

DATE

MASTER SERVICES AGREEMENT

Between

XFLO Solutions Limited

and

CUSTOMER

Parties

- (1) XFLO Solutions Ltd t/a Redtail Consulting incorporated and registered in Scotland with company number SC521101 whose registered office is at 1 Cambuslang Court, Glasgow, Scotland, G32 8FH ("**Supplier**").
- (2) ACME Limited incorporated and registered in England with company number xxxx whose registered office is at xxxx, United Kingdom, xxxx ("**Customer**")

Background

The Supplier is in the business of providing Managed Security Services, Cyber Security Consultancy and Products as further set out in the Schedule. Customer wishes to obtain and the Supplier wishes to provide the services on the terms set out in this Agreement.

1. Definitions and Interpretation

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions.

Change Order: has the meaning given in clause 6.1.

Charges: the sums payable for the Services, as set out in Schedule 1.

Confidential Information: any information relating to or disclosed in the course of the performance of this Agreement, including any information, idea, technology, know-how, inventions, algorithms, data, process, technique, program, computer software, computer code and related documents, work-in-progress, future development, engineering, present or future products, costs, sales, customers, profits, employees, key personnel, pricing policies, operational methods, technical processes, opportunities, markets, and other business affairs and methods and related information, manufacturing, marketing, business, technical, strategic, research, operating, financial, or personnel matters, whether in oral, written, graphic or electronic form and, in any event, with respect to the Customer's Confidential Information shall include any specifications described in a Statement of Work, as well as trading strategies, customer lists, trading data and similar information. Notwithstanding the foregoing, Confidential Information shall not include any information that:

- (i) is or becomes generally available to the public without breach of this Agreement;
- (ii) is in the possession of a party prior to its disclosure by the other party;
- (iii) becomes available from a third party not in breach of any obligation of confidentiality to which such third party is subject; or
- (iv) must be disclosed due to a judicial or governmental requirement or order. In the event that a recipient of such Confidential Information is ordered to disclose any Confidential Information of the disclosing party by a court, administrative agency or other governmental body with jurisdiction over recipient, recipient shall to the extent permitted by applicable law first provide the disclosing party with prompt written notice of such required disclosure and will take reasonable steps to allow disclosing party to seek a protective order with respect to the confidentiality of the information required to be disclosed. Recipient will promptly cooperate with and assist disclosing party in connection with obtaining such protective order at disclosing party's reasonable expense.

Customer's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items as may be specified in [Schedule 1](#)

Data Controller: has the meaning set out in section 1(1) of the Data Protection Act 1998.

Data Subject: an individual who is the subject of Personal Data.

Deliverables: any output of the Services to be provided by the Supplier to the Customer as specified in [Schedule 1](#) and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services (excluding the Supplier's Equipment).

Designs and Materials: shall mean all written or other materials and tangible designs, products, computer programs, source codes, drawings, notes, documents, information

and materials made or developed by Supplier alone or with others for Customer that results from the Services and all Intellectual Property Rights relating thereto.

Intellectual Property: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, 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 (including know-how and trade secrets) 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.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which the Supplier is providing services under this agreement.

Processing and process: have the meaning set out in section 1(1) of the Data Protection Act 1998.

Services: the services as set out in **Schedule 1**.

Statement of Work: the agreement between the parties setting out the particulars in relation to the services provided to the customer, inclusive of the Services, Charges and/or Deliverables set out in Schedule 1.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Services including any such items specified in **Schedule 1**.

- 1.2 The Schedules form part of and shall have effect as if set out in full in the body of this Master Services Agreement, and shall take precedence over the main provisions of this Master Services Agreement where any conflict arises. Any reference to this "Agreement" includes the Schedules.
- 1.3 The Schedule(s) may be amended, replaced and/or deleted where agreed by the parties to this Master Services Agreement via a Change Order at any time during the Term.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5 A reference to writing or written includes email.
- 1.6 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as

varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

2. Commencement and duration

This Agreement, including all terms and conditions, shall be effective as of the date of last signature of this Agreement (“**Service Start Date**”) and shall remain in effect for a period of 36 months from such date (the “**Term**”) unless or until terminated or automatically extended in accordance with clause 12.

3. Supplier's responsibilities

- 3.1 The Supplier shall use reasonable endeavours to provide the Services in accordance with this agreement in all material respects.
- 3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in **Schedule 1** but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- 3.3 The Supplier may appoint a manager for the Services, such person to be as identified in **Schedule 1**. Where appointed that person shall have authority to contractually bind the Supplier on all matters relating to the Services (including by signing Change Orders). The Supplier may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.

