



G-Cloud 15

Terms and Conditions

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Background

Full Fat Things Limited (the **Company**) is in the business of software development, hosting and consultancy services. The Customer desires to engage the Company to provide such services, and the Company agrees to perform such services, on the terms and conditions set forth herein.

Services provided by Full Fat Things Limited to the Customer are subject to these supplemental terms and conditions (**Supplemental Terms**). If and to the extent that any provision of these Supplemental Terms conflicts with the **G-Cloud 15 Framework Agreement** or any applicable **Call-Off Contract**, the Framework Agreement and/or Call-Off Contract shall prevail to the extent of the conflict.

G-Cloud 15 specific agreed terms

Unless defined within these Supplemental Terms, any capitalised terms have the meaning assigned to them in the G-Cloud 15 Framework Agreement and Call-Off Contract.

Agreement means, collectively: (i) these Supplemental Terms (including any Schedules), (ii) any Statements of Work agreed under them, and (iii) the relevant G-Cloud 15 Framework Agreement and Call-Off Contract, in each case as amended from time to time.

The ejusdem generis rule is not intended to be used in the interpretation of this Agreement; it follows that a general concept or category utilised in this Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

1. Agreed Terms

1.1 Definitions

In this Agreement the following terms shall have the meanings set out below:

1.1.1 **Affiliate** means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual.

1.1.2 **Business Day** means any week day, other than a bank or public holiday in England.

1.1.3 **Business Hours** means between 09:00 and 18:00 on a Business Day.

1.1.4 **Charges** means the amounts payable by the Customer to the Company under or in relation to this Agreement (as set out in the applicable Statement of Work and/or Schedule).

1.1.5 **Confidential Information** means any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party which is marked as “confidential”, described as “confidential” or reasonably understood to be confidential.

1.1.6 **Control** means the legal power to control (directly or indirectly) the management of an entity (and **Controlled** will be construed accordingly).

1.1.7 **Controller, Processor, Processing, Data Subject and Personal Data** shall have the meanings given to them in Data Protection Legislation.

1.1.8 **Data Protection Legislation** means: (i) the UK GDPR; (ii) the Data Protection Act 2018; and (iii) any other applicable laws relating to privacy and/or processing of Personal Data, in each case as amended or replaced from time to time.

1.1.9 **Force Majeure Event** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars).

1.1.10 **Intellectual Property Rights** means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and includes copyright and related rights, moral rights, database rights, Confidential Information, trade secrets, know-how, business names, trade names, domain names, trade marks, service marks, passing off rights, unfair competition rights, patents, utility models, semi-conductor topography rights and rights in designs).

1.1.11 **Hosted Materials** means all websites, web applications, software, information, data, databases and other works and materials stored, transmitted, published or processed using the Services.

1.1.12 **Hosted Services** means the hosting of the Customer's Hosted Materials and which may include shared hosting, dedicated hosting, co-location services, email services, domain name services and/or SSL services, as set forth in the applicable Statement of Work.

1.1.13 **Minimum Term** means the period of 1 month starting on the Start Date.

1.1.14 **Open Source License** means any license that is approved by the Open Source Initiative and listed at <http://www.opensource.org/licenses>, and any similar license for "free," "publicly available" or "open source" software, including version 2 and 3 of the GNU General Public License and the MIT License.

1.1.15 **Prohibited Content** means:

A. material which breaches any applicable laws, regulations or legally binding codes, or infringes any third party Intellectual Property Rights or other third party rights, or may give rise to any form of legal action against the Company or the Customer or any third party;

B. pornographic or lewd material; and

C. messages or communications which are offensive, abusive, indecent or obscene, are likely to cause annoyance, inconvenience or anxiety to another internet user, or constitute spam or bulk unsolicited mail.

1.1.16 **Resources** means the resources specified in the applicable Statement of Work and/or Schedule.

1.1.17 **Schedule** means a schedule attached to these Supplemental Terms which sets out a description of the Services (if any).

