

THIS AGREEMENT is made with effect from the day of

BETWEEN

- (1) **Beyond Systems Limited** a company incorporated in England under number 05750705 and whose registered office is 85/87 High Street West, Glossop, Derbyshire SK13 8AZ ("BEYOND");
- and
- (2) **Insert Company Name** a company incorporated in England under number [insert company reg no.] and whose registered office is at [Insert Address] ("CUSTOMER")

WHEREAS

- (1) The CUSTOMER has identified a need for expert help and assistance in the performance and completion of Cloud Support services specified in the GCloud14 Framework offering [Insert Offering] and the Schedules [Insert Schedules Ref];
- (2) BEYOND has the required level of expertise and has agreed to provide the required assistance on the terms of this agreement.

IT IS HEREBY AGREED AS THAT:

1. DEFINITIONS

- 1.1 "AGREEMENT" shall mean this document and any documentation expressly incorporated herein by reference and shall include any amendments or supplementary agreements specifically referenced hereto and effected as provided in clause 13 hereof.
- 1.2 "MATERIAL" shall include but not be limited to any document, notes, information, software, know-how or other like material supplied or created for the performance of the SERVICES.
- 1.3 "PROJECT ESTIMATE" means the project schedules setting out, amongst other things, the description of the Services and the costings;
- 1.4 "SERVICES" shall mean work performed by BEYOND for CUSTOMER under this AGREEMENT.
- 1.5 "TIMETABLE" means the timetable proposed for the provision of the SERVICES

2. CHARGES AND PAYMENTS

- 2.1 Unless expressly specified otherwise in the PROJECT ESTIMATE, SERVICES shall be provided on a time and materials ("T&M") basis. Any estimate of cost, effort or timescale provided shall be for CUSTOMER's budgetary and planning purposes only and BEYOND will continue to provide SERVICES after this estimate is exceeded on a T&M basis if requested.
- 2.2 Unless expressly specified otherwise CUSTOMER shall reimburse BEYOND for actual, reasonable travel, accommodation and out-of-pocket expenses incurred by BEYOND or its employees in providing the SERVICES.
- 2.3 All fees and expenses due will be invoiced monthly and payable 30 (thirty) days from date of invoice. The charges do not include taxes or duties. VAT will be charged at the rate current at the date of invoice. If the CUSTOMER fails to pay any amount payable under this AGREEMENT, BEYOND may charge interest at the rate of 4% above the base rate for the

time being of Barclays Bank plc BEYOND reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

- 2.4 CUSTOMER shall, within 14 (fourteen) days date of the invoice, raise any dispute on any part of the invoice with which it does not agree. CUSTOMER may withhold from payment on the due date that part of any invoice which it disputes until the dispute is resolved. Note that where invoice disputes are raised after the 14 (fourteen) days from the date of the invoice, CUSTOMER must pay within the stated payment terms. Should the resolution of the dispute be later found to be in the favour of CUSTOMER, then BEYOND will repay to CUSTOMER any excess payment within 14 (fourteen) days of the date of the resolution of the dispute.

3. CUSTOMER OBLIGATIONS

- 3.1 CUSTOMER shall provide to BEYOND any MATERIAL as may reasonably be necessary for BEYOND to fulfil its obligations under this AGREEMENT and BEYOND shall be responsible for safe custody thereof whilst in its care.
- 3.2 CUSTOMER shall afford reasonable access at all times to personnel of BEYOND or its appointed contractors subject to BEYOND conforming to all reasonable, normal security and safety requirements of CUSTOMER.
- 3.3 CUSTOMER shall provide suitable office accommodation, services, computer equipment and software necessary for BEYOND to fulfil its obligations under this AGREEMENT.

