

**Agreement with a Limited Company Contractor
for Consultancy Services where the
Limited Company has opted out of the
2003 conduct regulations**

(These Terms are for use where the Supplier will NOT be under the direction, supervision or control of the client i.e. the arrangement meets the HM Revenue & Customs tests of self-employment AND the limited company contractor HAS opted out* of the protection of the Conduct Regulations 2003¹)

This Agreement is made on the 23rd March, 2015

Between:

NAMES OF PARTIES

- (1) Cloudsoft Limited, a company incorporated in England & Wales, registration number 3756144 of 40D Gledstanes Road, Barons Court, W14 9HU ('the Supplier'), and
- (2) **Brook Street (UK) Limited** a company incorporated in England & Wales registration number 459637 of 134 Hatfield Road St Albans Herts AL1 4JB ('the Employment Business').

RECITALS

- (A) The Supplier carries on the business of the provision of consultancy services relating to all aspects of Senior business intelligence engineer: services specified in the attached schedule ('the Consultancy Services').
- (B) The Employment Business has requested the Supplier and the Supplier has agreed with the Employment Business, to provide the Consultancy Services on the terms and subject to the conditions of this agreement ('Agreement').

IT IS AGREED as follows:

1. INTERPRETATION AND DEFINITIONS

- 1.1 Unless the context otherwise requires, references to the singular include the plural.
- 1.2 The headings contained in the Agreement are for convenience only and do not affect their interpretation.
- 1.3 **"Assignment"** means the services, which the Supplier is engaged by the Employment Business to render to the Client.
- 1.4 **"Client"** means the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 1985 together with any customer of the Client requiring the services of the Supplier and identified in the attached schedule

2. SUPPLIER

- 2.1 The Supplier's obligation to provide the Consultancy Services shall be performed by such member or members of the Supplier's employees, officers or representatives ("Staff") as the Supplier may consider appropriate provided that the Employment Business and the

¹ Conduct of Employment Agencies and Employment Businesses Regulations 2003

Client are reasonably satisfied that they possess the necessary skills and expertise to perform the services. The Supplier shall be entitled to assign or sub-contract the performance of the Consultancy Services provided that the Employment Business and the Client are reasonably satisfied that the assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Consultancy Services to the required standard and that the terms of any such assignment or sub-contract contain the same obligations imposed by this agreement and further that any person to whom the performance of the Consultancy Services has been assigned or sub-contracted has opted out of the Conduct Regulations 2003.

2.2 The schedule attached to this Agreement shall specify the Client, the fee payable by the Employment Business and such expenses as may be agreed, any notice period and any other relevant information.

2.3 Save as otherwise stated in this Agreement, the Supplier shall be entitled to supply its services to any third party during the term of this Agreement provided that this in no way compromises or is to the detriment of the supply of its services to the Client.

3. THE CONTRACT

3.1 This Agreement constitutes the contract between the Employment Business and the Supplier and governs the Assignment undertaken by the Supplier with the Client.

3.2 No variation or alteration of these terms shall be valid unless approved by the Employment Business and the Supplier in writing.

4. UNDERTAKING OF THE SUPPLIER

4.1 The Supplier warrants to the Employment Business that by entering into and performing its obligations under this Agreement it will not thereby be in breach of any obligation that it owes to any third party.

4.2 The Supplier warrants that its Staff has the necessary skills and qualifications to perform the Consultancy Services.

5. OBLIGATIONS OF THE SUPPLIER

5.1 The Supplier agrees on its own part and on behalf of its Staff, its Assignees and Subcontractors as follows:

5.1.1 To perform the Consultancy Services and to conduct itself with all proper skill and care, in a professional manner, and in accordance with industry standards, methodologies, and guidelines.

5.1.2 To observe any statutory or other reasonable rules or obligations as may be applicable in the country where the Services are to be delivered including but not limited to those relating to health and safety during the Assignment to the extent that they are reasonably applicable to independent contractors while performing the services and to take all reasonable steps to safeguard its own safety, the safety of its Staff and the safety of any other person who may be affected by its actions on the Assignment.

5.1.3 To furnish the Client and/or the Employment Business with any progress reports as may be requested from time to time.

5.1.4 Not to sub-contract or assign to any third party any of the Consultancy Services which it is required to perform under the Assignment except in accordance with clause 2.1.

