



# Agile Solutions Terms and Conditions

## G Cloud 12

Agile Solutions GB Ltd Terms and Conditions for the provision of professional services as covered in G Cloud 12:

## 1. SERVICES

Agile Solutions GB Limited will provide to the Client the Services specified on a Statement of Work under the terms of this Agreement.

## 2. DEFINITIONS

2.1 "Client" shall mean XXX, whose registered office is XXX

2.2 "Agile" shall mean Agile Solutions GB Limited, whose registered office is at CBX1 Exchange House, 454 Midsummer Boulevard, Milton Keynes. MK9 2EA.

2.3 "Consultancy Agreement" shall mean Agile's standard form for ordering Services and shall specify the Services and applicable fees. Each Consultancy Agreement shall constitute a separate agreement and shall be governed by the terms of this Agreement.

2.4 "Service(s)" shall mean work performed by Agile for Client pursuant to a Consultancy Agreement, agreed to by the parties, under this Agreement.

2.5 "Developments" shall mean any ideas, know-how, techniques, documentation, software, reports or specifications which may be developed by Agile hereunder.

2.6 "Material(s)" shall mean any design, specification, instruction, software, information, data or other like documents supplied by either party to this Agreement to the other for the performance of the Service.

2.7 "Charges" shall mean Fees and Expenses as further defined in Clauses 3.1 and 3.2

2.8 "Group" shall mean in relation to a company any subsidiary, holding company, ultimate holding company or subsidiary of such holding company or ultimate holding company and "subsidiary" and "holding" company shall bear the meanings attributed to them in Section 1149 of the Companies Act 2006.

2.9 "Confidential Information" means information that one party (or its affiliate) discloses to the other party under this Agreement, and which is marked as confidential or would normally under the circumstances be considered confidential information;"

## 3. CHARGES, PAYMENT AND TAXES

### 3.1 Fees for Service

Unless otherwise expressly specified in the applicable Consultancy Agreement, Services shall be provided on a time and material ("T&M") basis. T&M rates are current when the Services are performed, exclusive of incidental expenses ("Fees"). A standard working day shall be 8 hours, including lunch. Agile will only charge for those hours actually worked by the consultant(s). Any additional hours worked by the consultant(s) over and above the standard working day will be charged at the agreed daily rate in hourly increments. Any estimate of time or days work required to perform Services or a monetary limit stated in the applicable Consultancy Agreement for T&M Service, shall be deemed an estimate for Client's budgeting and Agile's resource scheduling purposes; after any such estimate of time, days work or monetary limit is expended, Agile will continue to provide the Services on a T&M basis, if a Consultancy Agreement or alternative document acceptable to Agile for continuation of the Service is signed by the parties..

### 3.2 Incidental Expenses

Unless specifically stated otherwise, the Client shall reimburse Agile for reasonable travel, accommodation, communications, equipment and out-of-pocket expenses incurred in conjunction with the Services ("Expenses"). These expenses will be at cost, incurred in accordance with the expenses policy of the Client and agreed by prior written sign-off. It is at the Client's discretion that these fees are reimbursed if they are outside of company policy.

### 3.3 Invoicing and Payment

Agile shall invoice Client on the final day of each month, unless otherwise expressly specified in the applicable Consultancy Agreement. Charges shall be payable within 30 (thirty) days from the date of invoice and shall be deemed overdue if they remain unpaid thereafter.

### 3.4 Any amount payable by Client to Agile under this Agreement which has not been paid in accordance with Clause 3.3 shall be deemed overdue. Interest will be kept to 1% above the Barclays Bank plc base rate on overdue sums.

### 3.5 Taxes & Duties

The charges do not include taxes or duties. All additional taxes or duties which Agile shall have to pay or collect in connection with the provision of products or Services shall be billed to and paid by Client. VAT will be charged in addition where appropriate at the rate in effect at the date of invoice.

### 3.6 Orders

The Client shall issue a purchase order, letter of intent, or alternative document acceptable to Agile, on or before commencement of Service under the applicable Consultancy Agreement.

#### 4. TERM AND TERMINATION

##### 4.1 Term

4.1.1 This Agreement shall commence on its Effective Date. Either party may terminate this Agreement at any time by providing the other party with written notice Subject to 4.1.2 below.

4.1.2 Cancelling or rescheduling of a Consultancy Agreement must be done in writing or by email. These services will be delivered to a schedule requested by the Client by providing a minimum of 30 days notice to Agile of a requirement for a consultant to deliver services. Agile reserve the right to charge their standard cancellation/rescheduling fee per consultant if the services are cancelled or rescheduled less than 3 business days prior to the delivery of the services commencing. To cancel an engagement which is in progress, either party must give four weeks written notice of cancellation, and Agile shall have the right to collect service fees for the services performed during such a four week period.

