

Professional Services Agreement

Terms and Conditions for consultancy work:

**Delivered by Tripkit Ltd t/a RJH Cloud Consulting
for [Customer Name]**

Professional Services Agreement

This Professional Services Agreement (“Agreement”) is entered into as of [DATE] (the “Effective Date”) by and between Tripkit Ltd t/a RJH Cloud Consulting a company registered in England under number 08760737 with registered offices at 10 Henry Road, Sarisbury Green, Southampton, SO31 7PD (“CONSULTANCY COMPANY”), and [CUSTOMER NAME], a company registered in [COUNTRY] under number [REGISTRATION NUMBER] with registered offices at [REGISTERED ADDRESS] (“THE CLIENT”)

RECITALS

THE CLIENT shall engage the CONSULTANCY COMPANY to provide the services described in the attached Statement of Work (“the Services”) and the CONSULTANCY COMPANY shall perform the Services using its officers, employees or sub-contractors hereinafter known as the PRIMARY CONTRACTOR or SUBSTITUTE CONTRACTOR; and

WHEREAS, it is contemplated that over time the parties may enter into successive Statements of Work covering discrete engagements, all of which shall be covered by this Professional Services Agreement. For the avoidance of doubt THE CLIENT is not obliged to offer and the CONSULTANCY COMPANY is not obliged to accept any Statements of Work that may be offered.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, the parties agree as follows:

CLAUSE 1: SERVICES

1.1 For purposes of this Agreement, “Statement of Work” shall mean the agreement by which the parties have agreed that the PRIMARY CONTRACTOR, which, for the avoidance of doubt includes any SUBSTITUTE CONTRACTOR, will perform certain services, and “Services” shall mean the specific services to be performed by the PRIMARY CONTRACTOR pursuant to a Statement of Work. Each Statement of Work shall be substantially in the form of Exhibit A hereto (or such other format as the parties shall agree for a specific engagement) and shall be executed by both parties in order to have binding effect.

1.2 Any fixed price or not-to-exceed amount as the parties agree shall apply to the Services may be stated as such in the applicable Statement of Work.

1.3 Changes to the terms of any Statement of Work shall be made in accordance with the change control procedures described in Clause 12.2. The CONSULTANCY COMPANY shall have no obligation to proceed with any change to the scope of work described in a Statement of Work unless and until a Change Order is agreed to by the parties.

1.4 The CONSULTANCY COMPANY agrees that it shall at all times represent THE CLIENT’S best interests in the best manner it can and to comply at all times with Any of THE CLIENT’S internal policies made known to it providing such internal policies are applicable to independent suppliers.

1.5 The CONSULTANCY COMPANY shall devote such time and resources as is necessary for the proper performance of the Services to THE CLIENT during the duration of this Agreement.

CLAUSE 2: FEES AND PAYMENTS

2.1 THE CLIENT shall pay the CONSULTANCY COMPANY the amounts specified in each Statement of Work.

2.2 Unless otherwise provided in a Statement of Work, the CONSULTANCY COMPANY shall invoice THE CLIENT every month in arrears for the Services provided. All valid undisputed invoices are due and payable 14 days after the end of the month in which the invoice is received.

2.3 Unless otherwise provided in a Statement of Work, the costs as defined and agreed in the Statement of Work paid to the CONSULTANCY COMPANY will exclude expenses. The CONSULTANCY COMPANY shall invoice THE CLIENT for all approved extra expenses incurred in a calendar month together with the fee for Services for such month.

2.4 The charges by the CONSULTANCY COMPANY under this Agreement do not include taxes or duties. If THE CLIENT is required to pay or collect any local, value added, goods and services, or any other similar taxes or duties based on Services provided under this Agreement, then such taxes and/or duties shall be separately stated on the applicable invoice.

CLAUSE 3: LIMITED WARRANTY AND DISCLAIMER

3.1 The CONSULTANCY COMPANY warrants that the Services will be performed using its own skill and initiative and in a professional and workmanlike manner in accordance with currently accepted standards and best practices for Services of a similar nature.

3.2 The CONSULTANCY COMPANY warrants the accuracy of any advice, report, data or other product delivered.

3.3 If any Deliverable includes third party product, the CONSULTANCY COMPANY hereby agrees to transfer to THE CLIENT, to the extent it is legally permitted to do so, all warranties associated with such product or to otherwise arrange for the direct purchase by THE CLIENT of such product.

