

Terms & Conditions of Engagement

1 INTERPRETATION

The definitions and rules of interpretation in this condition apply in these terms and conditions.

1.1 Definitions:

Conditions: these terms and conditions as amended from time to time in accordance with clause 2.2.

Confidential Information: all information, whether technical or commercial (including all specifications, artwork, concepts, mockups and system designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

- a) identified as confidential at the time of disclosure; or
- b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person, firm or company who purchases Services from the Supplier.

Customer's Project Manager: the Customer's manager for the Project appointed in accordance with clause 5.1(a).

Deliverables: all products and materials developed by the Supplier in relation to the Project in any media, including, without limitation, computer programs, data, diagrams, consultancy reports, artwork and specifications (including drafts).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation 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.

Project: the project as described in the Proposal.

Proposal: the detailed description of the Project, setting out the estimated timescale, costs and Services to be provided by the Supplier.

Services: the services to be provided by the Supplier under the Contract, including the Deliverables as set out in the Proposal.

Software: any computer programs, websites or web applications, including application code, stylesheets templates and visual elements used by the Customer and developed or modified by the Supplier in the course of the Project.

Success Criteria Design Brief: an agreed set of criteria as to the completed Project.

Supplier: Nuvola Ltd, incorporated and registered in England and Wales with company number

04887246 whose registered office is at 4 St Johns Avenue, Clevedon BS21 7TQ.

Supplier's Project Manager: the Supplier's manager for the Project, appointed in accordance with clause 4.3.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Condition 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).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes email.

2 APPLICATION OF CONDITIONS

2.1 These Conditions shall:

- a) apply to and be incorporated in the Contract; and
- b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3 EFFECT OF PROPOSAL

3.1 The Customer's purchase order or acceptance of the Proposal constitutes an offer by the Customer to purchase the Services specified in the Proposal on these Conditions. The Customer's offer shall be deemed to be accepted by the Supplier on the earlier of:

- a) the Supplier issuing written confirmation of its acceptance of the purchase order; or
- b) the Supplier's commencement of work pursuant to the purchase order at which point the Contract shall come into existence. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

4 SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Proposal.

4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Proposal or agreed by the parties, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

4.3 The Supplier shall appoint the Supplier's Project Manager who shall have authority to contractually bind the Supplier on all matters relating to the Project. The Supplier shall use reasonable endeavours to ensure that the same person acts as Supplier's Project Manager

throughout the Project, but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.

4.4 The Customer acknowledges that the Supplier is under no obligation to undertake any searches or enquiries which would reveal whether any of the Deliverables proposed by the Supplier are able to be trademark protected or whether they may infringe on a third party's Intellectual Property Rights and the Supplier gives no warranty to this effect.

5 CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- a) co-operate with the Supplier in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project;
- b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier; and
- c) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects.

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees:

- a) the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing; and
- b) the Supplier shall not be liable for any resulting breach of its obligations under the Contract.

5.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier, except that the Customer

shall not be in breach of this condition if it hires an employee or sub-contractor of the Supplier as a result of a recruitment campaign not specifically targeted to any employees or sub-contractors of the Supplier.

5.4 Any consent given by the Supplier in accordance with condition 5.3 shall be subject to the Customer paying to the Supplier on demand a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

6 CHANGE CONTROL

6.1 If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- a) the likely time required to implement the change;
- b) any variations to the Price arising from the change;
- c) the likely effect of the change on the Proposal; and
- d) any other impact of the change on the terms of the Contract.

6.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

6.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to the Price, the Proposal and any other relevant terms of the Contract to take account of the change.

7 PRICE AND PAYMENT

7.1 The total price for the Services (**Price**) shall be the amount set out in the Proposal.

7.2 The Price shall exclude:

- a) expenses, which shall be payable in addition in accordance with clause 7.3; and
- b) VAT, which the Supplier shall add to its invoices at the appropriate rate.

7.3 The Customer shall reimburse the Supplier for all expenses to include the costs of hotel accommodation at standard rate, mileage by motor car at Inland Revenue specified rates, train travel by standard class and flights at economy class together with any other ancillary expenses reasonably incurred by the project team in connection with the Services.

7.4 Unless otherwise specified in the Proposal or otherwise agreed in writing between the Supplier and the Customer, the Customer shall pay a non-refundable deposit of 50% of the Price plus VAT to the Supplier in full and in cleared funds before commencement of the Services.

7.5 The Supplier may invoice the Customer:

- a) monthly in arrears for Services carried out during such month at the day rates specified in the Proposal; or
- b) on completion of any Deliverable set out in the Proposal for the Price of such Deliverable; or
- c) at any other time, if set out in the Proposal or otherwise agreed between the Supplier and the Customer.

7.6 Any invoice issued pursuant to clause 7.5(a) shall set out the project reference and, where relevant, a description of the deliverables covered by the invoice.

