

NETPREMACY LIMITED

and

CUSTOMER

Professional Services Framework Agreement

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Parties

- (1) **NETPREMACY LIMITED** incorporated and registered in England and Wales with company number 4050972 whose registered office is at 6 Wellington Place, Leeds, LS1 4AP ("Netpremacy").
- (2) **CUSTOMER** incorporated and registered in England and Wales (registered number **Customer Registered Number**) whose registered office is at **Customer Registered Address**.

Background

- (A) Netpremacy provides IT consultancy services.
- (B) Customer wishes to purchase IT consultancy services from Netpremacy.
- (C) Customer and Netpremacy agree that any IT consultancy services to be provided by Netpremacy to Customer shall be provided in accordance with the terms and conditions of this Agreement.

Agreement

IT IS AGREED as follows:-

1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in these terms and conditions.

"Deliverables"	the products and/or materials to be developed and/or provided by Netpremacy under a SOW.
"Intellectual Property Rights"	patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether

registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Services"

the services to be provided by Netpremacy under a SOW including any Deliverables.

"Statement of Work / SOW"

an individual contract based on the pro-forma statement of work set out in Appendix 1 which incorporates the terms and conditions in this Agreement.

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. References to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant schedule.

2. Statements of Work

- 2.1. Any number of Statements of Work may be added to this Agreement at any time upon agreement of such Statements of Work by the parties. Netpremacy shall have no obligation to provide any proposed Services unless the parties have signed a Statement of Work relating to those Services.
- 2.2. Each Statement of Work when executed by an authorised representative of both parties shall constitute a separate agreement and, except for provisions in this Agreement which are specifically excluded or modified in such Statement of Work, each such Statement of Work shall incorporate therein all the terms and conditions of this Agreement.

- 2.3. No addition to, variation of, exclusion or attempted exclusion of any term or condition of this Agreement or any Statement of Work shall be binding on either party unless it is set out in writing and signed by a duly authorised representative of each party.

3. Netpremacy's obligations

- 3.1. Netpremacy shall use its best endeavours to provide the Services to the Customer in accordance with any delivery dates set out in the relevant SOW. Any delivery dates shall be estimates only and time shall not be of the essence.
- 3.2. Netpremacy shall at all times during the term of this agreement maintain all necessary licenses and consents and comply with all relevant legislation in relation to the Services.
- 3.3. Netpremacy warrants that it will perform the Services with reasonable skill and care and shall cooperate with the Customer in all matters relating to the Services.
- 3.4. Netpremacy warrants that any Deliverables will materially comply with their description or specification as set out in the relevant SOW for a period of 30 days from delivery.
- 3.5. Netpremacy shall observe and ensure that its personnel observe, all health and safety rules and regulations and any other security requirements that apply at the Customer's premises.
- 3.6. The Customer's sole remedy for breach of the warranty under clause 3.4 shall be correction of the relevant defect(s) by Netpremacy within a reasonable time from notification by the Customer of the defect(s) provided such defect(s) is notified to Netpremacy within the period set out in clause 3.4. To the extent a Deliverable consists of software, Netpremacy does not warrant that the software will operate uninterrupted or be error free. The warranty in clause 3.3 shall not apply to the extent any defect is caused by the Customer or any third party (save that if the "third party" is Google and under the relevant SOW Google is required to access the Deliverable for the benefit of the Customer then the warranty shall not be affected).
- 3.7. If under any SOW Netpremacy is required to supply any goods and/or services supplied by a third party, Netpremacy does not give any warranty, guarantee or other term or condition as to their quality, fitness for purpose or otherwise, but shall, where possible, pass on to the Customer the benefit of any warranty, guarantee or indemnity given by such third party to Netpremacy.

4. Customer's obligations

- 4.1. The Customer shall:

- 4.1.1. co-operate with Netpremacy in all matters relating to the activities to be performed under a SOW;
 - 4.1.2. provide in a timely manner such access to the Customer's premises, personnel and data, and such office accommodation and other facilities, as is reasonably requested by Netpremacy in order to carry out the Services;
 - 4.1.3. provide in a timely manner such information as Netpremacy may request in order to carry out the Services and ensure that such information is accurate in all material respects;
 - 4.1.4. be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.
- 4.2. If Netpremacy's performance of its obligations under a SOW is wholly or substantially prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to Netpremacy on demand all reasonable costs or charges sustained or incurred by it directly as a result of such act or omission, subject to Netpremacy confirming such costs and charges to the Customer in writing and Netpremacy mitigating such losses wherever possible.

