



Teams and Conditions

G-Cloud 15

Framework Reference – RM1557.15

THE BELOW AGREEMENT (the "Agreement") is made and entered into on the date of execution (the "Effective Date")

BETWEEN

[Client Name], a company incorporated in [country] with registration number [number] and registered office [registered office address] (the "Client"); and

Flyte Cloud Services Ltd, a company registered in Scotland with company number SC421512 whose registered office is at 93 West Regent Street, Glasgow, G2 2BA (the "Supplier").

The above named shall collectively be known as "Parties", and each a "Party".

WHEREAS

The Supplier is experienced in the provision of services and software products including design, development and support services for systems. b

The Parties wish to enter into an arrangement with each other for the provision of Goods and Services by the Supplier to the Client, on the terms and conditions of this Agreement. IT IS HEREBY AGREED as follows:

1. ORDER OF PRECEDENCE

1.1 In the event of any conflict or inconsistency between the Clauses of this agreement and the Statement of Work (including any changes to the Statement of Work), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:

- (a) Statement of Work;
- (b) The Clauses in this Agreement.

2. SUPPLY OF SERVICES

- 2.1** Commencing on the date specified above, the Supplier shall perform the Services in accordance with this Agreement. In supplying the Services, the Supplier agrees that:
- (a)** It shall supply the Services to the Client in accordance with the agreed Statement of Work ;
 - (b)** It shall use commercially reasonable endeavours to meet any performance timelines specified under a Statement of Work but any such timelines shall be estimates only and time shall not be of the essence for the performance of the Services;
 - (c)** It warrants to the Client that the Services will be provided using reasonable care and skill; and
 - (d)** In the event the Client identifies any non-conformity with the Services, the Client shall promptly notify the Supplier of any such non-conformities and the Supplier shall rectify the non-conformity within a reasonable time frame from the date the Supplier received the complaint; and
- 2.2** It will comply with all applicable laws, statutes, and regulations from time to time in force.
- 2.3** Either party may request changes to any Statement of Work (in each case, a "Change Request"). Any Change Request shall be made in writing (including email) and sent to the Client's Lead Representative (as defined in the Statement of Work) or Supplier's Lead Representative (as defined in the Statement of Work), as appropriate and shall set out the change in sufficient detail so as to enable the other party to make a proper assessment of such change. Any agreed-upon changes shall continue to be subject to these Conditions.
- 2.4** Neither party shall be required to accept any Change Request made by the other party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.

3. FEES

- 3.1** The payment schedule for the capital fee shall be as follows:
- (a)** All capital fees equal to or below £3,000 (ex VAT) will adhere to the following payment: 100% upon contract signing.
 - (b)** All capital fees equal to or below £10,000 (ex VAT) will adhere to the following payment schedule: a 60% deposit upon contract signing, and 40% upon going live.
 - (c)** All capital fees exceeding £10,000 (ex VAT) will follow this payment schedule: a 40% deposit upon contract signing, 30% upon entering UAT, and 30% upon going live.
 - (d)** The capital fee is defined in the proposal document. Any licenses that will be required before the service contract will be added to the client's bill at the appropriate time during the build.

- (e) Service charges refer to ongoing support contracts, with monthly fees payable in advance of going live.

3.2 It is agreed that:

- (a) Fees are fixed as stated in the supplier proposal document; any change outside the agreed Statement of Work is agreed upon mutually by change control.
- (b) Invoices will be raised as set out in the relevant Statement of Work. All invoices shall be payable fourteen (14) days from the date of the invoice. In the event of any undisputed invoices not being paid by the Client after being given thirty (30) days' notice of any such delays, the Supplier reserves the right to suspend or terminate the Services; and

3.3 For the avoidance of doubt, the Supplier may increase any fees related to Third-Party Licences (as defined in Clause 9.7) in line with any increases imposed upon the Supplier by such third parties upon 30 days' notice. 3rd party licences include Power Automate Premium at £12.30/month, Veeam backup data storage at £30.00/month and Veeam Backup of O365 accounts at £2.30/user/month.

3.4 Notwithstanding and subject to Clause 3.2, the Supplier reserves the right, on giving the Client 30 days' notice, to increase the Fees on an annual basis with effect from each anniversary of the Commencement Date. If the Client does not agree with this increase, then they may terminate this Agreement upon 30 days written notice and before such price increase takes effect. If the Supplier does not receive written notice within thirty (30) days, the Client is deemed to have agreed to the amendment to the Fees.

