



PROFESSIONAL SERVICES ENGAGEMENT AGREEMENT

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This Professional Services Engagement Agreement ("AGREEMENT") is made as of the Effective Date specified at the end of this agreement by and between Proceed Data Migration Solutions Ltd ("PDMS") having a principal place of business at Regus House, Fort Dunlop, Fort Parkway, Birmingham, B24 9FE and XXXXXXXX ("CLIENT"), having a place of business at XXXXXXXXXXXXXXXXXXXXXXXX. Collectively PDMS and CLIENT shall be known as the "PARTIES".

The Parties agree as follows:

1. SERVICES PROVIDED BY PDMS. PDMS shall provide CLIENT certain services ("SERVICES") specified in a properly executed Statement of Work ("SOW") to be incorporated herein and made a part hereof. Each SOW shall incorporate the terms and provisions of this Agreement. To the extent a SOW provides additional and/or conflicting terms to this Agreement, the terms of the SOW shall prevail.

All PDMS subcontractors under an SOW, if any, shall be bound to perform all obligations under this Agreement as if they were being performed by PDMS.

2. CLIENT DUTIES. (a) CLIENT shall perform such duties and tasks designated in a SOW to facilitate PDMS's performance of the Services outlined there under and provide PDMS with reasonable and necessary access to CLIENT's facilities during CLIENT's normal business hours and otherwise as reasonably requested by PDMS in order to facilitate PDMS's performance of the Services outlined in each SOW. (b) CLIENT shall not contract or employ for related services with any current or former PDMS employees or subcontractors for a period of twelve (12) months from the date of this agreement.

3. FEES, EXPENSES, & PAYMENT. For all Services performed under a SOW or other request for Services that references this Agreement, CLIENT shall: (i) pay PDMS in accordance with each SOW or at the then current PDMS standard rates, whichever are applicable; (ii) reimburse PDMS for all reasonable and necessary travel and living expenses PDMS incurs performing such Services, provided such expenses are incurred in compliance with PDMS's travel and expense policy, and provided further that such expenses are incurred pursuant to an applicable SOW or other request for Services by CLIENT; and (iii) pay PDMS upon receipt of each invoice. All payments pursuant to this Agreement are non-refundable. PDMS reserves the right to invoice CLIENT five percent (5%) annual interest for any outstanding, undisputed invoice not paid within thirty (30) days after receipt. PDMS invoices shall describe the following: (i) the time period for which work and expenses are billed; (ii) the quantity of work performed; (iii) the hourly rates charged, if applicable; (iv) travel and living expenses by type and amount; and (v) totals.

4. INSURANCE. PDMS shall maintain statutory Employer's Liability Insurance as required by UK law.

5. CONFIDENTIAL INFORMATION.

5.1 DEFINITION. The term "CONFIDENTIAL INFORMATION" shall mean: (i) any and all information which is disclosed by either party ("OWNER") to the other ("RECIPIENT") verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary; and (ii) the terms, including without limitation, the pricing, of this Agreement and any proposals or other documents that preceded this Agreement. Confidential Information may include, but not be limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, CLIENT lists, employee information, financial information, confidential information concerning Owner's business or organization, as Owner has conducted it or as Owner may conduct it in the future. In addition, Confidential Information may include information concerning any of Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software).

5.2 TREATMENT OF CONFIDENTIAL INFORMATION. Owner's Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient to any third party except to those third parties operating under non-disclosure provisions no less restrictive than in this Section and who have a justified business "need to know". CLIENT shall protect the deliverables resulting from Services with the same degree of care. This Agreement imposes no obligation upon the Parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the Owner and provided further that diligent efforts are undertaken to limit disclosure.

5.3 RIGHTS AND DUTIES. The Recipient shall not obtain, by virtue of this Agreement, any rights, title, or interest in any Confidential Information of the Owner. Within fifteen (15) days after termination of this Agreement, each party shall certify in writing to the other that all copies of Confidential Information in any form, including partial copies, have been destroyed, returned, or used solely as the Owner so directs.

5.4 SURVIVABILITY. The terms of this Section 5 shall survive termination of this Agreement. If the Parties have executed a separate agreement that contains confidentiality terms prior to or contemporaneously with this Agreement, those separate confidentiality terms shall remain in full force to the extent they do not conflict.

6. **WARRANTIES AND REPRESENTATIONS.** Each party warrants that it has the right and power to enter into this Agreement and an authorized representative has executed this Agreement. PDMS warrants that the Services will be performed in a professional and workmanlike manner in accordance with recognized industry standards. To the extent Services provided by PDMS are advisory; no specific result is assured or guaranteed. PDMS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY (BY ANY TERRITORY OR JURISDICTION) TO THE EXTENT PERMITTED BY LAW, AND FURTHER PDMS EXPRESSLY EXCLUDES ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY TO THE EXTENT PERMITTED BY LAW.

7. **LIMITATION OF LIABILITY.** PDMS'S MAXIMUM LIABILITY FOR ANY ACTION ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT OR CONTRACT, SHALL BE LIMITED TO THE AMOUNT OF SERVICES FEES PAID BY CLIENT FOR THE SERVICES FROM WHICH THE CLAIM AROSE. IN NO EVENT SHALL PDMS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN.

8. **INDEPENDENT CONTRACTOR STATUS.** PDMS performs this Agreement as an independent contractor, not as an employee of CLIENT. Nothing in this Agreement is intended to construe the existence of a partnership, joint venture, or agency relationship between CLIENT and PDMS.

