it were our own. To keep things simple we make a simple pledge to any organisation that shares their data with us.

What we won't do:

We won't do any of the following without your express written permission:

- ✗ Name you in public or humiliate you or your organisation
- ✗ Identify you to other organisations* without your permission
- ✗ Sell your raw data (as a service) to external 3rd parties

What we will do:

- ✓ Provide you with a secure upload facility to upload your raw data, based in the EEA**
- ✓ Store your data & analysis on UK based secure servers (our whole process is within the EEA**)
- ✓ Add your data to our Price Benchmarking & Procurement Dashboard Applications for the benefit of all
- ✓ Share aggregated insight with other buying organisations to support benefit delivery
- ✓ Share market level insight with interested suppliers and other interested parties

59. The formats / standards of data that can be extracted include, but are not limited to XLS and QVD. In signing up to our services, the customer has no claim or right to any of the insight/data provided, whether that be analysis, categorisation, mapping, classification or any other data contained within our tools / applications and/or services. Our (contracted) customers do have full rights over the data they provide us (the Raw Data) and as such can request copies.

* Except for where tools are specifically designed for sharing information, like price benchmarking / spend analytics / supplier insights

** European Economic Area. Except for MailChimp which stores names / email addresses in the US.