

# **Envitia G-Cloud 14 Professional Services Agreement**

**[AGXXX-XX]** |

This Agreement number [XXX-XX] is made on the [XXX]

Between:

[Company Name]  
Company Address

(hereinafter called "XXX")

And

Envitia Limited  
North Heath Lane  
Horsham  
West Sussex  
RH12 5UX

(hereinafter called "Envitia")

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## **1. Definitions**

- 1.1 “Agreement Number” shall mean the AG number specified on the cover page and in the header on each page that uniquely identifies this Agreement.
- 1.2 “Charges” shall mean Fees and Expenses as further defined in Clauses 1.5 and 1.6 respectively.
- 1.3 “Commencement Date” shall mean the date specified on the cover page of this Agreement.
- 1.4 “Confidential Information” shall mean all technical and commercial information communicated in oral or written form relating to [XXX] or Envitia’s respective businesses, facilities, products, techniques and processes, source and object codes, calculations, designs, logic, coding, readable or computer or other machine readable data, logic diagrams, flow charts, coding sheets, listings, test plans, test data, test logs, operating instructions, maintenance instructions and other manuals documents papers and materials which are not in the public domain.
- 1.5 “Expenses” shall mean travel, accommodation, subsistence and out-of-pocket expenses incurred in providing the Services or as further defined in the Service Schedule.
- 1.6 “Fees” shall mean the amount chargeable to [XXX] for the provision of the Services on a time and material basis at Envitia’s rates stated in the Service Schedule, exclusive of Expenses.
- 1.7 “Materials” shall mean any design, specification, instruction, software, information, data or other like documents supplied by either party to this Agreement to the other for the performance of the Service.
- 1.8 “Proprietary Software” means computer programs together with related materials including but not limited to tapes, CD-ROM, listings user manuals in which [XXX], its principals or suppliers have intellectual property rights.
- 1.9 “Service Schedule” shall mean [XXX]'s standard form for ordering Services an example of which is attached and shall specify the Services and applicable Charges. Each Service Schedule shall constitute a separate agreement and shall be governed by the terms of this Agreement and shall reference the Agreement Number.
- 1.10 “Services” shall mean work performed by Envitia for [XXX] pursuant to a Service Schedule agreed to by the parties under this Agreement.

## **2. Recital**

- 2.1 This Agreement covers the terms and conditions for the supply of Services by Envitia to [XXX] on a time and materials basis.

### **3. Term**

- 3.1 This Agreement shall commence on the Commencement Date and shall govern Services provided in subsequent Service Schedules that reference this Agreement unless terminated sooner as provided for in Clause 12

### **4. Services**

- 4.1 Envitia will provide to [XXX] the Services specified on the Service Schedule, under the terms of this Agreement.

### **5. Charges**

- 5.1 Services shall be provided for the Fees shown in the Service Schedule. Any estimate of time or days work required to perform Services or a monetary limit stated in the applicable Service Schedule, shall be deemed an estimate for [XXX]'s budgeting and Envitia's resource scheduling purposes. After any such estimate of time, days work or monetary limit is expended, Envitia will continue to provide the Services only if a new Service Schedule is signed by the parties.

### **6. Orders**

- 6.1 [XXX] shall issue a purchase order or other duly authorised instruction for Envitia to provide the Service on or before commencement of Service under the applicable Service Schedule.

### **7. Payment**

- 7.1 Envitia shall invoice [XXX] monthly, unless otherwise expressly specified in the applicable Service Schedule. Charges together with applicable Value Added Tax shall be payable within 30 days from the date of invoice. Late payment will bear interest at the rate of 2% above the base rate of Barclays Bank Plc.

### **8. [XXX]'s Obligations**

- 8.1 Where any work or Services are to be carried out at [XXX]'s premises then [XXX] shall, subject to compliance by the Envitia's personnel with [XXX]'s safety and security requirements, allow Envitia full and complete access to the areas where Services are to be performed and will provide adequate office accommodation and facilities for any of Envitia's staff working on its premises as required.