- 5.1.5 To notify the Employment Business forthwith in writing if it should become insolvent, dissolved or subject to a winding up petition.
- 5.1.6 To provide at its own cost, subject to any agreement to the contrary specified in the Schedule attached as to any facilities which may be made available by the Client, all such necessary equipment as is reasonable for the adequate performance by the Staff of the Consultancy Services.
- 5.1.7 To notify the Employment Business if any of the proposed Staff have not opted out of the 2003 Conduct Regulations
- 5.2 If the Supplier is unable for any reason to perform the Consultancy Services during the course of an Assignment the Supplier should inform the Employment Business by no later than 10.00am on the first day of incapacity. The Supplier shall be entitled upon giving reasonable notice and with the agreement of the Client and the Employment Business to suspend the Consultancy Services, provided that any such suspension shall be for no longer than a period of two weeks.
- 5.3 Subject to any industry standards, industry methodologies or industry guidelines that may be specified in the Schedule hereto the Supplier shall have autonomy in relation to determining the method of performance of the Consultancy Services but in doing so it shall co-operate with the Client and observe any reasonable and lawful instructions within the scope of the Assignment in so far as they are applicable to independent contractors.
- 5.4 Nothing in this Agreement shall render any member of the Supplier's Staff an employee of either the Employment Business or the Client. The Supplier shall ensure that none of its Staff holds him or her self out as an employee of either the Employment Business or the Client.
- 5.5 The Supplier shall bear the cost of any training, which its Staff may require in order to perform the Consultancy Services.

6. INVOICING

- 6.1 At the end of each invoicing period (or at the end of the Assignment where an Assignment is for a shorter period, or is completed before the end of an invoicing period) the Contractor shall deliver to the Employment Business the Employment Business' timesheet duly completed to indicate the number of days worked by the Contractor during the preceding invoicing period, signed by an authorised representative of the Client. Such timesheets must be received by the Employment Business by no later than 12 noon on the Monday following the invoicing period to which they relate. This timesheet must be accompanied by an invoice from the Contractor for the amount due from the Employment Business to the Contractor for the days worked in that invoicing period. Such invoice should bear the Contractor's name, company registration number, VAT number, and should state any VAT due on the invoice. The Employment Business takes no responsibility for delays outside its normal control, e.g. electronic mail service disruptions, postal disturbances, strikes, breakdown in banks' transfer equipment or late arrival of its invoices. The Supplier shall obtain the signature of an authorised representative of the Client as verification of execution of the Assignment.
- 6.2 The Supplier shall obtain the signature of an authorised representative of the Client as verification of execution of the Assignment.
- 6.3 The Employment Business shall not be obliged to pay any fees to the Supplier unless an invoice has been properly submitted by the Supplier in accordance with sub-clause 6.1 of this Agreement and until the Client has verified the execution of the Assignment.

7. FEES

- 7.1 Subject to the receipt of the Supplier's invoice in accordance with clause 6 above, the Supplier will receive payment from the Employment Business for the Assignment in accordance with

the fee specified in the Schedule attached, plus VAT where appropriate. Invoices shall be paid within 30 days of receipt by the Employment Business.

7.2 The Supplier shall be responsible for any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of its Staff for the Assignment.

7.3 All payments will be made to the Supplier.

7.4 If the Supplier shall be unable for any reason to provide the Consultancy Services to the Employment Business no fee shall be payable by the Employment Business during any period that the Consultancy Services are not provided.

8. OBLIGATIONS OF THE EMPLOYMENT BUSINESS

8.1 Throughout the term of this Agreement the Employment Business shall pay the Supplier the agreed fee in accordance with clause 7.1 above

8.2 The Employment Business shall furnish the Supplier with sufficient information about the Assignment in order for the Supplier to arrange for the Consultancy Services to be carried out.

9. TERM OF THE AGREEMENT

9.1 This Agreement shall commence on 23rd of March, 2015. It shall continue until completion of the Consultancy Services to the reasonable satisfaction of the Client, at which time this Agreement shall expire automatically, or until it is terminated by the Employment Business or Supplier in accordance with sub-clauses 9.2 to 9.4.

9.2 The Employment Business may terminate this Agreement and instruct the Supplier to cease work on the Assignment without cause upon the provision of the notice period detailed within the schedule hereto.

