



THE BCS CONSULTING GROUP

Terms and Conditions

1 INTRODUCTION

1.1 These terms apply to all services delivered by The BCS Consulting Group Limited and subsidiaries (including but not limited to BCS Data Centres Limited, BCS Business Critical Solutions GmbH, and BCS Italia Srl) – hereafter “we” or “us” – unless superseded by a later dated issue or otherwise agreed in writing.

1.2 These are the terms of business that will apply to the services provided by us. These terms will be subject to the specific matters detailed in our proposal, the letter to you confirming your instructions (the “Engagement Letter”) or our Order Acceptance. The terms of those documents read with these terms of business will together form the contract between us (the “Contract”). Our obligations to each other will therefore be defined exclusively in the Contract, to the exclusion of any other communications between us and to the exclusion of any other terms or conditions.

1.3 No amendment or variation to the Contract will be binding on us unless in writing signed by your duly authorised officer and one of our directors.

1.4 The services we provide as specified in the Proposal, Engagement Letter or Order Acceptance (the “Services”) are for your benefit only. Unless otherwise agreed, and subject to paragraph 5.1, no third party shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

1.5 We do not tolerate bribery and corruption in any form, whether giving or receiving a bribe and whether committed by our directors, employees, agents, or associates. Either party may terminate the Contract immediately in the event that the other commits an act of bribery or corruption which constitutes an offence under any law such as the U.S. Foreign Corrupt Practices Act, the Bribery Act (UK) 2010 or the laws of any jurisdiction implementing the OECD Convention of Combating Bribery of Foreign Public Official in International Business Transactions.

2 OUR GENERAL OBLIGATIONS

2.1 We agree to perform the Services subject to and in accordance with these terms of business.

2.2 We shall perform the Services with the skill care and diligence reasonably to be expected of a professional person experienced in the provision of like services.

2.3 We shall use all reasonable endeavors to liaise, keep fully informed and co-operate fully with your representatives and any other professional advisers or contractors engaged by you and notified to us. At the same time, we shall be entitled to rely upon the information and/or advice given by you, those other professional advisers, and contractors.

2.4 We shall advise you of the individual people who will act on our behalf in the provision of the Services.

2.5 We shall not remove any such persons without your prior written approval, which shall not be unreasonably withheld. If you give such approval, we shall be responsible for replacing such persons with a person who shall similarly have been previously approved by you in writing.

2.6 The individual persons referred to in paragraphs 2.4 and 2.5 shall have the necessary qualifications and experience to perform their duties in relation to the Services.

3 YOUR GENERAL OBLIGATIONS

3.1 In order to enable us to perform the Services you shall within a reasonable time:

(a) obtain and provide us with all necessary information (including reports and other relevant documentation) in your possession which relates to the Services or the project in relation to which the Services are being provided (the “Project”).

(b) provide us timeously with all other information which we may reasonably request.

(c) give us your decision as quickly as reasonably possible on all reports, recommendations and any other matters which are referred to you by us; and

(d) instruct your other professional advisers and contractors to provide us with all necessary information for and in relation to the Project.

3.2 Where applicable you will, in relation to health and safety issues, comply with the obligations of the “client” as detailed in the Construction (Design and Management) Regulations 2015.

3.3 Our directors and employees are an important asset of our business. In these circumstances it is a condition of our appointment that during the term of our engagement and for a period of six months after completion of the Services (or termination of our engagement under paragraph 7) (this is deemed the period of restriction) you shall not directly or indirectly solicit or offer employment to any of our directors or employees without our prior written consent. Should you consequently employ any of our directors or employees during the period of restriction, you will be liable to pay Business Critical Solutions £100,000 compensation for directors and £50,000 compensation for employees.

4 ADDITIONAL SERVICES

4.1 It is possible that it will become necessary for us to provide services which go beyond the Services as detailed in the Engagement Letter (“Additional Services”). Such Additional Services may arise out of:

(a) changes in the scope or timing of the Project whether or not caused by changes of instructions by you or your other professional advisers.

(b) delay, defective performance or insolvency of your other professional advisers and contractors; and/or

(c) by written agreement in the manner set out at paragraph 1.4.

4.2 In the circumstances we shall be entitled to be paid such further fee as is then agreed or, in the absence of such agreement, a fee calculated on a time basis in accordance with the hourly rates set out in the Engagement Letter.

5 OUR LIABILITY

5.1 We have an interest in limiting the personal liability and exposure to litigation of our employees and directors. You therefore agree that any claim of any kind arising out of or in connection with the Contract shall be brought only against ourselves (Business Critical Solutions Ltd) and that no claims in respect of the Contract will be brought personally against any of our directors or employees involved in the provision of the Services and such directors and employees may rely on the Contracts (Rights of Third Parties) Act 1999 for the purposes of this paragraph 5.1.

5.2 Further you agree that our maximum aggregate liability in respect of breach of contract or breach of duty or negligence or otherwise arising out of or in connection.

with the Contract shall be limited in total to the lesser of £1,000,000 or a sum equivalent to ten times the remuneration payable to us as specified in the Engagement Letter.