3.5 If the Client fails to pay any amount properly due and payable within such period, the Supplier shall have the right to charge interest on the overdue amount at a rate of 2 per cent per annum above Bank of England base rate, accruing on a daily basis from the due date up to the date of actual payment.

4. TERMS AND TERMINATION FOR SUPPORT

4.1 The Agreement shall commence on the Commencement Date for a period of 12 months unless otherwise set out in the applicable Statement of Work ("Initial Term") and shall continue in force unless and until terminated in accordance with the provisions of this Agreement or of any Statement of Work as applicable.

4.2 The Agreement shall, unless terminated earlier in accordance with the Conditions, automatically be extended for successive twelve (12) month periods ("Extended Term") at the end of the Initial Term and at the end of each Extended Term, unless a party gives written notice to the other party, not later than ninety (90) days before the end of the Initial Term or the relevant Extended Term, to terminate the Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

4.3 Without prejudice to any rights that the parties have accrued under the Agreement, or as set out elsewhere in these Conditions or any of their respective remedies, obligations or liabilities, either party may terminate the Agreement and/or applicable Statement of Work (which is subject to the event listed below) with immediate effect by giving written notice to the other party if:

- (a) The other party commits a material breach of any material term of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so;
- (b) The other party suspends or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (c) Failure to meet SLA targets for two consecutive months within any rolling 12-month period may result in termination: or

4.4 The other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

5. CONSEQUENCES OF TERMINATION

5.1 If this Agreement terminates in accordance with Clause 4 (and only in such circumstances), then subject to the total Fees incurred, the Client will pay the Supplier, any costs that have been actually and properly incurred by the Supplier prior to the date of termination and/or as otherwise specified by the Supplier to the Client as being payable, unless otherwise agreed:

5.2 The Supplier will, if requested by the Client, provide to the Client a copy of any materials created as part of the Services.

6. LIMITATION OF LIABILITY

6.1 Nothing in this Agreement shall limit or exclude either party's liability for:

- (a) Fraud or fraudulent misrepresentation made by that party on which the other party can be shown to have relied

6.2 Subject to Clause 6.1, the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill; and
- (f) any indirect or consequential loss.

6.3 Subject to Clause 6.1, the parties' total liability to the other, whether in contract, tort (including negligence), breach of its statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to one hundred per cent (100%) of the total Fees incurred under this Agreement.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1** The Supplier warrants that, other than to the extent that they incorporate material supplied by or expressly required by the Client all deliverables under any Statement of Work shall not infringe the intellectual property rights of any third party and shall indemnify the Client and the Client's clients from and against any claim that they do so.

8. GENERAL

Confidentiality

- 8.1** Each party agrees and undertakes that it will treat all confidential information disclosed to it by the other party in connection with the Services as strictly confidential and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other party, publish or otherwise disclose to any third party any such confidential information except for the purposes intended by the relevant Statement of Work.
- 8.2** To the extent necessary to implement the provisions of any Services, each party may disclose confidential information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in Clause 8.1.
- 8.3** The obligations of confidentiality set out in this Clause 8 shall not apply to any information or matter which:
- (a)** is in the public domain other than as a result of a breach of the Agreement;
 - (b)** was in the possession of the receiving party prior to the date of receipt from the disclosing party or was rightfully acquired by the receiving party from sources other than the disclosing party;
 - (c)** is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or
 - (d)** was independently developed by the receiving party without use of or reference to the confidential information.
- 8.4** For purposes of this Agreement confidential information shall mean all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its "Representatives") to the other party and that party's Representatives in connection with the Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Intellectual Property

8.5 Subject to Clause 8.6 below, on creation by the Supplier and upon the Supplier receiving undisputed payment in full, all intellectual property rights in bespoke materials or code created under the Services (Bespoke IPR) for the Client shall vest automatically in the Client. The Supplier hereby assigns to the Client its present and future rights and full title and interest in such creations, including but not limited to workflows, widgets, business processes, and customised web coding which are used in order to provide the Services. The Client hereby provides an irrevocable, worldwide, royalty-free licence to the Supplier for the duration of this Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.

8.6 Notwithstanding Clause 8.5 above, the Supplier shall retain exclusive ownership of

- (a) all of its pre-existing intellectual property (Background Materials); and
- (b) (ii) ideas, concepts, techniques and know-how discovered, created or developed by the Supplier during the performance of the Services that are of general application and that are not based on or derived from the Client's business or the Client's confidential information (General IP) together with the Background Materials, (the Supplier's Intellectual Property). The Supplier grants to the Client a non-exclusive, irrevocable, worldwide royalty free and non-transferable licence to use the Supplier's Intellectual Property. For the purposes of this Agreement intellectual property rights shall mean, all patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Third-Party Licences

8.7 The Supplier shall (if requested by the Client) procure the third-party licences ("Third Party Licences") for the provision of the Services as set out in the applicable Statement of Work. The Supplier expressly excludes any warranty to the Client that the Third-Party Licences supplied or licensed by it under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in its marketing, sales or other associated documentation. The Client shall remain liable for any and all payments owed to the Supplier throughout this Agreement and until the end of the respective licence terms and shall adhere to any User Licence Agreements sent by such third party in relation to the Third-Party Licences.

Data Protection

- 8.8** If applicable, both parties shall comply with the Data Protection Legislation in all respects. For the purposes of this Agreement, the **Data Protection Legislation** means all applicable data protection and privacy laws and regulations, guidance and codes of practice, including (without limitation): Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation); the Data Protection Act 2018; the Privacy and Electronic Communications (EC Directive) Regulations 2003; and guidance and codes of practice issued from time to time by the Data Protection Regulator; in each case as amended, updated or replaced from time to time. The **Data Protection Regulator** means the UK Information Commissioner's Office, and any successor body or bodies to it or applicable related organisations.

No partnership or agency

- 8.9** Nothing in this Agreement is intended to or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any part of the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

Entire agreement and counterparts

- 8.10** This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 8.11** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 8.12** The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law.

Severance

- 8.13** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this paragraph shall not affect the validity and enforceability of the rest of this Agreement.

Third-party rights

- 8.14** No one other than a party to this Agreement and Microsoft (in respect of enforcing the terms of the CSP Agreement) shall have any right to enforce any of its terms.

Marketing

- 8.15** Both parties agree to reasonably cooperate in connection with the creation of mutually beneficial marketing communications, which shall include, at a minimum, a press release, case study and a reference to Client on Supplier and its Affiliate's website, provided that in no event shall either party use the name, trademarks or other proprietary identifying symbols of the other party without such party's prior written consent, which consent shall not be unreasonably withheld or delayed. Any marketing on customer projects must have prior written approval from the Client. This includes discussions with third parties, other customers, other Microsoft Partners and Microsoft. All information is subject to the signed NDA.

Force Majeure

- 8.16** Neither party to this Agreement shall be deemed to be in breach of this Agreement or any Statement of Work, or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement or any Statement of Work due to a force majeure event. For the purposes of this Agreement, force majeure means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, act of God, war, pandemic, epidemic, riot, civil commotion, compliance with any law or governmental order, rule, regulation or direction, flood or storm, save that strike or lockout of the party's own staff shall not entitle them to claim that to be a force majeure event ("Force Majeure").
- 8.17** A party shall only be entitled to claim relief under this Clause if it:
- (a)** informs the other party as soon as reasonably possible that an event of Force Majeure has occurred; and
 - (b)** uses all reasonable endeavours to recommence the performance of its obligations in accordance with these Conditions and any affected Statement of Work as soon as possible and keeps the other party informed as to progress and the estimated dates on which that party will be able to recommence full performance of its obligations.
- 8.18** In the event that the Supplier is unable to provide any Services in accordance with the requirements of these Conditions and any relevant Statement of Work due to an event of Force Majeure, the Fees payable under each affected Statement of Work shall be subject to a pro-rata reduction so that the Client is not required to pay for any Services which are not performed due to that event of Force Majeure.

Non-Solicitation

- 8.19** The Client shall not solicit the Supplier's staff or contractors who have been employed or engaged in the Services or the performance of the Agreement during the lifetime of the Agreement and for a period of twelve (12) months thereafter. For the purposes of this Clause 'solicit' means the soliciting of such person with a view to engaging such person as an employee, director, subcontractor or independent contractor.
- 8.20** In the event that the Client is in breach of Clause above then the Client shall pay to the Supplier by way of liquidated damages an amount equal to thirty percent (30%) per cent of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to the Supplier's ability to seek injunctive relief
- 8.21** The parties hereby acknowledge and agree that the formula specified in Clause 9.20 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

Governing law and Jurisdiction

- 8.22** This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of Scotland.
- 8.23** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

By way of acknowledgement of acceptance of the foregoing terms and conditions please sign this Statement and return it to the Employer.

Signed:

Name:

Date:

For and on behalf of **[Client Name]**

I have received and agree to the terms of the above written Statement and accept these as the terms and conditions of my employment.

Signed:

Name:

Date:

For and on behalf of **Flyte Cloud Services Limited**