1.1.18 **Services** means the services described in one or more Statements of Work and/or Schedules, which are provided by the Company to the Customer.

1.1.19 **Software Development Services** means the design, development, maintenance, implementation and support and other services as may be required to create, enhance, modify, update, or upgrade software applications as set forth in the applicable Statement of Work.

1.1.20 **Statement of Work** (also referred to as **SOW**) means a statement of work describing the Services.

1.1.21 **Term** means the term of this Agreement.

1.1.22 **Year** means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Start Date or on any anniversary of the Start Date.

1.1.23 **Effective Date** means the date this Agreement becomes effective, as stated in the Call-Off Contract and/or applicable Statement of Work.

Start Date means the date the Services commence, as stated in the Call-Off Contract and/or applicable Statement of Work.

1.2 Statutory interpretation

In this Agreement, a reference to a statute or statutory provision includes a reference to: (i) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and (ii) any subordinate legislation made under that statute or statutory provision.

1.3 Headings

Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.4 Persons

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 Incorporation of SOWs / Schedules

Schedules and Statements of Work form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules and Statements of Work.

1.6 Singular/plural; gender

Unless the context otherwise requires:

A. words in the singular include the plural and in the plural include the singular; and

B. a reference to one gender includes a reference to the other genders.

2. Term

2.1 This Agreement will come into force on the Start Date and will continue in force indefinitely, unless and until terminated in accordance with Clause 13.

3. Customer Responsibilities & Obligations

3.1 The Customer must:

3.1.1 co-operate with the Company in all matters relating to the Services. The Company shall not be responsible for any delay as a result of the Customer's failure or delay in doing so;

3.1.2 give the Company access to the Customer's premises (where relevant), and provide the Company with any information, documentation, materials and facilities that the Company reasonably require; obtain any licences and permissions needed for the Company to supply the Services before the Company starts;

3.1.3 procure any third party co-operation reasonably required for the provision of the Services.

3.2 If the Company cannot supply the Services because the Customer has prevented the Company (for example by causing delay, or by not doing something the Customer was supposed to do), the Company can stop supplying the Services until the Customer has put the matter right (at the Customer's own cost). In this case, the Customer will also pay the Company for any costs or losses the Customer has caused the Company, and the Company will not be responsible for any costs or losses caused to the Customer.

3.3 The Services are provided to the Customer only, and the Customer may not resell the Services to any third party.

3.4 It is the Customer's responsibility to keep any passwords relating to the Services confidential, and to change such passwords on a regular basis. The Customer will notify the Company immediately if it becomes aware that a password relating to the Services is or may have been compromised or misused.

3.5 The Customer must not use any of the Services:

3.5.1 to host, store, send, relay or process any Prohibited Content;

3.5.2 for any purpose which is unlawful, fraudulent, or infringes any third party rights;

3.5.3 in any way which may put the Company in breach of a contractual or other obligation owed by the Company to any internet service provider.

3.6 The Customer acknowledges that the Company does not purport to monitor the content of any Hosted Materials or the use of the Services, unless expressly stated otherwise in the applicable SOW.

3.7 Where the Company reasonably suspects that there has been a breach of Clause 3.5, the Company may:

3.7.1 delete or amend the relevant Hosted Materials; and/or

3.7.2 suspend any or all of the Services and/or the Customer's access to any or all Services while it investigates the matter.

3.8 Neither party will employ, engage, or otherwise solicit any person who during the previous 6 months was a Customer, officer, employee or sub-contractor of the other and with whom such party had material contact in connection with Services performed under any Statement of Work, until 12 months after that Statement of Work has terminated.

3.9 Any breach by the Customer of this Clause 3 will be deemed to be a material breach of this Agreement for the purposes of Clause 13.