5. **Change control**

- 5.1. Either party shall be entitled to request a change of the scope or execution of the Services by submitting details of the requested change to the other party in writing.
- 5.2. If either party requests a change to the scope or execution of the Services, Netpremacy shall, within a reasonable period of time, provide a written estimate to the Customer of:
- 5.2.1. the likely time required to implement the change;
 - 5.2.2. any variations to Netpremacy's charges arising from the change;
 - 5.2.3. the likely effect of the change on any delivery dates; and
 - 5.2.4. any other impact of the change on the relevant SOW.
- 5.3. If the Customer wishes Netpremacy to proceed with the change, Netpremacy has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, any delivery dates and any other relevant provisions within the relevant SOW to take account of the change.
- 5.4. Netpremacy may charge for the time it spends assessing a request for a change from the Customer on a time and materials basis in accordance with its standard daily fee rates. If the investigation and/or preparation of the change is likely to impact any delivery date(s), Netpremacy shall be under no obligation

to consider the change until agreement has been reached with the Customer on any revisions required to any delivery date(s).

6. Charges and payment

- 6.1. The charges payable for the Services shall be as stated within the applicable SOW.
- 6.2. Netpremacy's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00am and 6.00pm UK time on weekdays (excluding weekends and public holidays); any part days will be charged on a pro rata basis based on the standard daily fee rates. If Netpremacy personnel perform work outside of these hours the Customer will not be charged any overtime unless expressly agreed.
- 6.3. Netpremacy shall invoice the Customer in advance for its charges for time, expenses and materials (together with VAT where appropriate) payable under each SOW.
- 6.4. The Customer shall pay each invoice submitted to it by Netpremacy in full, without deduction or set-off and in cleared funds prior to the commencement of any Services. All payments shall be made by direct bank transfer into Netpremacy's nominated bank account.
- 6.5. Without prejudice to any other right or remedy that Netpremacy may have, if the Customer fails to pay Netpremacy on or before the due date Netpremacy may:
 - 6.5.1. charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - 6.5.2. suspend all Services until payment has been made in full (such right of suspension not to be used in an unreasonable manner by Netpremacy).
- 6.6. All outstanding payments payable to Netpremacy shall become due immediately on termination of this Agreement.

7. Intellectual Property Rights

- 7.1. All Intellectual Property Rights and all other rights in the Services and any Deliverables shall be owned by Netpremacy. Netpremacy hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services and Deliverables. If Netpremacy terminates this Agreement under clause 10.1, this licence will automatically terminate.

7.2. Netpremacy warrants that it has full authority to licence the use of any Intellectual Property Rights provided to the Customer under this Agreement. If any claim is brought or threatened by a third party against the Customer alleging that its use of any Intellectual Property Rights licensed by Netpremacy in accordance with the terms of this Agreement infringes the rights of the third party, Netpremacy shall at its own expense defend the claim and shall indemnify the Customer against all damages and costs awarded against the Customer or agreed by Netpremacy by way of settlement provided that:

7.2.1. the Customer informs Netpremacy promptly and fully in writing of the claim and does not concede or otherwise prejudice the claim;

7.2.2. the Customer authorises Netpremacy to assume sole conduct of the claim; and

7.2.3. the Customer gives Netpremacy all reasonable assistance in defending the claim (subject to Netpremacy meeting the Customer's reasonable costs incurred in providing such assistance).

Subject to the Customer complying with the provisions in clauses 7.2.1-7.2.3, if any Intellectual Property Rights licensed by Netpremacy under this Agreement do infringe a third party's rights, Netpremacy shall at its expense and discretion either procure for the Customer the right to continue to use those rights or adapt or replace the infringing Intellectual Property Rights. If none of the preceding options can be achieved on reasonable, commercial terms, Netpremacy may terminate the Customer's licence in respect of the infringing Intellectual Property Rights and refund the fees paid by the Customer for those elements. Netpremacy shall have no obligation under this clause to the extent any claim: (a) is based on any acts or omissions of the Customer not authorised under this Agreement; (b) arises as a result of use of the Intellectual Property Rights in combination with any equipment or programs not supplied by Netpremacy; or (c) arises as a result of a modification or other change which was not carried out by Netpremacy. The Customer's sole remedy for breach of this warranty is as set out in this clause 7.2.

8. **Confidentiality and property**

8.1. Netpremacy shall keep in strict confidence all technical or commercial know-how, personal data, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to Netpremacy by the Customer or its employees, agents or sub-contractors, and any other confidential information concerning the Customer's business or its products which Netpremacy may obtain. Netpremacy shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging Netpremacy's obligations to the Customer and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind Netpremacy.