9.3 The Supplier may terminate this Agreement by notice with immediate effect if:

9.3.1 the Employment Business is in material breach of any term of this Agreement and fails to remedy any such breach within fourteen days of notice being given by the Supplier to the Employment Business requiring remedy;

9.3.2 a receiver, administrative receiver, administrator or similar officer be appointed to the Employment Business or any part of its assets or undertaking, or the Employment Business goes into liquidation, or makes any voluntary arrangement with its creditors, or passes a resolution for voluntary winding-up or a winding-up order is made (except for the purpose of a bona fide amalgamation or reconstruction).

9.4 The Supplier may terminate this Agreement (or any particular Assignment) at any time without cause upon the provision of the notice period detailed within the schedule hereto.

9.5 Failure by the Supplier to give notice of termination as required in sub-clause 9.3 [or 9.4] shall constitute a breach of contract and shall entitle the Employment Business to claim damages from the Supplier for any resulting loss suffered by the Employment Business.

9.6 The Supplier acknowledges that the continuation of the Assignment is subject to and conditioned by the continuation of the contract entered into between the Employment Business and the Client. In the event that the contract between the Employment Business and the Client is terminated for any reason the Assignment shall cease with immediate effect without liability to the Supplier.

10. ACKNOWLEDGMENT

10.1 The Supplier acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from services carried out by the Supplier and its Staff and any third party to whom the Contract is assigned or sub-contracted for the Client during the Assignment shall belong to the Client. Accordingly the Supplier shall (and shall procure that

any relevant member of its Staff shall) execute all such documents and do all such acts as the Employment Business shall from time to time require in order to give effect to its rights pursuant to this clause.

10.2 The Employment Business acknowledges that all intellectual property rights that were owned by the Supplier prior to this Agreement shall remain the property of the Supplier unless otherwise agreed, in writing, by the Supplier.

11. CONFIDENTIALITY

11.1 In order to protect the confidentiality and trade secrets of any Client and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Supplier agrees on its own part and on behalf of its Staff as follows:

11.1.1 Not at any time whether during or after the Assignment (unless expressly so authorised by the Client or the Employment Business as a necessary part of the performance of its duties) to disclose to any person or to make use of any of the trade secrets or confidential information of the Client;

11.1.2 To deliver up to the Client or the Employment Business (as directed) at the end of the Assignment all documents and other materials belonging to the Client (and all copies) which are in its possession including documents and other materials created by it or the Staff during the course of the Assignment;

11.1.3 Not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Client except when required to do so in the course of its duties under the Assignment in which event any such item shall belong to the Client or the Employment Business as appropriate.

11.1.4 Without prejudice to any obligations imposed on and assumed by the Supplier, obligations of confidentiality shall not apply to any information which the Supplier can show (and it shall be for the Supplier to show):-

- a. was known to the Supplier before such information was imparted by the Client; or
- b. is in or subsequently comes into (other than by breach by the Supplier of its obligations) the public domain;

12. RESTRICTION

12.1 None.

13. COMPUTER EQUIPMENT WARRANTY

13.1 The Supplier shall ensure that any computer equipment and associated software which it provides to its Staff for the purpose of providing the Consultancy Services contains antivirus protection with the latest released upgrade from time to time.

14. RELATIONSHIP BETWEEN EMPLOYMENT BUSINESS AND SUPPLIER

14.1 The Supplier acknowledges to the Employment Business that its services are supplied to the Employment Business as an independent contractor and that accordingly the responsibility of complying with all statutory and legal requirements relating to the staff of the Supplier (including the payment of taxation) shall fall upon and be discharged wholly and exclusively by the Supplier. In the event that any person should seek to establish any liability or obligation upon the Employment Business on the grounds that the staff are an employee of the Employment Business, the Supplier shall upon demand indemnify the Employment Business and keep it indemnified in respect of any such liability or obligation and any related costs expenses or other losses which the Employment Business shall incur.

14.2 Neither the Employment Business nor the Client is obliged to offer any work to the Supplier. The Employment Business, the Client and the Supplier are not obliged to offer or accept any contracts or services in addition to those specified in the schedule attached.

15. NOTICES

15.1 All notices which are required to be given hereunder shall be in writing and shall be sent to the registered office from time to time of the party upon whom the notice is to be served. Any such notice may be delivered personally or by first class prepaid post or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours and if by facsimile transmission when dispatched.