7.7 The Supplier may issue invoices to the Customer in respect of Expenses incurred on a monthly basis.

7.8 The Customer shall pay each invoice submitted to it by the Supplier in full, and cleared funds, within 14 days of receipt. Payment shall be made by bank transfer to the Supplier's account as specified on the invoice, unless otherwise agreed.

7.9 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:

- a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
- b) suspend all Services until payment has been made in full; and
- c) charge the Customer any reasonable expenses incurred in recovering the sum due.

7.10 Time for payment shall be of the essence of the Contract.

7.11 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.12 All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

7.13 For the avoidance of doubt, provided that the Supplier can demonstrate that the Services meet the Deliverables specified in the Proposal, or the Success Criteria Design Brief, the Customer shall not withhold payment of any part of the Price due pursuant to these Conditions.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 Except where specified in the Proposal, all Intellectual Property Rights are and shall remain the exclusive property of the Supplier.

8.2 Where, during the course of the Project, the Supplier modifies Software that has been already developed by the Customer or by a third party, the Customer warrants that both it and the Supplier have the right to use, modify and extend the Software, and agrees to indemnify the Supplier in the case of any breach of a third party's intellectual property rights. Further:

- a) where existing Software is modified by the Supplier to the extent that changes are made to existing code, stylesheets and/or template files, clauses 8.1, 8.3 and 8.4 shall not apply and Intellectual Property Rights to such modifications will become, upon payment in full by the Customer of all sums payable to the Supplier pursuant to this agreement, the property of the Customer; or
- b) where the modifications comprise discreet new modules (discernable by the creation of new code, stylesheet and/or template files within the Software), clauses 8.1, 8.3 and 8.4 shall apply to these new modules.

8.3 Subject to payment in full by the Customer of all sums payable to the Supplier pursuant to this agreement, the Supplier shall grant the Customer the right to use the Intellectual

Property Rights arising solely in respect of the Project on the basis of an irrevocable royalty-free non-exclusive World-wide licence to the extent necessary to use the Deliverables.

8.4 The Customer:

- a) may not use the Intellectual Property Rights other than as specified in clause 8.3 without the prior written consent of the Supplier; and
- b) shall not permit any third party to make any commercial use of the Intellectual Property Rights and the Deliverables, except after termination of the Contract where a third party may be engaged by the Supplier to make continuing modifications to the Deliverables.

8.5 The Customer hereby consents to the Supplier using the Customer's name, logo and branding and details of the Project in promoting the Supplier's business, including on its website.

9 CONFIDENTIALITY AND SUPPLIER'S PROPERTY

9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- a) is or becomes publicly known other than through any act or omission of the receiving party;
- b) was in the other party's lawful possession before the disclosure;
- c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- d) is independently developed by the receiving party, which independent development can be shown by written evidence.

9.2 Subject to clause 9.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

9.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

9.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 9.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

9.5 The above provision of this clause 9 shall survive termination of the Contract, however arising.

10 LIMITATION OF LIABILITY

10.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- a) any breach of the Contract howsoever arising;
- b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions excludes the liability of the Supplier:

- a) for death or personal injury caused by the Supplier's negligence; or
- b) for fraud or fraudulent misrepresentation.

10.4 Subject to clause 10.2 and clause 10.3:

- a) the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - i. loss of profits; or

- ii. loss of business; or
 - iii. depletion of goodwill or similar losses; or
 - iv. loss of contract; or
 - v. loss of use; or
- b) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- c) the Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price.

11 TERMINATION

11.1 Without prejudice to any other rights or remedies to which the Supplier may be entitled, the Supplier may terminate the Contract without liability to the Customer if:

- a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- b) the Customer commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- c) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- d) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
- e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer other than for the sole purpose of a

scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;

- f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer;
- g) the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- h) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- i) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
- j) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(c) to clause 11.1(i) (inclusive);
- k) there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).

11.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

11.3 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

11.4 Where the Project includes provision for ongoing engagement, either party may terminate the Contract by giving the other 90 days written notice (unless a different term is specified in the Proposal), and in the case of the Customer, paying any sums due under the Contract.

12 FORCE MAJEURE

12.1 The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

13 WAIVER

13.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14 RIGHTS AND REMEDIES

14.1 The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15 SEVERANCE

15.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of this agreement.

15.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

16 ENTIRE AGREEMENT

16.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

17 ASSIGNMENT

17.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

18 NO PARTNERSHIP OR AGENCY

18.1 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19 THIRD PARTY RIGHTS

19.1 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

20 NOTICES

20.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be delivered by hand, by email or by pre-paid first-class post or other next working day delivery service at its registered office.

20.2 In the case of a notice or communication being sent by email, the recipient should either send a read receipt if requested or reply to acknowledge receipt as soon as practically possible. The absence of such shall not however indicate that the email was not received.

20.3 Any notice or communication shall be deemed to have been received:

- a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
- b) if delivered by email, at the time of receipt by the recipient's email server; or
- c) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting [or at the time recorded by the delivery service].

20.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21 GOVERNING LAW & JURISDICTION

21.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

21.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).