##### 4.2 Termination for Breach

Either party may terminate a Consultancy Agreement if the other party is in material breach of the Consultancy Agreement following written notice specifying the breach and where a breach capable of remedy has not been cured within 30 (thirty) days of receipt of such written notice.

##### 4.3 Effect of Termination

The parties' rights and obligations under Clauses 3.3, 3.4 and 3.5 and 4.3 and Sections 5,7 and 8 shall survive termination of this Agreement and/or any Consultancy Agreement. Termination of this Agreement and/or any Consultancy Agreement shall not prevent either party from pursuing any other remedies available to it, including but not limited to injunctive relief, nor shall termination relieve Client of its obligations to pay all Charges that have accrued prior to such termination.

#### 5. INDEMNITY, WARRANTY AND LIABILITY

##### 5.1 Indemnity

5.1.1 Either party to this Agreement providing Materials ("Provider") will defend and indemnify the other party to this Agreement receiving such Materials ("Recipient") against a claim that any Material furnished by the Provider and used by the Recipient as permitted by the terms of this Agreement infringes a third party's copyright or patent or any other intellectual property right provided that a) Recipient notifies Provider in writing within 30 (thirty) days of being made aware of the claim; b) Provider has sole control of the defence and all related settlement negotiations; and c) Recipient provides Provider with the assistance, information and authority reasonably necessary to perform the above. Reasonable out-of-pocket expenses incurred by Recipient in providing such assistance will be reimbursed by Provider.

5.1.2 In the event that some or all of the Material is held or is believed by the Provider to infringe, the Provider shall have the option, at its expense a) to modify the Material to be non-infringing or supply substitute non-infringing material to the Recipient provided that this modification or substitution does not result in a diminution of functionality; b) to obtain for the Recipient the right to continue using the Material; or c) to require return of the infringing Material from the Recipient and terminate all rights thereto. If such return materially affects either party's ability to meet its obligations under the relevant Consultancy Agreement, then either party may by written notice, terminate the Consultancy Agreement in accordance with Clause 4.2. If Client is the Recipient then upon such termination Client shall be entitled to recover the Fees paid by Client for that portion of the Material plus a capped indemnity from Agile of up to £0.5m. If Agile is the Recipient, then upon such termination Agile shall be entitled to recover the Charges for Services ordered up to the date of termination together with the costs of committed resources in accordance with Clause 4.1.2. This Clause 5.1 states the parties' entire liability and exclusive remedy for infringement of any third party's intellectual property rights.

5.1.3 The Provider shall have no liability for any claim of infringement resulting from a) the Recipient's use of a superseded release of some or all of the Material if such infringement would have been avoided by the use of a subsequent unaltered release of the Material which is provided or offered to be provided to the Recipient; or b) any information, design, specification, instruction, software, data or material not furnished by the Provider.

##### 5.2 Warranties

- 5.2.1 Agile warrants that the Services will be performed with skill and care consistent with generally accepted best-practice computer software services. To the extent permitted by law, all other warranties and conditions or other terms, whether express or implied, are expressly excluded, including the implied warranties or conditions of merchantability, satisfactory quality and fitness for a particular purpose.
- 5.2.2 Agile warrants that its personnel shall possess the appropriate skills and experience for any tasks assigned to them.
- 5.2.3 Client shall report in detail any deficiencies in any Service to Agile in writing within 30 (thirty) days of completion of the Service. In the event of a breach of any warranty the Client shall allow Agile a reasonable opportunity to correct errors that cause the breach of the warranty, replace any defective media or perform the Service again so as to comply with the warranty set out in Clause 5.2.1. Agile does not warrant that operation of the Developments in software form will be uninterrupted or error free.
- 5.2.4 Limitation of Liability
- 5.3.1 Agile accepts liability for fraud, misrepresentation, death or personal injury that is due to the negligence of Agile or its employees in the performance of this Agreement and for any other liability that is not excludable by law.
- 5.3.2 Save for any material or repetitive breach, in the event that Agile fails to comply with its obligations under this Agreement then, subject to the agreement of the Client, acting reasonably, Agile shall be entitled to be given a reasonable opportunity to correct any errors and re-perform its obligations and provide the services hereunder at Agile's own costs. However, this should not have the effect of causing any detrimental effect on the Client or prejudicing the benefit which was intended to be derived by the Client from this Agreement.
- 5.3.3 Except in respect of any liability under clause 5.3.5 below, in the event that Agile's failure to comply with its obligations is not remedied as above then the total amount of Agile's liability to the Client for all losses, damages, costs, claims and expenses howsoever and whenever arising under this Agreement and its Schedules shall not exceed in aggregate two hundred percent of the amount paid to Agile under this Agreement.
- 5.3.4 The sums set out in clauses 5.3.1 and 5.3.3 represent the total liability accepted by Agile for any claims arising under or in connection with this Agreement and its Schedules save that no limit shall apply to any claims under clause 5.3.1.
- 5.3.5 Agile shall indemnify and keep indemnified the Client against all losses it or they may suffer arising out of or in connection with: (i) any claim by a third party that the Services or the Client's use of any of the Deliverables infringes the Intellectual Property Rights of such third party or (ii) any breach by Agile of clauses 8. or 8.11.
- 5.3.6 Except in respect of any liability under clause 5.3.5 above, neither party will be liable to the other party for any indirect or consequential loss or damage including, without limitation, any indirect loss of business or profits in each case whether arising from negligence, breach of contract or otherwise.