4. Company Obligations

4.1 The Company shall supply the Services in accordance with this Agreement and the agreed Statements of Work.

4.2 The Company will supply the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards.

5. Intellectual Property of software

5.1 This Clause 5 applies where the Company agrees to deliver Software Development Services.

5.2 Where the software will be developed on WordPress or Drupal content management systems and community-contributed projects (collectively, **CMS**), the software is distributed under version 2 of the GNU General Public License (**GPL**) Open Source Licence. Where CMS is used, both the Company and the Customer shall be bound by the terms of the GPL licence. There is no licence fee for CMS.

5.2.1 Further, the Company agrees to also license custom code it develops for, or in connection with, the software under the GPL licence depending on which software it is extending. This gives the Customer complete access to the source code, and no licence fees.

5.3 Where the software will be developed in Ruby on Rails or Laravel, the software is distributed under the MIT Open Source Licence. Where Ruby on Rails or Laravel is used, both the Company and the Customer shall be bound by the terms of the MIT licence. There is no licence fee.

5.3.1 Further, the Company agrees to also license custom code it develops for, or in connection with, the software under the MIT licence depending on which software it is extending. This gives the Customer complete access to the source code, and no licence fees.

5.4 Some software is obtained from the Customer to include in the software built for the Customer. The Company asserts no ownership over this or its quality and cannot guarantee its quality. The Customer guarantees that it holds the necessary licence or permission for use of such software by the Company for the purpose of this Agreement.

5.5 All Intellectual Property Rights in software built for the Customer by the Company that is not a derivative of an Open Source Licensed product or framework (as defined by the Open Source License) are automatically assigned to the Customer.

Full Fat Things' obligations (IP claims)

5.6 Subject to Clause 5.7, the Company will defend the Customer against any claim or, at the Company's option, settle any claim alleging that the Services or any element thereof infringes any Intellectual Property Rights of a third party.

5.7 The Customer will notify the Company promptly of any such claim referred to in Clause 5.6 and allow the Company to conduct the defence of the claim, including selection of counsel, course of action and all related settlement obligations and, at the Company's expense, provide the Company with such assistance as the Company may reasonably request. For the avoidance of doubt, this obligation to defend shall not apply to any part of the Services which is a derivative of an Open Source Licensed product or has been supplied by the Customer.

5.8 If such a claim is made, the Company may, at its sole option and expense:

5.8.1 procure for the Customer the right to continue to use the Services; or

5.8.2 modify the Services so as to cease the infringement; or

5.8.3 replace the Services with a non-infringing alternative, provided that any modified or replacement Services shall comply with the warranties set out herein and the Customer's rights in respect of such modified or replacement Services shall be the same as set out in this Agreement from the date of the modification or replacement; or

5.8.4 terminate this Agreement immediately by notice in writing and refund the fees paid by the Customer as at the date of termination less a reasonable sum in respect of use of the Services to the date of termination.

6. Hosting Services

6.1 This Clause 6 applies where the Company agrees to provide Hosting Services.

Implementation and transition

6.2 The Company will make available the Services on or before the Start Date in the applicable SOW.

6.3 At the request of the Customer, the Company will use reasonable endeavours to assist with the transition of any Customer website(s) from any third party host or service provider.

6.4 The Customer will be responsible for obtaining suitable licences of third party software which are required for the full use of the Services.

Cloud Hosting

6.5 Where the Company agrees to provide cloud hosting to the Customer:

6.5.1 the Company will make available to the Customer hosting capacity on a cloud server meeting the specification set out in the SOW;

6.5.2 the Customer will not have administration rights in relation to any server, and the Company may refuse any request to change the configuration of a server at its sole discretion.

Resource limits

6.6 The Customer's utilisation of Resources must not exceed the limits stated in the applicable SOW. If the Customer's utilisation of Resources exceeds those limits, the parties will endeavour to agree a variation to the SOW. If the parties cannot agree to such a variation within a reasonable period (being not more than 30 days) following notice from the Company requesting such variation, and Resource utilisation continues to exceed those limits, the Customer will be deemed to be in material breach of this Agreement for the purposes of Clause 13.

7. Charges and payment

7.1 All Charges stated in or in relation to this Agreement are quoted in British Pounds Sterling and exclusive of VAT, unless the context requires otherwise, and subject to VAT at the prevailing rate in the UK at the time of invoice.

7.2 All expenses, including travel expenses, are charged at cost, unless otherwise stated in the SOW.

7.3 The billing and invoice phase will be stated in each SOW for the Services performed.

7.4 The Customer will pay the Charges within **45 days** of the date of issue of an invoice.

7.5 If the Customer does not pay any amount properly due to the Company under or in connection with this Agreement, and has not already raised a query or dispute in relation to such invoice, the Company may claim interest and statutory compensation pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 and any successor legislation, as amended from time to time.

7.6 The Company's agreed day rate will increase annually on each anniversary of the commencement of billable work by the **lesser of 3% or CPI**, as published by the Office for National Statistics.

7.7 Save where Clause 7.6 applies, the Company may vary the Charges by giving at least 30 days' notice of variation.

7.8 Unless otherwise stated in the SOW, and subject to pre-approval by the Customer, travel time is charged when the Company is required to travel to a location on Customer business other than the Customer office in a specified location.

8. Warranties

8.1 The Customer represents and warrants that it has the legal right and authority to enter into and perform its obligations under this Agreement.

8.2 The Company represents and warrants:

8.2.1 it has the legal right and authority to enter into and perform its obligations; and

8.2.2 it will perform its obligations with reasonable care and skill.

8.3 All liabilities and obligations are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter will be implied.

9. Indemnity

9.1 The Customer indemnifies and undertakes to keep indemnified the Company against all liabilities, losses, costs, and expenses (including legal expenses and settlement amounts) arising out of or in connection with:

9.1.1 any breach by the Customer of this Agreement; and

9.1.2 where Hosting Services are provided, any activity upon, or any breach of security of, the Customer's dedicated or co-located server, and any malfunction of the Customer's co-located server.

10. Limitations and exclusions of liability

10.1 Nothing in the Agreement will:

10.1.1 limit or exclude liability for death or personal injury resulting from negligence;

10.1.2 limit or exclude liability for fraud or fraudulent misrepresentation;

10.1.3 limit any liability in any way that is not permitted under applicable law; or

10.1.4 exclude any liability that may not be excluded under applicable law.

10.2 The limitations and exclusions in this Clause 10 and elsewhere:

10.2.1 are subject to Clause 10.1;

10.2.2 govern all liabilities arising under the Agreement or any collateral contract; and

10.2.3 limit and exclude liability under the express indemnities set out in the Agreement.

10.3 Neither party will be liable for loss of profits, income, revenue, use, production or anticipated savings.

10.4 Neither party will be liable for:

10.4.1 loss of business, contracts or commercial opportunities;

10.4.2 loss of or damage to goodwill or reputation;

10.4.3 losses arising out of a Force Majeure Event.

10.5 Neither party will be liable for:

10.5.1 loss or corruption of any data, database or software;

10.5.2 any special, indirect or consequential loss or damage.

10.6 The Company will not be liable in respect of any claims or losses arising from:

10.6.1 any activity regulated by the Financial Conduct Authority;

10.6.2 infringement of patent or misappropriation of a trade secret action brought in the USA or Canada;

10.6.3 any bodily or mental injury or death, unless in relation to mental anguish due to defamation, breach of privacy or negligent publication, or for services given by the Company for a fee;

10.6.4 loss, destruction or damage to tangible property, unless arising from or in connection to Services provided by the Company for a fee;

10.6.5 failure of service by an internet service provider or other utility service, other than where the Company's business activities provide these services;

10.6.6 ownership, use or possession of any land, building, animal or vehicle;

10.6.7 anything likely to lead to a claim which the Customer knew about before the Agreement was signed;

10.6.8 chargeback or reversal of any payment transaction;

10.6.9 terrorism, war or nuclear risks (including threats and responses);

10.6.10 a cyber attack, hacker or social engineering communication (including threats and responses). This does not apply to any claim arising directly out of the provision of hosting, maintenance, security or web design or other Services provided under this Agreement by the Company;