CLAUSE 4: INTELLECTUAL PROPERTY RIGHTS

4.1 Subject to any third party rights or restrictions and the other provisions of this Clause 4, unless otherwise stated in the Statement of Work, ownership in all intellectual property in any Deliverable shall upon delivery thereof to THE CLIENT, be with THE CONSULTANCY COMPANY.

4.2 Notwithstanding Clause 4.1, it is agreed and acknowledged that each party will retain all rights it possessed prior to the date of the relevant Statement of Work.

CLAUSE 5. CONFIDENTIAL INFORMATION

5.1 Each party agrees to treat all information and materials received from the other party that are labelled “Confidential” or “Proprietary” or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential information of the other party (“Confidential Information”). Each party further agrees to use at least the same degree of care to avoid disclosure or dissemination of the other party’s Confidential Information as it uses to protect its own confidential materials, but in any event, at least a reasonable degree of care. Neither party shall use the Confidential Information of the other party for its own benefit or for the benefit of any third party, except as expressly permitted by this Agreement.

5.2 Neither party shall disclose Confidential Information of the other party to any third party (other than its employees or independent contractors having a need-to-know) without the other party’s prior written consent; provided, however, that a party shall not be liable for the disclosure of information designated as Confidential or Proprietary by the other party if the same: (i) is in the public domain at the time of disclosure; (ii) becomes known to the other party from a third-party source under no obligation to maintain confidentiality; (iii) becomes publicly available through no fault or failure to act by the receiving party in breach of this Agreement; (iv) is already known by the receiving party when received, or is independently developed by the receiving party without reference to the information provided by the other party, as established by documentary evidence; or (v) is required by a court or other governmental authority to be disclosed, provided that the receiving party has given notice to the disclosing party of such mandated disclosure and uses reasonable efforts to assist the disclosing party in making such disclosure subject to a protective order or other confidentiality protections.

5.3 In the event the parties have executed a mutual non-disclosure agreement prior to the Effective Date of this Agreement, then for so long as such agreement remains effective during the term of this Agreement, the terms of such non-disclosure agreement shall be given precedence to this Clause 5.

CLAUSE 6: LIMITATION OF LIABILITY

6.1 The maximum cumulative liability of either Party for all claims arising under or related in any way to this Agreement whether in contract, tort (including negligence), strict liability or otherwise shall not exceed £250,000. The CONSULTANCY COMPANY agrees to maintain adequate insurance at all times to cover the abovementioned issues in at least this amount and to provide THE CLIENT proof thereof upon demand.

CLAUSE 7: INDEMNITIES

7.1 This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the CONSULTANCY COMPANY shall be fully responsible for and shall indemnify THE CLIENT for and in respect of payment of the following within the prescribed time limits:

7.1.1 any income tax, National Insurance and Social Security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services, where such recovery is not prohibited by law.

7.1.2 any liability for any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the PRIMARY CONTRACTOR or any SUBSTITUTE CONTRACTOR against THE CLIENT arising out of or in connection with the provision of the Services.

CLAUSE 8: TERM OF ENGAGEMENT AND TERMINATION

8.1 Term. The term of this Agreement shall commence on the Effective Date and will continue in full force and effect until terminated pursuant to this Clause 8.

8.2 Termination for Cause. Either party may terminate this Agreement in whole or in part (with respect to a specific Statement of Work) for a material breach of a material term. The terminating party must first give the breaching party written notice of the alleged breach and a reasonable period of 10 working days to cure the alleged breach. If the breach is not cured within the agreed upon cure period, the terminating party may terminate this Agreement or the applicable Statement of Work, as the case may be, with immediate effect upon written notice to the breaching party. Any termination hereunder shall in no way prejudice any other rights or remedies available to the non-breaching party, at law or in equity. Any termination that is limited to a given Statement of Work shall in no way impact the applicability of this Agreement or any other Statement of Work then in effect.

8.3 Termination for Bankruptcy and Related Events. If either party becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation, insolvency or receivership or makes an assignment for the benefit of its creditors or enters into an agreement for its dissolution or winding-up, then the other party may by written notice terminate this Agreement as of the date specified in such notice.