## 6. CLIENT OBLIGATIONS

- 6.1 Where any work or Services are to be carried out at the Client's premises then the Client shall, subject to compliance by Agile's personnel with Client's reasonable security requirements, allow Agile full and complete access to the area(s) where Service(s) are to be performed and will provide adequate office accommodation and facilities for any Agile staff working on its premises as required.
- 6.2 The Client will provide Agile with all necessary co-operation, information, equipment, data and support that may reasonably be required by Agile for the performance of its obligations hereunder, including access to suitably configured computer products and Internet access at such times as Agile requests. Specific dedication of Client personnel and resources to the project shall be agreed in writing in the Consultancy Agreement.
- 6.3 Upon successful completion of the work or services the client agrees to a publishable reference.

## 7. DEVELOPMENTS

- 7.1 Agile hereby grants to the Client, subject to Client's compliance with the licence provisions included or referred to herein, an irrevocable, non-exclusive, non-transferrable, royalty free licence to use any software programs constituting Developments on Client's computer equipment in consideration for the

payment of Agile's fees for Services; to copy the Development(s) for archival or back-up purposes; and to modify the Development(s) or combine them with other software products.

- 7.2 The licence to use Developments granted herein will be effective from the date of acceptance (if applicable) of any Developments or any part(s) thereof or the date first used if earlier and shall remain in force until the Client discontinues its use.
- 7.3 Agile may retain copies of any developments for its internal quality assurance purposes. Subject to Agile's obligations of confidentiality under Clause 8.1, each party shall be free to use the concepts, techniques and know-how used and developed in the project for a period of one-year following the termination or completion of this agreement. In any event, Agile shall be free to perform similar services for other customers using our general knowledge, skills and experience.

## 8. GENERAL

### 8.1 CONFIDENTIALITY

Each party shall treat as strictly confidential all Confidential Information and shall not use, copy, adapt, alter, disclose or part with possession of any Confidential Information except as strictly necessary to perform its obligations or exercise its rights under this Agreement, provided that this clause shall not apply to Confidential Information which:

- a) was rightfully in the Receiving Party's possession before disclosure by the Disclosing Party or which the Receiving Party received from a third party who is not under an obligation of confidentiality in relation to the information;
- b) was already public knowledge or which becomes so at a future date (otherwise than as a result of breach of this clause 8.1 ;
- c) is developed independently without access to, or use or knowledge of, the Confidential Information.

Further, each party shall be permitted to disclose Confidential Information if the disclosure is:

- d) agreed in writing by the party that disclosed the Confidential Information ("**Disclosing Party**") to the other party ("**Receiving Party**");
- e) required by law or by the order of a court or similar judicial or administrative body, provided that to the extent lawfully permissible to do so, the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing, and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

Each party shall ensure that its directors, officers, employees, agents and contractors who have, or may have, access to the Confidential Information are bound by an undertaking of confidentiality in substantially the same terms as the provisions of this clause 8.1

Nothing in this clause 8.1 will prevent the Client from disclosing both the existence of this Agreement and its contents: (a) to the extent that such disclosure is required by any applicable law or the regulations of a stock exchange or Regulator or by the order or ruling of a court or administrative body of competent jurisdiction; or (b) to a prospective purchaser of shares in or the assets of the Client provided that, prior to any such disclosure, any such prospective purchaser had agreed in writing to be bound by duties of confidentiality in respect of any information disclosed to it.