10.6.11 any negligent act, error or omission in the operation or maintenance of computer or digital technology such as development, installation, patching or upgrading. This does not apply to any claim arising directly out of the Company's computer or digital technology error affecting any computer or digital technology accessed or used by the Customer;

10.6.12 failure of service provided by internet, telecommunications, utilities or other infrastructure providers;

10.6.13 processing, acquisition, storage, damage, loss, alteration, disclosure, use of or access to Personal Data, except where they arise from the Company's performance of a business activity or as part of the Services and which is not otherwise excluded.

10.7 Neither party will be liable for failure or delay caused by an event beyond reasonable control which could not have been foreseen or was unavoidable (including industrial disputes, energy or transport failures, acts of God, war, terrorism, civil unrest, explosions, mechanical breakdown, natural disasters, deliberate damage, or failures of suppliers or subcontractors).

Hosting Services

10.8 Neither party's liability in relation to any event or series of related events will exceed the total amount paid and payable by the Customer to the Company under the Agreement during the one month period immediately preceding the event(s) giving rise to the claim.

10.9 Neither party's aggregate liability under the Agreement and any collateral contracts will exceed the total amount paid and payable by the Customer to the Company under the Agreement.

Software Development Services

10.10 The total aggregate liability of either party to the other, whether arising in contract, tort (including negligence) or otherwise in connection with this Agreement and any collateral contracts, shall not exceed an amount equivalent to 100% of all sums paid and payable by the Customer to the Company in accordance with this Agreement during the twelve month period immediately preceding the date when the liability arises.

10.11 The Company's total liability to the Customer will not exceed **£2 million**.

11. Data protection and processing

11.1 Both parties will comply with all applicable requirements of Data Protection Legislation. This Clause 11 is in addition to and does not relieve, remove or replace a party's obligations or rights under Data Protection Legislation.

11.2 The parties will enter into a Data Processing Agreement prior to the commencement of Processing any Personal Data.

11.3 Where the Company Processes Personal Data for the Customer pursuant to any SOW:

11.3.1 the terms of the Data Processing Agreement shall apply; and

11.3.2 the SOW shall set out additions or variations to the scope, nature and purpose of Processing, duration, types of Personal Data and categories of Data Subject.

11.4 Each party agrees to indemnify, keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses (including fines/penalties imposed by a supervisory authority) due to any failure by the indemnifying party or its employees, subcontractors or agents to comply with Data Protection Legislation, this Clause 11, the Data Processing Agreement and any applicable SOW.

11.5 The Customer acknowledges that the Company holds and uses contact information of the Customer's employees and contractors so the Company can fulfil its contractual duties and services. The Company's privacy policy is available at <https://www.fullfatthings.com/privacy-cookie-policy>.

12. Confidentiality and publicity

12.1 Each party will keep confidential the Confidential Information of the other and will not disclose it except as permitted by this Clause 12 or agreed in writing.

12.2 Confidential Information may be disclosed to employees and professional advisers, provided recipients are legally bound to protect confidentiality.

12.3 Confidential Information may be disclosed to third parties where necessary to carry out this contract, solely for fulfilling obligations, provided recipients are legally bound to protect confidentiality.

12.4 Clauses 12.1–12.3 continue after the Agreement ends.

12.5 Each party will protect the other's Confidential Information using at least reasonable security measures and no less than those used to protect its own Confidential Information.

12.6 Confidentiality obligations do not apply to information that:

12.6.1 is public other than due to breach;

12.6.2 was already known to the receiving party (evidenced); or

12.6.3 must be disclosed by law or order of a competent authority.