4. VARIATIONS

- 4.1 If the CUSTOMER wishes to make any variation to the functional specification as agreed by both the CUSTOMER and BEYOND or a variation to the scope of the SERVICES, the CUSTOMER will provide written details to BEYOND, BEYOND will advise the CUSTOMER in writing as soon as reasonably practicable of any changes to the fee or the TIMETABLE or any other consequences which may be caused by the proposed variation.
- 4.2 If the CUSTOMER accepts the written advice of BEYOND this AGREEMENT will be treated as amended accordingly. BEYOND shall not be required to accept any variation unless the CUSTOMER has accepted its written advice.

5. TERM AND TERMINATION

- 5.1 This AGREEMENT shall commence on its Effective Date. Either party may terminate it at any time by giving 28 days written notice.
- 5.2 This AGREEMENT may be terminated by CUSTOMER with immediate effect by written notice if BEYOND shall:
- 5.3 Commit a serious breach of this Agreement and, in the case of a breach capable of being remedied, is not remedied within 30 days of a request by the CUSTOMER to do so; or
- 5.3.1 become bankrupt or make any arrangement with its creditors, becomes insolvent, enters into receivership or liquidation, takes any action for voluntary winding-up otherwise than for the purpose of a solvent reconstruction or amalgamation or ceases to carry on business.
- 5.4 The provisions of clause 5.2 shall apply mutatis mutandis as between BEYOND and CUSTOMER upon the default or bankruptcy etc. of CUSTOMER.
- 5.5 Termination of this AGREEMENT shall not prejudice any provision herein which is expressed to remain in effect despite such termination and shall not prejudice any right of either party which shall have accrued on or before such termination.

6. FORCE MAJEURE

- 6.1 Neither BEYOND or CUSTOMER shall be liable in respect of any breach of this AGREEMENT due to any cause (hereinafter referred to as FORCE MAJEURE) beyond its reasonable control including but not limited to Act of God, inclement weather, flood, lightning, fire, industrial action,

any act or omission of Government or any other competent authority, war, military operations, riot or the act or omission of any party for whom BEYOND or CUSTOMER (as appropriate) is not responsible. This sub-clause does not apply unless the party concerned: -

- 6.1.1 notifies the other party of the relevant event and consequences as soon as possible after it occurs;
- 6.1.2 promptly provides the other party with any further information which the other party requests about the event or consequence; and
- 6.1.3 promptly takes any steps (except steps involving significant additional costs) which the other party reasonably requires in order to reduce the other parties' losses or risk of losses.
- 6.1.4 Performance under the AGREEMENT shall be resumed as soon as practicable after the FORCE MAJEURE has come to an end.

7. INDEMNITY AND LIMITATIONS

- 7.1 Notwithstanding any other provision of this AGREEMENT in no event shall either party be liable for loss of profits or indirect or consequential loss of whatever nature, howsoever caused, whether occurring in contract, tort, negligence or otherwise.
- 7.2 In respect of any loss or damage which in any way arises out of or is connected with the performance or non-performance by BEYOND, its staff, agents and sub-contractors, of any of its obligations under this AGREEMENT, BEYOND'S liability, except for liability arising from death or personal injury for which no limitation shall apply, will be limited in aggregate to the total amount paid by the CUSTOMER to BEYOND under this AGREEMENT.

8. WARRANTY

- 8.1 All SERVICES provided by BEYOND shall be performed consistent with generally accepted computer software services industry practices. Any deficiencies in the SERVICES must be reported to BEYOND in writing within 28 days of completion of those SERVICES. This warranty is exclusive and in lieu of all other warranties and conditions, whether express or implied and nothing herein shall constitute a warranty of merchantability or fitness for a particular purpose. Nothing in any description of SERVICES is intended by BEYOND as an additional warranty.
- 8.2 BEYOND will re-perform the SERVICES to remedy any breach of warranty. If BEYOND does not re-perform the SERVICES as warranted, CUSTOMER will be entitled, as exclusive remedy, to recover the fees paid to BEYOND for that part of the SERVICES which is deficient.
- 8.3 Acceptance shall occur or be deemed to occur on completion of SERVICES in accordance with this AGREEMENT.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 Any rights in the nature of Intellectual Property Rights arising in the course of the Services shall become and remain the property of BEYOND.
- 9.2 Clause 9.1 will not apply if:
 - 9.2.1 It is overridden in a specific proposal, terms of reference or other document agreed as an amendment to this AGREEMENT and/or;
 - 9.2.2 The copyright belongs to a third party e.g. extracts from Oracle documentation
- 9.3 In performing these SERVICES, BEYOND uses its accumulated knowledge and experience. Some of this is in the heads of BEYOND's directors and consultants. Some is contained in BEYOND's methods, programs, know-how and related documentation. This is referred to as BEYOND's Knowledge Base. While this Knowledge Base will be used in providing SERVICES, BEYOND must retain ownership of all rights in it for CUSTOMER's benefit and the benefit of future customers. This Knowledge Base, including any which arises in the course of providing SERVICES, is therefore excluded from clause 9.1. Where any MATERIAL delivered as part of

SERVICES is part of BEYOND's Knowledge Base, BEYOND hereby grants to CUSTOMER a non-exclusive, non-transferable, royalty free licence for CUSTOMER's own use for supporting CUSTOMER's internal data processing requirements but not further or otherwise.

- 9.4 BEYOND shall indemnify CUSTOMER against any claim that the normal use or possession of MATERIAL created by BEYOND infringes the intellectual property rights of any third party provided that BEYOND is given control of any such claim and that CUSTOMER gives BEYOND such assistance as may be reasonably required to settle or oppose any such claim provided that BEYOND shall meet CUSTOMER's costs of so doing.
- 9.5 BEYOND shall have the right to replace or change all or any part of the MATERIAL created by BEYOND in order to avoid infringement or alleged infringement.
- 9.6 Clause 9.4 shall apply mutatis mutandis between CUSTOMER and BEYOND with respect to any claim relating to MATERIAL created by CUSTOMER.

10. CONFIDENTIAL INFORMATION

- 10.1 BEYOND and the CUSTOMER shall treat as confidential and not at any time or for any reason without the written consent of the other party, except as provided in clauses 10.2.1, 10.2.2 and 10.2.3, disclose or permit to be disclosed to any person, save to those of its employees or subcontractors who require to know such information for the purposes of performing their obligations under this AGREEMENT, nor make use of or permit to be made use of, any information relating to all or part of the terms and conditions of this AGREEMENT, the technology, technical processes, business affairs or finances or any such information relating to a subsidiary, supplier, or customer of the other party.
- 10.2 Clause 10.1 shall not apply to information which:
 - 10.2.1 is in or comes within the public domain other than by breach of this AGREEMENT; and/or
 - 10.2.2 was already in possession of one party prior to receipt from the other party; and/or
 - 10.2.3 is received from a third party free from restriction.

11. PUBLICITY

- 11.1 BEYOND may, with agreement from the CUSTOMER, publish or quote the CUSTOMER's name as a client of BEYOND along with information indicating the type of work undertaken.
- 11.2 BEYOND may publish, with agreement from the CUSTOMER, detailed case study marketing literature.

12. PERSONNEL

- 12.1 The Services will be provided to the CUSTOMER by BEYOND using consultants who are its officers, employees, representatives or subcontractors. Whilst BEYOND will use all reasonable endeavours to keep changes of personnel to a minimum, no undertaking is given that any particular consultant will carry out any particular task though BEYOND undertakes that before using any new consultant it will satisfy the CUSTOMER that the consultant is trained and suitable to undertake the Services and it shall be BEYOND's responsibility and cost to ensure that the new consultant fully understands the requirements and the progress made to date.
- 12.2 In the event that a consultant who has previously been providing the services is unable to do so for a short period of time owing to illness or holiday BEYOND will provide the CUSTOMER with as much notice as possible in the circumstances and will consult with the CUSTOMER as to whether a suspension of the provision of the services during that short period would be

preferable to the use of a temporary substitute consultant. For the purposes of this clause a short period shall be any period of time less than 14 days.

- 12.3 Except as otherwise expressly provided herein, the parties agree that, during the term of this AGREEMENT and six months thereafter, they will not, except without the prior written consent of the other, solicit the employment of individuals from the other party.

13. AMENDMENT

- 13.1 Any amendment of this AGREEMENT must be agreed in writing and signed by duly authorised representatives of both parties.

14. CONTRACT DISPUTE RESOLUTION PROCESS

- 14.1 Both the parties will define the individuals, responsible for resolution of conflict and the escalation process. If either party escalates that the other is in material breach of their commitments, then the following process will be applied:

- Step 1 - There will be written notice provided to the escalation authority of the other party.
- Step 2 - The issue will then be discussed directly between the escalation authorities of each party.
- Step 3 - The party in breach, will then be provided with a reasonable amount of time (time to be agreed by both parties at the time of notification) to correct this breach.

- 14.2 If the dispute cannot be resolved within the agreed time set out in Step 3 above, it shall be referred to an agreed mediator, or in the absence of agreement a mediator chosen at the request of either party by the Centre for Dispute Resolution (CEDR). The mediation shall be conducted in accordance with CEDR Model Mediation Rules. The completion of this mediation procedure shall be a pre-requisite of any termination of this AGREEMENT by either party or the bringing of any action to enforce its terms other than an action for injunction alone to prohibit or require the doing of certain acts.

- 14.3 This Clause 14 is without prejudice to either Party's rights or remedies provided by law, under this AGREEMENT or otherwise including the right to seek injunctive relief or otherwise commence legal proceedings at any time.

15. SEVERABILITY

- 15.1 If any term, part or provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable as being contrary to applicable law or public policy, in whole or in part, such term, part or provision shall to the extent reasonably possible be construed in a manner so as to be enforceable and the remainder of this AGREEMENT shall remain in full force and effect and in no way be affected, impaired or invalidated, except by reason thereof the fundamental nature of this AGREEMENT is thereby frustrated.

16. WAIVER

- 16.1 The failure of either party at any time to enforce any provisions of this AGREEMENT shall in no way affect that party's rights thereafter to require complete performance by the other party hereto, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any such provision or be a waiver of the provision itself. Any waiver to be effective must be in writing.

17. WHOLE AGREEMENT

- 17.1 This AGREEMENT constitutes the entire AGREEMENT between BEYOND and CUSTOMER as to the subject matter hereof and supersedes all previous communications, representations

and agreements, whether written or oral, and CUSTOMER hereby acknowledges that no reliance is placed on any representation made but not embodied in this AGREEMENT.

18. ASSIGNMENT

18.1 The licence granted to CUSTOMER under this AGREEMENT is personal to CUSTOMER who shall neither assign nor part with nor sub-let any interest in it or grant any right under it to any third party or seek to exercise the licence granted hereunder for the benefit of or on behalf of a third party without the prior written consent of BEYOND. BEYOND shall be entitled to sub-contract or sub-let any part of the SERVICES but shall not assign this AGREEMENT without the prior written consent of CUSTOMER.

19. NOTICES

19.1 All legal notices relating to this AGREEMENT shall be given by first class post or facsimile confirmed by letter to the address above and shall be deemed to have been delivered after 48 hours if posted or on receipt of facsimile.

20. HEADINGS

20.1 The headings of the clauses of this AGREEMENT are provided for convenience only and shall not contribute to the meaning or construction of said clauses.

21. LAW

21.1 The construction, validity and performance of this AGREEMENT shall be governed by English law and each party hereto submits to the non-exclusive jurisdiction of the English courts.

Agreement

	For and on behalf of the CUSTOMER	For and on behalf of BEYOND
Signature		
Print Name		
Date		

Schedule B/????/001

Revision 1.0

Customer	
Assignment	
Services to be Performed:	
Objectives	
Approach	
Basis of Costs	
Agreed (daily) rate(s)	
Expenses	
Schedule Start Date	
Schedule End Date	

	For and on behalf of the CUSTOMER	For and on behalf of BEYOND
Signature		
Print Name		
Date		