4. Customer's obligations

- 4.1 The Customer shall:
 - (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements; and
 - (c) obtain and maintain all necessary licenses and consents and comply with all relevant legislation as required to enable the Supplier to provide the services.
- 4.2 If in the Supplier's reasonable opinion performance of its obligations under this agreement has been prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed a reasonable extension of time to perform its obligations equal to the delay caused by the Customer.

5. Non-solicitation

The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of six (6) months after the termination of this agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

6. Change control

6.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Services;
- (b) the Supplier's existing Charges;
- (c) the timetable of the Services; and
- (d) any of the terms of this Agreement and/or the Schedule.

6.2 If the Supplier wishes to make a change to the Services, it shall provide a draft Change Order to the Customer for discussion and agreement in accordance with clause 6.4.

6.3 If the Customer wishes to make a change to the Services:

- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes; and
- (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 6.3(a), provide a draft Change Order to the Customer for discussion and agreement in accordance with clause 6.4.

6.4 If the parties agree to a Change Order, they shall sign it and that Change Order shall form an addition to or replacement of (as applicable) the contents of Schedule.

7. Charges and payment

Unless otherwise specified in a Statement of Work, invoices for shall be rendered to Customer every month and shall be paid in full within thirty (30) days from the date of such invoice, by wire transfer of funds to the account of Supplier. Customer shall notify Supplier within those thirty (30) days after receipt of an invoice if it has any objections to the invoice. Billing errors (such as wrong price per hour or incorrect calculations) are not subject to the 30 days limitation. After such 30th day of non-payment for undisputed amounts, invoices

shall thereafter bear interest at the rate of the lesser of five (5%) percent interest per annum compounded daily or the highest interest rate allowed by law.

Customer agrees to pay Supplier all reasonable legal fees and expenses incurred in connection with the collection of invoices not paid within the 30 day time period set out above.

8. Intellectual property rights

8.1 Ownership of Deliverables by the Customer.

The parties acknowledge and agree that Customer shall be the rightful and exclusive owner of all Designs and Materials and Deliverables (including, for the avoidance of doubt, in process or otherwise partially completed Designs and Materials and Deliverables) and any and all related Intellectual Property Rights, which Supplier has conceived, made, developed or reduced to practice, solely or jointly with others, in the course of performing the Services or as a result of providing such Services, whether or not the Designs and Materials or Deliverable is completed for any reason including by reason of the termination or expiration of the applicable Statement Of Work (such rights in the Deliverables and the related Intellectual Property Rights, the “**Customer Rights**”), provided that the relevant invoice in respect of the relevant Services has been paid by Customer and except in cases of termination by Customer. To the extent that ownership of any of the Customer Rights is not vested, or does not vest, in Customer by operation of law or otherwise, Supplier hereby agrees to and hereby does assign, grant, convey and transfer to Customer all right, title and interest in and to the same, effective as of, and from the moment of, creation or invention without the necessity of any other action by, or consideration from, any of the parties. Supplier shall provide Customer, at Customer’s expense (except as set forth in an Statement Of Work or as otherwise agreed upon by the parties), with all assistance required to vest or perfect Customer’s ownership of the same, and shall cooperate (for reasonable compensation at its then prevailing consulting rates) with Customer and do all acts requested by Customer to evidence, establish, apply for, procure, register, record, maintain, enforce and defend Customer’s ownership rights therein on a prompt basis, but in any event within such time period(s) as required to enable Customer to timely preserve, assert or defend its rights therein.

8.2 Third Party Intellectual Property Rights.

In the event that Supplier provides software at the request of Customer for use in or as part of a third party’s system or program then Customer agrees to abide by and comply with the terms of such third party’s license agreement relating to the use of such application.

9. Data protection and data processing

- 9.1 The Customer and the Supplier acknowledge that for the purposes of the Data Protection Act 1998, the Customer is the Data Controller and the Supplier is the data processor in respect of any Personal Data and both parties shall, where reasonably practicable, act in accordance with any additional or subsequent legislation in relation to Data Protection that may be in force from time to time.
- 9.2 The Supplier shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer.
- 9.3 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 9.4 The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
- (a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
 - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - (ii) the nature of the data to be protected; and
 - (b) take reasonable steps to ensure compliance with those measures.
- 9.5 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 9.
- 9.6 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Customer's instructions.
- 9.7 The Supplier may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractors' contract:
- (a) is on terms which are substantially the same as those set out in this agreement; and

- (b) terminates automatically on termination of this agreement for any reason.

10. Confidentiality

- 10.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, customers or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by this agreement.
- 10.2 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 10.3 Confidential information shall in the context of this Agreement mean such information that a business person would in the circumstances reasonably consider to be confidential.

11. Limitation of liability

- 11.1 Nothing in this agreement shall limit or exclude the Supplier's liability for:
 - (a) fraud or fraudulent misrepresentation; or
 - (b) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 11.2 Subject to clause 11.1, the Supplier shall not be liable to the Customer, whether in contract, delict (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;
 - (f) loss of use or corruption of software, data or information; and
 - (g) any indirect or consequential loss.
- 11.3 The Supplier's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise arising under or in connection with this agreement shall be limited to a maximum of the value of the Charges paid to the date of the relevant claim, as set out in the relevant Statement of Work under which a particular claim is being brought.

12. Termination

12.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven (7) days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify (in the opinion of the non-offending party) that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(c) to clause 12.1(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- 12.2 The provisions of clauses 2 and 12.1 notwithstanding, either party may terminate this agreement for convenience by giving the other party at least 4 months' written notice prior to expiry of the Term. If notice is not given, the contract will be automatically renewed for a further 12 months on a rolling basis (such extension to be deemed a further extension of the Term). Such termination shall be without prejudice to any accrued rights, for the avoidance of doubt, including in relation to ownership of Intellectual Property Rights and any warranties, undertakings or representations in relation to the standard of the Services or Deliverables.

13. Consequences of termination

- 13.1 On termination or expiry of this agreement:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and any interest applicable and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall within a reasonable time, return all of the Supplier's Equipment. If Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of Supplier's Equipment. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the following clauses shall continue in force: clause 1 (Interpretation), clause 5 (Non-solicitation), clause 8 (Intellectual property rights), clause 9 (data protection), clause 10 (Confidentiality), clause 11 (Limitation of liability), clause 13 (Consequences of termination), clause 14.4 (Waiver), clause 14.6 (Severability), clause 14.8 (Conflict), clause 15 (Governing law) and clause 16 (Jurisdiction).

- 13.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

14. General Provisions

- 14.1 Force Majeure Event

Neither party shall be liable for delay or failure in the performance of its obligations hereunder if such delay or failure arises from the occurrence of events beyond the reasonable control of such party, which events could not have been prevented by the exercise of due care and could not have been foreseen at the time of entering into this Agreement, such as fire, explosion, flood, storm, labour strikes, Acts of God, war, acts of

terrorism, embargo, riot, or the intervention of any governmental authority, provided that the party suffering the delay or failure immediately notifies the other party of the reason for the delay or failure and acts diligently to remedy the cause of such delay or failure. Notwithstanding the foregoing, any delay or failure exceeding thirty (30) days shall be grounds for termination by the non-defaulting party, or the non-defaulting party (in its sole discretion) may choose to extend the Term of this Agreement for a period of time equal to the interruption or delay.

14.2 Assignment and other dealings

- (a) This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- (b) The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

14.3 Variation

Subject to clause 6, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.4 Waiver

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other hereunder shall not be construed to be a waiver of any succeeding breach thereof.

14.5 Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

14.6 Severability

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 clause shall not affect the validity and enforceability of the rest of this agreement.

14.7 Entire agreement

- (a) This Agreement supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) 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.

14.8 Conflict

If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Schedule(s), the provisions of the Schedule(s) shall prevail.

14.9 No joint venture

Nothing contained herein will be construed as creating any partnership, joint venture, or other form of joint enterprise between the parties.

14.10 Third party rights

No one other than a party to this agreement their successors and permitted assignees, shall have any right to enforce any of its terms.

14.11 Contact Administration and Notices

- (a) The parties will designate and maintain principal contacts for purposes of all work and business between them concerning this Agreement and all notices required and other communications required or permitted hereunder. Unless otherwise provided in the Statement of Work, Customer shall use the Supplier's principal contact for any notifications relating to billing disputes. Notwithstanding the notice provision in this agreement, such notification shall be effected by post or electronically to the e-mail address for the Principal Contact or hereafter as may be changed by written notice.
- (b) Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next business day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the email address of the relevant Principal Contact.
- (c) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address as per clause 14.11(b)(i);

- (ii) if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the Business Day after posting or at the time recorded by the delivery service; or
 - (iii) if sent by email, at 9.00 am on the next Business Day after transmission.
- (d) This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.12 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, and which together shall constitute one and the same agreement. A scanned (including "pdf") copy of this Agreement or any Statement of Work containing a copy of a manual signature shall be deemed to be a duly executed manual signature of the parties.

15. Governing law

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 England.

16. Jurisdiction

Each party irrevocably agrees that the courts of England 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.

These presents consisting of this and the previous 12 pages together with annexed schedule are entered into on the dated stated at the beginning of them:

Signed for and on behalf of
CUSTOMER

.....
Director

Signed for and on behalf of XFLO
Solutions LTD

.....
Director