8.4 Termination on notice. Notwithstanding anything to the contrary, THE CLIENT shall be entitled to terminate this Agreement and any Statement of Work at any time at its sole discretion on four weeks written notice to the CONSULTANCY COMPANY. The CONSULTANCY COMPANY shall be entitled to terminate this Agreement at its sole discretion at any time on four week's written notice to THE CLIENT.

8.5 Effect of Termination; Transition. In the event of the termination of this Agreement or a Statement of Work for any reason, THE CLIENT shall pay the CONSULTANCY COMPANY for all of the Services fully provided in terms of this Agreement up to the effective date of termination at the rates specified in the applicable Statement of Work. Upon expiration or termination of this Agreement (or any Statement of Work), the parties shall promptly meet to negotiate in good faith a transition plan to deal with business that is on going or pending at the time of expiration or termination (the Transition Plan).

The objective of the Transition Plan will be to unwind the relationship created under this Agreement in a manner that causes the least disruption within the market place. It is contemplated that the Transition Plan will deal, among other things with the fulfilment of pending orders and outstanding tenders and the treatment of on-going service and support. The CONSULTANCY COMPANY agrees to work in good faith with THE CLIENT to ensure an orderly transition or completion of the Services, as requested by THE CLIENT, but without additional expense to the CONSULTANCY COMPANY.

CLAUSE 9: PARTIES RESPONSIBILITIES

9.1 THE CLIENT and the CONSULTANCY COMPANY shall agree the location for the PRIMARY CONTRACTOR or any SUBSTITUTE CONTRACTOR to be based during the term of any Statement of Work

9.2 THE CLIENT shall provide access to any of THE CLIENT'S business systems that are required to enable completion of the Statement of Work during the term of the Statement of Work.

CLAUSE 10. EMPLOYEES

10.1 Non-Solicitation. During the term of any Statement of Work and for twelve (12) months thereafter, neither party will solicit for employment any employee or contractor of the other who was directly involved in the Services performed pursuant to such Statement of Work.

10.2 Independent Contractor. The parties agree that in giving effect to this Agreement, neither party shall be or be deemed to be an agent or employee of the other for any purpose and that the relationship of the parties is that of independent contractors. In addition, nothing in this Agreement shall constitute a partnership or a joint venture between the parties, and neither party shall have the right to enter into any form of agreement or contract or in any way pledge the credit of or incur any expenses or liabilities on behalf of the other party or in any way bind the other party to any obligation to a third party.

10.3 Staffing. The CONSULTANCY COMPANY'S PRIMARY AND SUBSTITUTE CONTRACTORS shall at all times remain under the direction and control of the CONSULTANCY COMPANY. The CONSULTANCY COMPANY shall have the right to request that one or more substitutes of equivalent expertise to work in place of the PRIMARY CONTRACTOR ("the SUBSTITUTE CONTRACTOR").

CLAUSE 11: ARBITRATION

11.1 Internal Escalation. In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with this Agreement (including disputes as to the creation, validity, interpretation, breach or termination of this Agreement) (each a "Dispute"), then upon the request of either party, each of the parties will appoint a senior business executive whose task it will be to meet with the other party's senior business executive for purposes of resolving the Dispute. Such executives will act promptly and in good faith to resolve such matter amicably and without the involvement of third parties.

If, however, such persons are unable to resolve the Dispute within thirty (30) days following the initial request escalating the Dispute to management (or such longer period of time as the parties may mutually agree in writing), either party may refer the Dispute to the English Courts in accordance with Clause 11.3. If and only if each of the parties' senior executives agree to mediation, then compliance with Clause 11.2 shall be a precondition to initiating legal proceedings.

11.2. Mediation. Either Party may, at any time upon written notice and in any event within ten (10) days after the conclusion of the escalation process required by Clause 11.1, elect to utilise a non-binding resolution procedure whereby each party presents its case at a hearing (the “Hearing”) before a panel consisting of up to three representatives per party with at least one senior executive of each of the parties and a mutually acceptable neutral adviser selected from a list of mediators to be agreed. The Hearing will occur no more than twenty-one (21) days after the mediation process is initiated. Each Party may be represented at the Hearing by lawyers. The parties shall each bear their respective costs incurred in connection with this procedure, except that they shall share equally the fees and expenses of the neutral adviser and the costs of the facility for the Hearing. If the outcome of the Hearing is unsuccessful then either party shall be free to proceed to refer the Dispute to the English Courts under Clause 11.3