16. LIABILITY

16.1 The Supplier shall be liable for any loss, damage or injury to any party resulting from the negligent acts or omissions of its Staff or from the acts of omission of any assignee or sub-contractor to whom the Supplier assigns or sub-contracts the performance of the Consultancy Services during an Assignment.

16.2 The Supplier shall ensure the provision of adequate Employer's Liability Insurance, Public Liability Insurance and any other suitable policies of insurance such as Professional Indemnity insurance in respect of the Supplier and its Staff during an Assignment and shall make a copy of the policy available to the Employment Business upon request.

16.3 The Supplier shall be liable for any defects arising in relation to the Consultancy Services and shall rectify at its own cost such defects as may be capable of remedy within a reasonable period from notification of such defects by either the Employment Business or the Client.

16.4 The Supplier's total liability under this Agreement shall not exceed the limit set out in the schedule hereto. This provision shall have no application to any liability for death or personal injury, any other liability for which exclusion or restriction is prohibited by law or to liability arising as a result of fraud on the Supplier's part.

16.5 The Supplier shall take out adequate insurance to cover the liability accepted under this Agreement and shall produce to the Employment Business on request a copy of the policy and relevant renewal receipts for inspection. Such insurance shall be for the minimum sum set out in the schedule hereto

17. GOVERNING LAW AND JURISDICTION

17.1 This Agreement shall be construed in accordance with the laws of England & Wales and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of this Agreement shall be subject to the exclusive jurisdiction of the Courts of England & Wales

18. ILLEGALITY

18.1 If any provision or term of this Agreement shall become or be declared illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, by reason of the provisions of any legislation or other provisions having the force of law or by reason of any decision of any Court or other body or authority having jurisdiction over the parties of this Agreement such terms or provisions shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement. Provided always that if any such deletion substantially affects or alters the commercial basis of this Agreement the parties shall use their reasonable endeavours to amend or modify the provisions and terms of this Agreement to give effect to the parties' original commercial intentions provided in the event that the parties are unable to reach agreement within one month of any deletion either party may terminate this Agreement by serving written notice upon the other..

19. DISCLAIMER

19.1 The Employment Business makes no representation nor does it accept any responsibility for ensuring that the terms of this contract are an accurate reflection of the relationship between the Client and the Supplier. Furthermore the Employment Business accepts no liability to indemnify the Supplier for any losses, expenses or liabilities incurred by the Supplier whether by reason of tax or other statutory or contractual liability or any such liability to any third party arising from the Assignment.

SIGNING PROVISIONS

On behalf of **the Supplier** by
(Authorised Signature)

Title: Date:

On behalf of **the Employment Business** by
(Authorised Signature)

Title: MANAGING DIRECTOR Date: 11/3/2015

SCHEDULE TO AGREEMENT 23rd March, 2015 to 30th June, 2015

Between:

EMPLOYMENT BUSINESS: Brook Street (UK) Limited

SUPPLIER: Cloudsoft Limited

NATURE OF CONSULTANCY SERVICES: Business intelligence and analytics engineering

CLIENT: Microsoft Limited

ADDRESS: Microsoft Studios, UK House, 2 Great Titchfield Street, London, W1D 1NN

SITE ADDRESS (if different):

CONTRACT TENURE: 23rd of March, 2015 to 30th of June, 2015

NOTICE PERIOD FOR EARLY TERMINATION: 4 WEEKS WRITTEN NOTIFICATION FROM BOTH PARTIES

CONTRACT FEE PAYABLE:

£ 450

AGREED DISBURSEMENTS: As agreed in advance between the Supplier and the Client



PCG-REC Approved Contract ref: A06-05.

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INVOICING FREQUENCY: Monthly as per Brook Street Invoice and Payment Schedule

FACILITIES/EQUIPMENT PROVIDED –

BY CLIENT:

BY SUPPLIER:

LIMIT OF LIABILITY UNDER 16.4: Public Liability - £2m
 Employer's Liability - £2m
 Professional Indemnity - £2m

MINIMUM SUM SPECIFIED IN CLAUSE 16.5: Public Liability - £2m
 Employer's Liability - £2m
 Professional Indemnity - £2m

STANDARDS ETC REFERRED TO IN CLAUSE 5.3

Insert here details of any industry standards, industry methodologies or industry guidelines specified by the Client to be adhered to by the Supplier in carrying out the Assignment e.g. contained in Client's operating manual.