- 8.2 [XXX] will provide Envitia with all necessary co-operation, information, equipment, data and support that may reasonably be required by Envitia for the performance of its obligations hereunder, including access to suitably configured computer products at such times as Envitia requests.

## **9. Warranty**

- 9.1 Envitia warrants that the Services will be performed with reasonable skill and care consistent with generally accepted computer software services industry practices. To the extent permitted by law, all other warranties and conditions or other terms, whether express or implied, are expressly excluded, including the implied warranties or conditions of merchantability, satisfactory quality and fitness for a particular purpose.
- 9.2 Both parties warrant that where participation by their respective personnel is necessary in the execution of this Agreement, such personnel shall possess the appropriate skills and experience for any tasks assigned to them.
- 9.3 [XXX] shall report in detail any deficiencies in any Service to Envitia in writing within 30 days of completion of the Service. In the event of a breach of any warranty [XXX] shall allow Envitia a reasonable opportunity to correct errors that cause the breach of the warranty or perform the Service again so as to comply with the warranty set out in Clause 9.1.

## **10. Confidentiality**

- 10.1 Envitia and [XXX] agree to keep the Confidential Information confidential and not to disclose or permit it to be disclosed to any third party except as necessary to enable Envitia and [XXX] to perform this Agreement.
- 10.2 Confidential Information shall not include information which;
- 10.2.1 becomes a part of the public domain through no act or omission of the other party;
  - 10.2.2 was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party;
  - 10.2.3 is lawfully disclosed to the other party by a third party without restriction on disclosure;
  - 10.2.4 is independently developed by the other party; or
  - 10.2.5 is disclosed by operation of the relevant law.
- 10.3 The obligations of the parties under this Clause 10.3 shall survive the expiry or the termination of this Agreement for whatever reason

## 11. Controlled Information

11.1 This Condition shall apply in addition to and notwithstanding clause 10 or any other confidentiality condition of the Agreement.

11.2 For the purposes of this Condition “Controlled Information” shall mean any information in any written or tangible form which is disclosed to one party by or on behalf of the other party in connection with the Agreement, and which is identified by the legend “Controlled Information” or other approved legend notified to the Agreement or. Controlled Information shall exclude information provided by oral communication.

11.3 The receiving party shall:

11.3.1 hold the Controlled Information and not to use it other than for the purpose of discharging its obligations under the Agreement;

11.3.2 not to copy the Controlled Information except as strictly necessary for the purposes of discharging its obligations under the Agreement;

11.3.3 not to disclose the Controlled Information to any third party unless so authorised in writing beforehand by the other party;

11.3.4 protect the Controlled Information diligently against unauthorised access and against loss; and,

11.3.5 act diligently to ensure that

11.3.5.1 Controlled Information is disclosed to its employees only to the extent necessary for the purposes of discharging its obligations under the Agreement;

11.3.5.2 employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Condition.

11.4 Where Controlled Information is provided to either party, it shall:

11.4.1 compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;

11.4.2 maintain this register for the duration of the Agreement and for two years following completion of the Agreement;

11.4.3 make the register of access available to the other party upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Condition; and,

11.4.4 at the completion of the Agreement, return to the other party all original and duplicate copies of the Controlled Information, or else at the other party's option destroy these copies and provide a certificate of destruction to the other party.

11.4.5 This Condition shall not diminish or extinguish any right of either party to copy, use or disclose any other information to the extent that it can show:

- 11.4.6 that the information concerned was or has become published or publicly available for use without breach or any provision of the Agreement or any other agreement between the parties;
- 11.4.7 that the information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with the Agreement;
- 11.4.8 that the information concerned was lawfully provided by a third party without restriction on use or further disclosure; or
- 11.4.9 from its records, that the information was derived independently of the Controlled Information;

to the extent that copying use or disclosure of this other information shall not disclose its relationship to any Controlled Information

## **12. Termination**

- 12.1 Either party may terminate this Agreement or Service Schedule upon 30 days written notice to the other party. [XXX] shall be liable to pay all Charges up to the effective date of such termination.
- 12.2 Either party may terminate a Service Schedule if the other party is in material breach of this Agreement following written notice specifying the breach and where a breach capable of remedy has not been cured within 30 days of receipt of such written notice. Consent to extend the cure period shall not be unreasonably withheld, so long as the party in breach has commenced cure during the 30 day notice period and pursues cure of the breach in good faith.
- 12.3 The parties' rights and obligations under Clauses 7, 13, 14 and 9 shall survive termination of this Agreement.
- 12.4 Termination of this Agreement or any Service Schedule shall not prevent either party from pursuing any other remedies available to it nor shall termination relieve [Company Name] of its obligations to pay all Charges that have accrued prior to such termination.

## **13. Indemnity**

- 13.1 Either party to this Agreement providing Materials "Provider" will defend and indemnify the other party to this Agreement receiving such Materials "Recipient" against a claim that any Material furnished by the Provider and used by the Recipient as permitted by the terms of this Agreement infringes the intellectual property rights of a third party.
- 13.2 The Recipient shall promptly notify Provider of any infringement of any intellectual property rights owned by a third party which comes to Recipient's notice and will at Provider's cost provide such assistance as Provider may require in that connection. Provider shall have the sole conduct and shall bear the costs of any infringement claim or proceedings by or against any third party.



- 13.3 In the event that some or all of the Material is held or is believed by the Provider to infringe a third party's copyright or patent, the Provider shall have the option at its expense:
- 13.3.1 to modify the Material to be non-infringing or supply substitute non-infringing material to the Recipient;
  - 13.3.2 to obtain for the Recipient the right to continue using the Material; or
  - 13.3.3 to require return of the infringing Material from the Recipient and terminate all rights thereto. If such return materially affects either party's ability to meet its obligations under the relevant Service Schedule, then either party may by written notice, terminate the Service Schedule in accordance with Clause 12.1. If Envitia is the Recipient then upon such termination Envitia shall be entitled to recover the Fees paid by Envitia for that portion of the Material. If [XXX] is the Recipient, then upon such termination [XXX] shall be entitled to recover the Charges for Services requested up to the date of termination together with the costs of committed resources in accordance with Clause 12.
- 13.4 The Provider shall have no liability for any claim of infringement resulting from;
- 13.4.1 the Recipient's use of a superseded release of some or all of the Material if such infringement would have been avoided by the use of a subsequent unaltered release of the Material which is provided or offered to be provided to the Recipient; or
  - 13.4.2 any information, design, specification, instruction, software, data or material not furnished by the Provider.
- 13.5 This Clause 13 states the parties' entire liability and exclusive remedy for infringement of any third party's intellectual property rights.

## **14. Limit of Liability**

- 14.1 Nothing in this Agreement shall limit either party's liability for personal injury or death caused by the negligence of either party.
- 14.2 Each party shall indemnify the other for all sums which are legally payable as compensation in respect of accidental loss of or damage to either party's tangible property caused by the other party's employees.
- 14.3 Unless otherwise expressly stated in this Agreement, and whether or not Envitia has been advised of the possibility of such loss, Envitia shall not be liable in contract, tort or otherwise for indirect or consequential loss of any kind including but not limited to; loss of revenue; loss of profits; loss of business or goodwill; loss of damage to or corruption of data; or loss of availability arising out of or in connection with or in relation to the provision of the Services or otherwise under, in connection with or in relation to this Agreement.
- 14.4 Subject to Clauses 14.1, 14.2 and 14.3 above, Envitia's total liability in connection with this Agreement shall be limited to the Fees paid for the Services or the sum of £50,000 (Fifty Thousand Pounds Sterling) which ever is the lesser.

## **15. Proprietary Rights**

- 15.1 Envitia acknowledges that all proprietary rights in the results arising from the Service will at all times and for all purposes vest and remain vested in [XXX].