11.3. Referral to the English Courts

If the Dispute cannot be resolved by escalation within the requisite time period and is either not submitted to mediation or not subsequently resolved by mediation within the requisite time period, then either Party may within ten (10) days after the completion of escalation or mediation, as the case may be, submit the Dispute to the English Courts for determination

CLAUSE 12: GENERAL

12.1 Force Majeure. Neither Party shall be responsible for any failure to perform or for any delay in performance of the terms of this Agreement or any Statement of Work where the failure or delay is due to: (i) acts of God; (ii) strikes, lockouts or other labour disturbances from whatever cause arising; (iii) fire, flood, accident, war, riot, insurrection, civil disturbance, terrorist activity, disruption of internet systems, (iv) enactment, promulgation or issuance of any laws, regulations, orders or decrees of any competent governmental, regulatory or judicial authority; or (v) without limiting the generality of the foregoing, any other circumstances of like or different character beyond the relevant Party’s control. Upon written notice to the other party, either party shall be released from all on going obligations (other than payment for services previously delivered) under the applicable Statement of Work in the event a Force Majeure Event lasts more than thirty (30) days or is such as to render continuation or completion of the Statement of Work impossible.

12.2 Change Control.

12.2.1 Either party may request a material change to a Statement of Work by initiating a change Order describing the nature of and reason for the change. THE CLIENT shall advise the CONSULTANCY COMPANY, in writing, of the desired change, with the same degree of specificity as in the relevant Statement of Work.

12.2.2 The CONSULTANCY COMPANY will assess the impact of the desired changes on: (i) the total cost of the Services to be provided under this Agreement; (ii) the milestones to be reached; (iii) the time frame for completion; and (iv) any other areas which in the opinion of the CONSULTANCY COMPANY, are likely to be affected by the desired changes, and shall prepare a Change Order incorporating a detailed description of the changes and such impacts.

12.3 Amendment and Waiver. No provision of this Agreement may be amended, waived or impaired, by any act or omission of either party and this Agreement may not be amended except by the express written consent of both parties. Forbearance or indulgence by either party in any regard shall not

constitute a waiver of any provision of this Agreement.

12.4 No Assignment. Neither party may assign this Agreement or any rights or obligations under this Agreement to a third party without the express written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, either party may assign this Agreement to any entity that succeeds to or acquires substantially all of the business of such party as relates to this Agreement via merger, acquisition or other business combination

12.5 Entire Agreement. Except as provided in Clause 5.6, this Agreement, the CONSULTANCY COMPANY'S standard terms and conditions, together with all Statements of Work attached hereto constitutes the entire understanding and agreement between the CONSULTANCY COMPANY and THE CLIENT and supersedes all prior agreements, representations, understandings, meetings or proposals between the parties whether written or oral. For greater certainty, there are no warranties, representations, understandings or other agreements between the parties in connection with the subject matter of this Agreement except as and only to the extent specifically set forth herein.

12.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Both parties submit to the exclusive jurisdiction of the English Courts.

12.7 Limitations of Actions. No action, lawsuit or other legal action, regardless of the form thereof, may be brought by either party more than one (1) year following the date on which the cause of action arose.

12.8 Severability. In the event that any one of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. If any provision of this Agreement is held to be invalid then the parties will negotiate in good faith a substitute provision that most closely corresponds to the original intention of the parties.

12.9 Partnership. Nothing in this Agreement shall constitute or be deemed to constitute a partnership or joint venture of any nature between the parties.

12.10 Third Party Rights. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

12.11 Survival. The parties agree that those sections of this Agreement which by their nature are intended to survive the expiration or termination of this Agreement shall survive, including but not limited to: Clause 4 (Intellectual Property Rights), Clause 5 (Confidential Information), Clause 6 (Limitation on Liability), Clause 7 (Indemnities) and Clause 10.1 (Non Solicitation).

12.12 Counterparts. This Agreement may be executed in counterparts, and by facsimile signatures, both of which when taken together shall constitute one and the same instrument and agreement between the CONSULTANCY COMPANY and THE CLIENT. The parties shall provide original signed documents to each other as soon as they become available. Any delay in providing original documents shall not affect the coming into force or the validity of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date.

THE CONSULTANCY COMPANY	THE CLIENT
Tripkit Ltd t/a RJH Cloud Consulting	[Client Name]
Name:	Name:
Title	Title:
Signature:	Signature:
Date:	Date: