

G-Cloud Services - CONSULTING SERVICES

This Agreement is signed between Fuel Professional Services whose registered office is at 17 Waterloo Place, Leamington Spa, Warwickshire CV32 5LA known as “Fuel PS” or “the Company” and “the Client” as listed in the SOW.

Definitions

“**Company**” Fuel Professional Services and its parents or subsidiaries

“**Confidential Information**” of a party (the “Disclosing Party”) means all information of the Disclosing Party, which has value by virtue of not being publicly known and which is disclosed or otherwise made available to the other (the “Receiving Party”) under this Agreement;

“**Fee(s)**” means the fee(s) set out in the SOW;

“**Force Majeure**” means any event beyond the reasonable control of the affected party;

“**Initial Term**” means the minimum term for which Fuel Professional Services will provide the Services as set out in the SOW;

“**Statement of Work**” or “**SOW**” means the document which lists the Services that the Client has chosen and the related fees and together with these Terms forms a written Contract between the Parties;

“**Services**” means the services to be provided by us as set out in the SOW;

1. The Agreement

1.1 The agreement made by the Parties that comprises the SOW and these terms and conditions, collectively the “Agreement”, shall be interpreted in the order of priority as stated in the SOW in the event of any inconsistency or conflict with documents appearing later.

1.2 The Agreement shall be deemed accepted by the Client upon the first of (i) the Client’s signature of the SOW, (ii) the Client’s instruction to commence work, (iii) Fuel Professional Services starting work at the Client’s site or (iv) the Client’s payment of any agreed fee.

1.3 Variations or additions to the Agreement can be made. However, authorised representatives of both Parties must agree to the variation or addition in writing.

2. Provision of Services

2.1 Fuel Professional Services warrants that it will perform the Services described in the SOW with reasonable skill and care and in a good and workmanlike manner. The standard by which the performance of the services will be measured is the professional standard expected of an experienced provider of consultancy services.

2.2 Fuel Professional Services will use consultants with appropriate skills and experience for the provision of the services. Fuel Professional Services may only replace those consultants with consultants of suitable experience and suitability.



2.3 Fuel Professional Services agrees to deliver the Services within a reasonable time. Both Parties will use all reasonable endeavours to meet any target date, project plan or timetable referred to in the Agreement.

3. Fees and Payment

3.1 The Agreement sets out the proposed fees, costs and expenses for the Services. Fees for consultancy based on time and materials or on an estimate do not constitute a fixed price. Fees which are considered to be subject to a Fixed Price shall be explicitly stated in the SOW.

3.2 All fees, costs and expenses referred to in the Agreement are exclusive of VAT, sales and similar taxes of any kind. Commercial in confidence

3.3 The Client shall pay all fees, costs and expenses related to the Services upon presentation of Fuel Professional Services' invoice.

3.4 In the event that invoices are not paid within 30 days from presentation of the invoice, Fuel Professional Services will be entitled to suspend performance of the Services and / or to charge interest on any outstanding amount.

4. Confidentiality

4. In this section "Confidential Information" means any information (in whatever form) which is of a confidential nature and which relates to a Party's business or that of its group companies (for the purposes of this Agreement, a group company is a company controlling, controlled by or under common control with a Party to this Agreement), the provision of the services or the Agreement and which is disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") or which the Receiving Party learns during the provision of the services or otherwise as a result of entry into this Agreement.

4.2 The definition of Confidential Information does not include any information:

- a) which is already known by the Receiving Party without an obligation of confidence; or
- b) which is or comes into the public domain without breach of this Agreement; or
- c) which is independently developed or created by the Receiving Party without use of the Confidential Information supplied; or
- d) lawfully received from a third Party without obligation of confidence.

4.3 The Receiving Party will treat the Disclosing Party's Confidential Information with the same degree of care as it treats its own confidential information and, as a minimum, with reasonable care.

4.4 During the provision of the Services and for three (3) years from completion thereof or other termination of this Agreement, the Receiving Party agrees that it will keep the Disclosing Party's Confidential Information confidential and subject to clause 4.5 below not disclose such Confidential Information to any third Party.

4.5 The prohibition referred to in clause 4.4 above will not apply where disclosure of the Confidential Information is:

4.5.1 Reasonably required by a company within the same group;



4.5.2 Reasonably required by the Parties' advisors or sub-contractors;

4.5.3 Provided that any disclosure as a result of the exceptions in clauses 4.5.1 and 4.5.2 above will only be made if such third Party is under a no less onerous obligation of confidentiality than as set out in this Agreement.

4.5.4 Reasonably required if as Party of the provision of the services the Client requires Fuel Professional Services to work with any third-Party supplier or other group company of the Client;

4.5.5 Required by a court or by law or by a regulatory authority. The Receiving Party shall give as much notice to the Disclosing Party as is reasonably practicable in the circumstances, and the Receiving Party shall assist the Disclosing Party in limiting the extent of such disclosure;

4.5.6 Consented to in writing by the other Party.

5. Client's Obligations

5.1 Fuel Professional Services may need access to the Client's facilities, information and resources for and during the provision of the Services. The Client, without charge to Fuel Professional Services, will provide access to these to the extent reasonably requested by Fuel Professional Services and shall co-operate with Fuel Professional Services to the extent reasonably required to achieve the objectives set out in the Agreement. Commercial in confidence

6. Intellectual Property and Rights of Use

6.1 Intellectual Property ("IP") means all forms of intellectual property, including, without limitation, property in and rights under copyright, patents, conceptual solutions, circuit layout rights, performance rights, design rights, designs, database rights, trade names, trademarks, service marks, methodologies, ideas, processes, methods, tools and know-how and entitlement to make application for formal (or otherwise enhanced) rights of any such nature.

6.2 IP and rights to IP owned by either Party on the date of the Agreement or created outside the terms of this Agreement and all modifications thereto and derivative versions thereof created during the services ("Background IP") shall remain the property of that Party.

6.3 The Client hereby grants to Fuel Professional Services a royalty-free, non-exclusive, non-transferable licence to use the Client's Background IP as required to allow Fuel Professional Services to perform its obligations under the Agreement.

6.4 IP created or developed by Fuel Professional Services within the provision of the services ("Foreground IP") and rights to such IP will be owned by Fuel Professional Services.

6.5 Upon completion of the Services and on receipt of payment in full by Fuel Professional Services, Fuel Professional Services will grant to the Client a royalty-free, non-exclusive, non-transferable licence to use any Foreground IP and Fuel Professional Services' Background IP as



required to allow the Client to use the deliverables produced by Fuel Professional Services for the objectives set out in the Agreement.

6.6 The licence referred to in clause 6.5 will be terminable by Fuel Professional Services if the Client uses or seeks to use the Foreground IP and Fuel Professional Services' Background IP for purposes other than those described in clause 6.5.

6.7 Fuel Professional Services warrants that to the best of Fuel Professional Services' knowledge and belief the results of the Services shall not infringe the copyright of any third Party.

7. Third Party Services/Software

7.1 At the Client's request Fuel Professional Services may provide Third Party Software with the Services if detailed specifically in the SOW.

7.2 If this Agreement indicates that the Client will use Third Party Software as part of the Services, the Client agrees to the Third-Party Software Licence Terms as defined in SOW for Third Party Software and agrees that Client may not resell the Services. The Client agrees that Third Party Software licence terms shall take precedence over any other terms of this Agreement.

7.3 The Client agrees that the use of Third-Party Software owner's products is at the Client's sole risk and Fuel Professional Services are not responsible in any way for their performance, features or failures.

7.4 The Client's rights to use the Software are subject to the usage rights granted by the Third-Party Software owner. The Client acknowledges that the usage rights of software may vary from product to product and agrees to abide by such rights. The Client is deemed to accept the usage rights in relation to the software set out in the SOW by placing the order with the Company.

7.5 The Client agrees that any software provided by the Company or Third-Party Software owner will remain the property of the Company and/or Third-Party Software owner and cannot be taken, transferred or re-assigned. Commercial in confidence

8. Termination

8.1 Either Party may at any time at the end of the Initial Term and without cause terminate the Agreement on giving 30 days written notice of termination to the other Party.

8.2 Upon termination under clause 8.1, the Client shall pay Fuel Professional Services all sums due in respect of the Services provided and expenses incurred prior to termination.

8.3 Either Party may terminate the Agreement forthwith by written notice if the other Party commits an act of bankruptcy or goes into liquidation or is put into liquidation (other than for a proper commercial purpose and whilst solvent) or a receiver is appointed or an administration order is made in respect of it.

8.4 Either Party may terminate the Agreement forthwith by written notice if the other Party commits a material breach of the Agreement and has failed to remedy the breach within 30 days of receipt of a written notice from the other Party identifying that the breach has occurred.



8.5 Involvement by either Party in unethical business practices shall always be considered a material breach which is not capable of remedy. Such practice includes, but is not limited to, either Party or anyone acting on a Party's behalf (with or without the knowledge of that Party):

8.5.1 engaging in any unethical or illegal activities in connection with the project or any agreement related to the project;

8.5.2 offering or giving any bribes or gifts to any individual or organisation involved in any way with the project;

8.5.3 requesting or accepting any bribes or gifts from any individual or organisation involved in any way with the project;

8.5.4 offering or paying any commission or other payment to any individual or organisation involved in any way with the project unless the full circumstances of such commission or payment are declared in writing to the other Party and, where applicable, any end-client in advance; or

8.5.5 accepting any commission or other payment from any individual or organisation involved in any way with the project unless the full circumstances of such commission or payment are declared in writing to the other Party and, where applicable, any end-client in advance.

8.6 Termination shall not affect any accrued rights or liabilities arising out of the Agreement.

8.7 Termination shall not affect the Clients licence rights to use the Third-Party Software owner's products unless such termination is caused by Clients breach of Third-Party Software owner's terms.

9. Limitations and Exclusions

9.1 Each Party accepts liability without limit for death or personal injury to any person due to its negligence or the negligence of its employees.

9.2 Each Party accepts liability for physical damage to or loss of the other Party's tangible property, if the damage or loss is due to its negligence or breach of contract. For the purposes of this clause, liability will be capped at £1,000,000 in respect of any one incident or series of connected incidents and is further capped at a maximum aggregated amount of £2,000,000 in respect of all claims falling within the ambit of this clause.

9.3 In respect of any liability other than those falling within clauses 9.1 and 9.2 above, each Party's total liability arising out of or in connection with the Agreement shall not exceed in aggregate 125% of the total fees payable by the Client under this Agreement excluding any Third-Party Software licence fees.

9.4 Neither Party shall in any circumstances be liable to the other whether in contract, tort (including negligence) or otherwise for:

9.4.1 Any loss of profit, loss of contracts, loss of benefit, loss of production, loss of availability, loss of data, loss of anticipated savings, loss of reputation, loss of goodwill or loss of use suffered or incurred directly or indirectly by the other Party.



9.4.2 Any consequential, indirect or special loss or damage howsoever arising and of whatsoever nature.

9.4.3 Any punitive or exemplary damages.

9.5 Nothing in this Clause 9 shall affect or limit the Client's obligation to pay sums properly due under the Agreement.

9.6 The express terms of this Agreement shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.

9.7 Nothing in this Agreement shall limit a Party's liability for fraud or fraudulent misrepresentation.

10. Non-Solicitation

10.1 The Client shall not, either during the provision of the Services or for a period of six months from completion, employ or offer employment to any member of Fuel Professional Services' project team.

11. Third Party Rights

11.1 No person or entity other than the Client shall have any rights to enforce any of the terms of the Agreement against Fuel Professional Services.

11.2 Fuel Professional Services does not accept any liability, howsoever arising, under the Agreement to any person or entity other than the Client.

12. Assignment

12.1 Neither Party shall assign the Agreement without the other Party's prior written consent (not to be unreasonably withheld or delayed).

13. Data Protection

13.1 Each Party warrants to the other that it has complied with and will continue to comply with the provisions of the Data Protection Act 2018 in relation to the Agreement.

14. Waiver

14.1 No failure, delay or indulgence by either Party in exercising any power or right under the Agreement shall operate as a waiver of that power or right.

15. Notices

15.1 Where the Client is required to give notice in writing to Fuel Professional Services, the notice must be addressed to the individual who signed the Agreement on behalf of Fuel Professional Services at the address set out in the Agreement.

15.2 Where Fuel Professional Services is required to give notice in writing to the Client, the notice will be addressed to the person who signed the Agreement (or that person's successor) at the



address stated in the Agreement (or current place of business if Fuel Professional Services knows this to be different).

15.3 All notices in writing must be sent by post or delivered by hand to the addressee.
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15.4 In the absence of evidence of earlier delivery:

15.4.1 A notice sent by post will be deemed to have been served two business days after posting.

15.4.2 A notice delivered by hand will be deemed received on delivery.

16. Force Majeure

16.1 Neither Fuel Professional Services nor the Client will be liable for any failure to perform their obligations, or delay in the performance of their obligations, if the failure or delay is due to causes outside their reasonable control.

17. Publicity

17.1 Neither Party shall make any statement about the services to the press or the public without the other Party's written consent.

18. Severability

18.1 If any provision or part of a provision of the Agreement is held to be invalid, illegal or unenforceable that part shall be severed, and the remaining provisions shall continue to be valid and enforceable as if the Agreement had been executed with the invalid provision omitted.

19. Entire Agreement

19.1 This Agreement constitutes the entire and only agreement in relation to the services and deliverables and supersedes all prior agreements, representations, understandings or discussions. Any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document do not form part of this Agreement. The Client acknowledges that any agreement, representation, understanding or discussion it wishes to rely upon has been recorded in the Agreement. The Client acknowledges that no reliance has been placed upon any agreement, representation, understanding or discussion that has not been embodied in this Agreement.

20. Applicable Law & Jurisdiction

20.1 The Agreement shall be governed by and construed in accordance with the laws of England and Wales.

20.2 Any dispute arising out of or in connection with the Agreement will be subject to the exclusive jurisdiction of the English Courts.