12.7 The Company has permission from the Customer to publicise the Company's work with the Customer for promotion of the Company's business, **subject always to any restrictions, approvals or publication requirements in the Call-Off Contract and/or applicable public sector policies notified to the Company.**

13. Termination

13.1 Either party may terminate this Agreement or any SOW at any time by giving at least 30 days' written notice.

13.2 Either party may terminate immediately by written notice if the other:

13.2.1 commits a breach which is not remediable; or

13.2.2 commits a remediable breach and fails to remedy within 30 days of written notice specifying the breach and remedy steps; or

13.2.3 persistently breaches the Agreement.

13.3 As an alternative to terminating the entire Agreement, either party may terminate an individual SOW for material breach of that SOW, and (if remediable) failure to remedy within 30 days of notice.

13.4 Either party may suspend or terminate immediately (including all SOWs) if any insolvency-type event occurs or is reasonably believed likely, including dissolution, cessation of business, inability to pay debts, insolvency, arrangements with creditors, appointment of an administrator/receiver/liquidator, or winding up.

13.5 If the Customer stops, threatens to stop, or the Company reasonably suspects the Customer is likely to stop paying its debts (including failure to pay Charges on time as described in Clause 7), the Company can cancel or suspend the Services or terminate this Agreement (including all SOWs) immediately and the Customer must immediately pay all sums owed for Services supplied.

14. Effects of termination

14.1 Upon termination, all SOWs terminate automatically and provisions cease to have effect, save that Clauses 1, 7.5, 9, 10, 12, 14 and 15.3 to 15.15 survive.

14.2 Termination does not affect accrued rights (including accrued payment rights).

Software Development Services

14.3 Upon termination, monies due for Services performed to termination are due and payable upon production of a valid invoice, save where immediate payment is due under this Agreement.

Hosting Services

14.4 If this Agreement is terminated under Clause 13.1, or by the Customer under Clause 13.2 or 13.3 (but not otherwise):

14.4.1 the Company will promptly provide an electronic copy of the Hosted Materials;

14.4.2 the Company will provide reasonable assistance to transfer hosting to the Customer or another provider, subject to payment of the Company's reasonable expenses; and

14.4.3 the Customer will be entitled to a refund of Charges paid for Hosting Services to be performed after termination, and will be released from any obligation to pay such Charges (calculated by the Company using a reasonable methodology).

14.5 Save as provided in Clause 14.4.3, the Customer will not be entitled to any refund of Charges for Hosting Services on termination, and will not be released from any obligation to pay Charges.

15. General

15.1 Notices must be in writing and delivered personally, by pre-paid first class post, or by email to the addresses notified by the parties.

The Company:

Full Fat Things Limited, 1 Brassey Road, Old Potts Way, Shrewsbury, Shropshire, SY3 7FA, United Kingdom (or such other address as notified).

Email: info@fullfatthings.com

The Customer:

The Customer will supply a postal address and email address for notices in the Call-Off Contract and/or SOW.

15.2 A notice is deemed received:

15.2.1 if delivered personally, at delivery;

15.2.2 if sent by first class post, 48 hours after posting;

15.2.3 if sent by email, at transmission (provided the sender retains written evidence).

15.3 No waiver unless in writing.

15.4 No variation unless in writing signed by both parties (and in accordance with relevant legislation and any applicable Call-Off requirements).

15.5 Severance applies.

15.6 No partnership/agency/employment relationship created.

15.7 Either party may assign to an Affiliate or successor to all/substantially all business. Otherwise, assignment requires prior written consent, subject to any Call-Off restrictions.

15.8 The Company may subcontract obligations to third parties, subject to applicable legislation and any Call-Off restrictions.

15.9 Further assurances.

15.10 Third party rights excluded.

15.11 Entire agreement (subject to the Framework and Call-Off Contract).

15.12 **Order of precedence (for these Supplemental Terms):** if there is any conflict or inconsistency between the provisions of these Supplemental Terms and any executed SOW, precedence is: (1) the executed SOW; (2) these Supplemental Terms; **provided always that** the G-Cloud 15 Call-Off Contract and Framework terms take precedence where they apply.

15.13 Rights and remedies are cumulative.

15.14 Governing law: England & Wales; exclusive jurisdiction of English courts.