5.3 As well as ourselves you may have appointed others (e.g. professional advisers or contractors) in connection with the Project. In those circumstances, our aggregate liability (if any) for any loss or damage under this Contract shall not exceed such sum as it would be just and equitable for us to pay having regard to the extent of the responsibility of those others for the loss or damage and on the assumption that:

(a) there are no exclusions of or limitation of liability joint insurance or co-insurance provisions in the contractual arrangements between you and those other professional advisers or contractors; and

(b) those professional advisers and contractors have provided contractual undertakings to you on terms no less onerous than those set out in this Contract.

5.4 Any claim for breach of contract, breach of duty or negligence or otherwise arising out of or in connection with the Contract shall be brought against us within six years of the act or omission alleged to have caused the loss in question.

5.5 You agree that the provisions of this paragraph 5 shall not be affected by the termination of our appointment (whether or not pursuant to paragraph 7) and that the provisions of this paragraph 5 shall continue in full force and effect notwithstanding any such termination.

5.6 This paragraph 5 shall not apply to any liability which we may have in relation to death or personal injury caused by our negligence or to any other liability which by law cannot be excluded or limited.

5.7 Unless otherwise agreed in writing, we shall not be responsible for the design of the Project, including the selection of materials to be used.

5.8 Subject to clause 5.6 we shall not be liable to you, either in contract, tort, breach of statutory duty, or otherwise, arising under or in connection with this Contract for (a) loss of profits; (b) loss of revenue; (c) loss of use or production; (d) loss of anticipated savings or financial costs; (e) loss of or damage to goodwill; (f) loss of overheads; (g) any indirect or consequential loss.

6 REMUNERATION

6.1 Our fees, both in total and payable on an interim basis, are defined in the Engagement Letter, and we shall be entitled to render invoices monthly unless otherwise agreed, such invoices including any additional fees payable under paragraph 4 above.

6.2 Our invoices will include details of the calculation of the invoiced sum. The invoice constitutes the notice of payment specifying the sum that we consider to be due at the payment due date (the “Notified Sum”). The final date for payment of each invoice is 28 days after the date of issue.

6.3 For the avoidance of doubt our fee is exclusive of Value Added Tax. You agree to pay the total amount of Value Added Tax properly due.

6.4 The Fee shall be deemed to be payment for the Services and to be exclusive of all expenses and disbursements. You shall reimburse us, against appropriate proof of expenditure, in respect of expenses which shall have been properly and reasonably incurred by us in connection with the Services. Any single expense item, other than the cost of reproducing and printing documents and drawings, in excess of the amount specified in the Engagement Letter must be agreed in advance and in writing by you.

6.5 If, in good faith you intend to pay less than the Notified Sum, you shall give notice in writing to us no later than 7 days before the final date for payment of the amount that you consider due together with details of the calculation of that amount. You will pay the Notified Sum unless you have given us notice to pay less than the Notified Sum.

6.6 We shall both immediately use our best endeavours to agree the amount in dispute but failing agreement the matter may be referred to adjudication in accordance with paragraph 13 or litigation.

6.7 Subject to paragraph 6.5 you shall pay all invoices without deduction, set-off, abatement or counterclaim.

6.8 We shall be entitled to be paid interest on invoices or any part thereof due and payable but remaining unpaid 28 days after the date of the invoice in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 provided that, in the case of items correctly disputed by you, interest shall run only from the date when the amount of such item is agreed or settled by adjudication in accordance with paragraph 13 or by litigation.

7 TERMINATION AND/OR SUSPENSION

7.1 You may by giving not less than 7 working days written notice require us to suspend the Services. You may, by giving not less than 7 working days written notice, require us to resume the Services at any time within a period of 6 months from the date of suspension. In those circumstances we shall use all reasonable endeavours to resume performance of the Services as soon as possible. If you do not request us to resume performance within such period, then our appointment under the Contract shall be deemed to have terminated, and the provisions of paragraphs 7.5 and 7.6 shall apply.

7.2 Both you and we shall be entitled to terminate the performance of the Services upon serving written notice on the other to that effect, if the other being in breach of its obligations of the Contract in any material respect has failed within 14 days of the service of such notice to Remedy such breach or breaches.

7.3 Both you and we shall be entitled to terminate the Contract immediately in the event that: distress or execution is levied or threatened upon any of the other's property; any judgement against the other remains unsatisfied for more than 14 days; you (being an individual) become bankrupt or unable to pay your debts or seek an arrangement with your creditors; you (being a company) have an administrator appointed or a receiver or manager or administrative receiver is appointed of you or any of your assets or you enter into liquidation or propose or make any voluntary arrangement with your creditors; any petition is presented or any resolution passed or any steps or proceedings taken which may lead to any of the foregoing occurrences; the other is or is deemed to be insolvent or unable to pay its debts; the other ceases to carry on business.