9. **NOTICE.** All notices or other communications referenced under this Agreement shall be made in writing and sent to the address designated above, designated in a specific SOW, or designated from time to time in writing by the Parties. All notices shall be deemed given to the other party if delivered receipt confirmed using one of the following methods: registered or certified first class mail, postage prepaid; recognized courier delivery; or electronic mail.

10. **TERMINATION OF PROFESSIONAL SERVICE.** Unless otherwise agreed to, either party may terminate this Agreement or any SOW at any time by giving the other party written notice of termination. If this Agreement or an SOW is terminated by the CLIENT, CLIENT shall pay PDMS for all work performed and for all expenses incurred prior to the effective date of termination. CLIENT shall also pay a termination fee equal to 25% of the total amount contracted for the professional service under the applicable SOW. If CLIENT provides less than ten (10) business days advance notice of an SOW termination for which professional services have been scheduled, the termination fee payable as set forth above shall be equal to 100% of the scheduled service as set forth in the SOW.

11. **POSTPONEMENT OF PROFESSIONAL SERVICE.** No penalty will be assessed if CLIENT postpones a scheduled professional service at least 20 business days or more before the start of the scheduled professional service. If CLIENT postpones a scheduled professional service at least six (6) but less than twenty (20) business days before the start of the scheduled professional service, a penalty of 25% of the amount of the scheduled professional service may be assessed. If CLIENT postpones a scheduled professional service less than six (6) business days before the start of the scheduled professional service, a penalty up to 100% of the scheduled service may be assessed.

12. CHANGES IN PROJECT PLAN. Once a project plan is agreed to by the PARTIES any changes to the scope or plan must be agreed between the PARTIES. A formal change request will be required to be filled in and actioned within 5 days of its presentation by either party.

13. PROJECT TOOLS. PDMS uses Microsoft Office 2010 and Project 2010, if the CLIENT uses any other version of Microsoft Office or Project, then at PDMS's discretion it may charge CLIENT a conversion fee to migrate work into the appropriate format.

14. WAIVER. No modification to this Agreement nor any failure or delay in enforcing any term, exercising any option, or requiring performance shall be binding or construed as a waiver unless agreed to in writing by both parties.

15. FORCE MAJEURE. Except for CLIENT's obligation to pay PDMS, neither party shall be liable for any failure to perform its obligations under this Agreement or any SOW if prevented from doing so by a cause or causes beyond its control, including without limitation, acts of God or public enemy, failure of suppliers to perform, fire, floods, storms, earthquakes, riots, strikes, war, and restraints of government.

16. SEPARATE AGREEMENTS. All Services provided herein are acquired separately from any software licenses agreed to between the Parties. Specifically, CLIENT may acquire software licenses without acquiring consulting services. CLIENT understands and agrees that this Agreement and any SOW is a separate and independent contractual obligation from any schedule relating to software licenses. CLIENT shall not withhold payments that are due and payable under this Agreement because of the status of any software licenses or schedules, nor shall CLIENT withhold payments that are due and payable relating to software licenses or schedules because of the status of work performed hereunder. In addition, the ability to provide such services are not exclusive or specific to PDMS and are commercially available from a variety of third party service providers.

17. DISPUTE RESOLUTION. Any disputes or claims under this Agreement or its breach shall be submitted to and resolved exclusively by arbitration conducted in accordance with the Alternative Dispute Resolution technique recommended by the Centre for Dispute Resolution.

18. GENERAL. (a) This Agreement taken together with any Schedules referred to in any sections hereof constitutes the entire agreement between the Parties with respect to the subject matter contained herein. All prior agreements whether or not agreed or offered and all conditions and warranties whether express or implied statutory or otherwise and all representations (other than fraudulent misrepresentation), statements, negotiations, understanding and undertakings either written or oral are superseded hereby and the parties hereby acknowledge that no reliance is placed on any such representation made but not embodied in this Agreement. (b) No alteration modification or addition to this Agreement (the Sections and/or the Schedules) nor any waiver of any of the terms hereof shall be valid unless made in writing and signed by the duly authorised representatives of both parties. (c) No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other rights or remedies. (d) This Agreement shall be subject to English law and the Parties agree to submit to the non-exclusive jurisdiction of the English courts.

The Parties hereby agree to all of the above terms and have executed this Agreement by a duly authorized officer or officer representative.

EFFECTIVE DATE:

ACCEPTED BY: [CLIENTNAME]

Authorized Signature

Printed Name and Title

ACCEPTED BY: Proceed Data Solutions Ltd

Authorized Signature

Printed Name and Title

Statement of Work
For
XXXXXXXXXXXXXXXXXX
Version 1.0

20/11/2013

Presented by:
<PDMS>

Fixed Rate Contract

CLIENT name	
CLIENT's administrator	
Project name	
Engagement duration	
Begin date	
End date	

Schedule of fixed term rates

Item description	Delivery schedule (Business days)	Cost

Payment terms

Phase	Payments due

Statement of work

Change management process

Any changes to the scope layed down in this SOW will be agreed between the PDMS and CLIENT's Project Manager. A formal change request will be required to be filled in and actioned within 5 days of its presentation by either party.

Acceptance and authorization

The terms and conditions of the PROFESSIONAL SERVICES ENGAGEMENT AGREEMENT apply in full to the services and products provided under this Statement of Work.

IN WITNESS WHEREOF, the parties hereto each acting with proper authority have executed this Statement of Work, under seal.

EFFECTIVE DATE:

ACCEPTED BY: [CLIENTNAME]

Authorized Signature

Printed Name and Title

ACCEPTED BY: Proceed Data Migration Solutions Ltd

Authorized Signature

Printed Name and Title