## **16. Law**

- 16.1 English law shall govern the validity construction and performance of this Agreement.
- 16.2 The language of this Agreement shall be English.
- 16.3 In the event of any dispute arising between the parties in connection with this Agreement which cannot be resolved by the parties immediate contract representatives, senior representatives of the parties will, within twenty-one (21) days of a written request from either party to the other, meet in good faith to attempt to resolve the dispute without recourse to legal proceedings, failing which this agreement is subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.

## **17. Force Majeure**

- 17.1 Neither party shall be in breach of this Agreement if there is any total or partial failure of performance by it of its duties and obligations under this Agreement occasioned by any act of God, fire, act of government, war, insurrection, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes or any other reason beyond the reasonable control of either party.

## **18. Rights of Third Parties**

- 18.1 A person who is not a party to this Agreement has no right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **19. No Poaching**

- 19.1 For the term of this Agreement and for a period of six months thereafter, without the prior written consent of the other party, neither party will either directly or indirectly solicit or entice away (or seek or attempt to entice away) from the employment of the other party any person(s) employed (or any person(s) who have been so employed in the preceding six months) by such other party.

## 20. General

- 20.1 This Agreement shall not be amended, modified, varied or supplemented except in writing signed by duly authorised representatives of the parties.
- 20.2 Any notice given under this Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by mail or facsimile to the address set out on the cover of this Agreement for a party or such other address as the party may from time to time designate by written notice to the other.
- 20.3 Any such notice shall be deemed to have been received by the addressee five working days following the date of despatch by post or where the notice or other document is given by facsimile simultaneously with delivery or transmission. To prove the giving of a notice or other document it shall be sufficient to show that it was despatched.
- 20.4 No failure or delay on the part of either party hereto to exercise any right or remedy under this Agreement shall be construed or operated as a waiver thereof.
- 20.5 If any provision of this Agreement shall be found by any court to be invalid, void or unenforceable the parties agree that the remaining provisions of the Agreement shall not be affected and that the remainder shall remain enforceable.
- 20.6 In case of any discrepancies between the Service Schedule and the main text to this Agreement the former shall always prevail provided it is signed by duly authorised representatives of both the parties. In all other cases this Agreement shall prevail.
- 20.7 Envitia is an independent contractor and nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as employment related taxes.
- 20.8 This Agreement embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of this Agreement. The parties warrant to each other on the commencement date of each Service Schedule that the complete agreement and understanding of the parties related thereto is contained in the terms of this Agreement and such Service Schedule.

This Agreement is executed by:

For and on behalf of:  
[XXX]

For and on behalf of:  
Envitia Limited

Signed: .....

Signed: .....

Name: .....

Name: .....

Title: .....

Title: .....

Date: .....

Date: .....

**ENVITIA LIMITED**  
**Professional Services Agreement**

**SERVICE SCHEDULE**

Agreement No: [UAGXXX-XX]  
Envitia Purchase Order No: [UPOXXX-XX]  
Project / Assignment No: [to be determined]

This Service Schedule together with the Professional Services Agreement identified above between Envitia and [XXX] constitute the entire Agreement for the provision of the Work detailed below:

**1. Work Statement**

[to be determined]

**2. Resource**

Envitia will provide the following Consultants or other qualified staff to provide the Service at the Fee rates specified:

Description	Fee Rate	Minimum Days
[to be determined]	[to be determined]	[to be determined]
[to be determined]	[to be determined]	[to be determined]

[statement about expenses: to be determined]

**3. Payment Schedule**

[to be determined]

**4. Scheduled Service Dates**

...

**5. Location of Service**

....

**6. Billing Address**

Name:

Address:

Telephone:

**7. [Company] Project Manager:**

[to be determined]

**8. Contractor Project Manager:**

[to be determined]

Signed for and on behalf of:  
[XXX]

Signed:.....

Name:.....

Title:.....

Date:.....

Signed for and on behalf of:  
Envitia Limited

Signed:.....

Name:.....

Title: .....

Date:..... |