Other than as expressly permitted under this Agreement, on termination or expiry of this Agreement for whatever reason, each party shall forthwith cease to use any Confidential Information of the other and shall return on demand, or at the request of such other, destroy or permanently erase all copies of that Confidential Information in its possession or control, save that each party will be permitted to retain Confidential Information for the purposes of and for so long as required by any law or by judicial or administrative process or its legitimate internal compliance issues, or that is included in back-up tapes made in the ordinary course of receiving party's business which are not capable of ready search and deletion.

Each party acknowledges that damages alone may not be an adequate remedy in the event of breach by the other party of the provisions of this clause 8.1 Accordingly, either party shall be entitled to seek an injunction or other equitable remedy for any threatened or actual breach of this clause 8.1 without prejudice to any other rights and remedies which that party may have.

The obligations in this clause 8.1 will remain in full force and effect following the termination or expiry of this Agreement.

## 8.2 Relationship between the Parties

Unless otherwise specifically agreed in the Consultancy Agreement in writing, the Client shall be responsible for the management of resources and direction of Services to be provided hereunder.

Agile is an independent contractor, nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as employment related taxes. Each party will maintain appropriate Employers' Liability and Public Liability Insurance.

## 8.3 Governing Law

This Agreement and all matters arising out of or relating to this Agreement shall be governed by and interpreted in accordance with English Law. The parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales, provided that where Client's registered office is in Scotland, the Agreement shall be governed by and interpreted in accordance with Scottish law and the parties agree to submit to the Court of sessions in Edinburgh.

## 8.4 Notice

All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by first class mail to the first address listed in the applicable Consultancy Agreement (if to Client) or to the Agile address in the Terms and Conditions (if to Agile).

## 8.5 Severability

In the event any provision or part thereof of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

## 8.6 Waiver

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

## 8.7 Export

Client agrees to comply fully with all relevant export laws and regulations of the United Kingdom and European Union ("Export Laws") to assure that neither the Developments or Agile Materials nor any direct product thereof are (1) exported, directly or indirectly, in violation of Export Laws; or (2) are intended to be used for any purposes prohibited by the Export Laws, including, without limitation, nuclear, chemical or biological weapons proliferation.

## 8.8 Non Solicitation

Each party agrees that, during the life of this agreement and for 6 months following completion or any termination of any Purchase Order, neither it by itself, its officers, employees or agents or otherwise howsoever and whether as a consultant, principal, partner, director, employee or otherwise, shall employ or solicit the services of any employee, officer, agent or consultant of the other party who was engaged and/or involved in providing or receiving Professional Services. Should such a situation arise whereby the Client wishes to employ such a consultant, principal, partner, director, employee or otherwise from Agile, we reserve the right to charge a fee comparable to that charged by our retained recruitment agents (currently set at 25% of first year's compensation package) to assist in covering our replacement recruitment costs.

## 8.9 Force Majeure

Agile shall not be liable for any delay, failure or non-performance of any of its obligations pursuant to any Order resulting from war, armed conflict, civil disturbances, act of God, fire, explosion, accident, illness, industrial dispute or any regulation, rule or act of Government or Government Agency, failure of third party suppliers to deliver parts and components, or any other cause beyond Agile's reasonable control. In the event of the circumstances of Force Majeure expressed herein shall continue for 30 days or more, either party shall be entitled by notice to the other to terminate the Order. Upon such termination, Agile shall be entitled to be paid for the services performed up to the point of termination.

## 8.10 Modification of the Agreement

Neither this Agreement nor a Consultancy Agreement may be modified or amended except in writing signed by a duly authorised representative of each party. It is expressly agreed that any terms and conditions of Client's purchase order shall be superseded by the terms and conditions of this Agreement and the applicable Consultancy Agreement.

## 8.11 Regulatory Requirements

The Services provided to the Client under this Agreement (including the procurement and supply of any items or equipment procured for the provision of the Services) shall be provided by Agile in compliance with all relevant legislation, regulations, codes of practice, guidance and other requirements of any relevant government or governmental agency.

## 8.12 The Agreement

This Agreement, including any addenda or Consultancy Agreements constitutes the complete agreement between the parties and, except as provided in Clause 8.2 above, supersedes all previous agreements, proposals or representations, written or oral, concerning the Services. The parties warrant to each other on the commencement date of each Consultancy Agreement that the complete agreement and understanding of the parties related thereto is contained in the terms of this Agreement and such Consultancy Agreement.

## Get in Touch

### Agile Solutions UK Locations

454 Exchange House	Ocean Chambers	9th Floor Lowry House
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