7.4 We shall be entitled to suspend performance of all or part of the Services and recover from you our reasonable costs and expenses incurred in doing so in the event that you fail to pay any invoice within 28 days in accordance with paragraph 6.1, (or in the case of items disputed in good faith within 28 days after the date when we agree with you the amount of such item or the amount is settled in accordance with adjudication in accordance with paragraph 13 or by litigation), provided that we give to you 7 days' notice of intention to suspend performance of the Services.

7.5 Termination of our appointment under the Contract, however, it may arise, shall not affect the rights and remedies of either of us in relation to any default of the other prior to such termination.

7.6 If the performance of the Services has been suspended or terminated under paragraph 7.1 or by us under paragraphs 7.2, 7.3, or 7.4 then:

(a) we shall be entitled to be paid (and we shall invoice you accordingly) for all outstanding fees earned by us for the Services and any Additional Services performed (whether wholly or in part) all expenses and other disbursements incurred and VAT due; and

(b) you shall compensate us for all subsequent expenses and disbursements properly incurred (or to be incurred) arising from such suspension or termination (including but not limited to the cost of engaging, re-deploying or dismissing staff).

7.7 If the performance of the Services has been terminated by you under paragraphs 7.2 or 7.3, then we shall give to you copies of any drawings or documents for and in relation to the Project prepared by us or on our behalf or in our possession as necessary to minimise any disturbance to the Project.

8 FORCE MAJEURE

8.1 We shall not be liable for any failure to carry out or delay in carrying out our obligations under the Contract where such delay or failure is due to civil commotion, riot, invasion, war, threat or preparation for war, act of terrorism, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster, industrial dispute, political interference with our normal operation or any other event attributable to any cause of whatever nature outside our reasonable control (“Force Majeure Event”).

8.2 We shall immediately notify you in writing of the existence of the Force Majeure Event and of the anticipated duration and shall use reasonable endeavours to overcome the effects of the Force Majeure Event. We shall be entitled to an extension of time sufficient to take account of a Force Majeure Event.

8.3 If a Force Majeure Event prevents us from performing our obligations under the Contract or if the extension of time under paragraph 8.2 continues for a period of 6 months you may terminate this Contract provided that you shall pay us all outstanding fees earned by us for Services and Additional Services performed (whether wholly or in part), all expenses and other disbursements and VAT incurred up to and including the date of termination under this paragraph.

9 INTELLECTUAL PROPERTY RIGHTS

9.1 The copyright in all documents provided by us in connection with the Services belongs to us. However, subject to payment of our fees, we will allow you to use them by granting to you an irrevocable, non-exclusive, royalty free licence to copy and use the documents for all purposes related to the Project. We shall not be liable for any use of such documents for any purpose other than that for which they were prepared.

10 ASSIGNMENT AND SUB-CONTRACTING

10.1 Neither you nor we may assign or transfer all or any part of the Contract without the written consent of the other.

11 COMMUNICATIONS

11.1 Any notices to be given under the Contract shall be given in writing and delivered by receipted hand delivery or recorded delivery post or fax or e-mail to the address of the party as stated in the Engagement Letter.

12 RESOLVING PROBLEMS AND COMPLAINTS

12.1 It is our policy to investigate complaints in relation to our conduct of a matter fully and promptly and to this end we operate a clients' complaints procedure, a copy of which is available upon request. We will use all reasonable endeavours to resolve complaints by negotiation or other non-adversarial means such as mediation, this being subject to either side's statutory right to have any dispute resolved by adjudication in accordance with paragraph 13 below.

12.2 In this regard we will consider with you whether it would be appropriate to refer the dispute to the Surveyors Arbitration Scheme operated by the Chartered Institute of Arbitrators.

13 ADJUDICATION

13.1 If the Housing Grants Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) applies to the Contract, the Scheme for Construction Contracts (England and Wales) Regulations 1998 shall also apply save for the following amendments:

(a) the final date for payment of any sum which becomes due under the Contract shall be 28 days from the date of our invoice.

(b) the adjudicator nominating body shall be the Royal Institution of Chartered Surveyors; and

(c) any notice of adjudication to be served upon us shall be served on the Company Secretary at The BCS Consulting Group Ltd, 5th Floor, 85 Strand, London, WC2R 0DW

with a copy to the Director responsible for the Services.

14 SEVERABILITY

14.1 Each term and condition contained within these terms of business shall be regarded as creating separate, severable and enforceable terms and conditions and in the event that any one shall be considered void or unenforceable for any reason then that term or condition shall be given effect to in its reduced or modified form and such invalidity or unenforceability shall not affect the validity of the remaining provisions of these terms of business.

15 WAIVER

15.1 Any delay or failure to exercise any right or remedy under the Contract shall not constitute a waiver of that right or remedy or preclude its exercise at any subsequent time. Any waiver of any provision of the Contract must be in writing and signed by you and us.

16 GOVERNING LAW

16.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by the law of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.