- 8.2. The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Netpremacy or its employees, agents or sub-contractors, and any other confidential information concerning Netpremacy's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to Netpremacy and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 8.3. All materials, equipment and tools, drawings, specifications and data supplied by Netpremacy to the Customer shall at all times be and remain the exclusive property of Netpremacy, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Netpremacy, and shall not be disposed of or used other than in accordance with Netpremacy's written instructions or authorisation.
- 8.4. This clause 8 shall survive termination of this Agreement.

9. Limitation of liability

- 9.1. Except as referred to in clause 9.3 and subject to clause 9.2, the aggregate liability of Netpremacy in respect of all claims arising under or in connection with this Agreement, any Statement of Work or the legal relationship established by this Agreement or any Statement of Work (whether in contract, tort or otherwise) shall be limited so that it shall in no circumstance exceed:
- 9.1.1. in respect of any default relating directly to any Statement of Work, 100% of the total sums payable under that Statement of Work; and
- 9.1.2. in respect of any general default under this Agreement not covered under clause 9.1.1, 100% of the total sums payable under this Agreement.
- 9.2. Netpremacy shall not in any circumstance (other than those referred to in clause 9.3) be liable for any loss of profits (actual or anticipated), loss of revenue, loss of anticipated savings, loss of goodwill, loss or corruption of or damage to data or for any indirect, incidental, consequential or special loss or damage.
- 9.3. Nothing in this Agreement shall exclude or limit Netpremacy's liability for death or personal injury resulting from negligence or in relation to any claim based on fraud, fraudulent misrepresentation, criminal act or a breach of the obligations imposed by s.12, Sale of Goods Act 1979 or s.2, Supply of Goods and Services Act 1982.
- 9.4. This clause 9 shall survive termination of this Agreement.

10. Termination

- 10.1. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement and/or a SOW immediately if:
- 10.1.1. the other party commits a material breach of this Agreement or the relevant SOW and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - 10.1.2. the other party becomes insolvent, is unable to pay its debts, ceases to trade, has a receiver appointed over the whole or any part of its assets, has an administrator appointed, enters into any composition with creditors generally, is wound up or any step is taken towards any of these events or any events or proceedings in the jurisdiction of the other party that is similar to any of the events mentioned in this clause.
- 10.2. Termination of this Agreement or any SOW, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination. Termination of this Agreement under clause 10.1.1 shall not affect any then ongoing SOWs which shall continue in full force and effect until the obligations of the parties thereunder have been completed, unless such SOWs are also terminated under clause 10.1.1.
- 10.3. If a SOW is terminated, Netpremacy shall be entitled to issue invoices for all Services provided up to the date of termination.

11. Force majeure

- 11.1. Netpremacy shall not in any circumstances have any liability to the Customer if it is prevented from or delayed in performing its obligations under this Agreement or a SOW or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (involving the workforce of any third party other than Netpremacy), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, accident, breakdown of a third party's plant or machinery, fire, flood or storm.

12. Waiver

- 12.1. A waiver of any right under this Agreement or any SOW is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

13. Severance

- 13.1. If any provision of this Agreement or a SOW is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 13.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

14. Entire agreement

- 14.1. This Agreement and the applicable Statement of Work shall constitute the entire agreement between the parties as to the subject matter thereof and shall supersede and replace all negotiations, representations, statements, understandings and undertakings whether written or oral. The Customer acknowledges that in entering into this Agreement or any Statement of Work it has not and will not rely on, and shall have no remedy in respect of, any representation or statement (written or oral) made by any person (whether or not a party to this Agreement or the applicable Statement of Work) other than those expressly set out in this Agreement or the applicable Statement of Work and that, in respect of the representations and statements which are expressly set out in this Agreement or any Statement of Work, the Customer's only remedies shall be for breach of contract under the terms of this Agreement and the applicable Statement of Work.
- 14.2. The terms of this Agreement are in lieu of all warranties, conditions, undertakings, terms and obligations concerning the supply of the Services and the use of any Deliverables which might but for this clause have effect between Netpremacy and the Customer or would otherwise be implied or incorporated into this Agreement or considered to take effect as a collateral contract, whether by statute, common law, trade usage, course of dealing or otherwise, all of which are agreed to be excluded to the fullest extent permitted by law.

15. Assignment

- 15.1. Neither party shall, without the prior written consent of the other, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement or any SOW.

16. Third party rights

- 16.1. This Agreement and any SOW is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit or be enforceable by anyone else.

17. **Notices**

- 17.1. Any notice under this Agreement or any SOW shall be in writing and shall be delivered by hand or sent by pre-paid first-class recorded delivery post to the other party at its address as set out at the beginning of this Agreement or such other address as may have been notified by that party for such purposes. All notices must be addressed to the parties' respective finance directors.
- 17.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class recorded delivery post shall be deemed to have been received 48 hours after posting.

18. **Compliance with laws**

- 18.1. Netpremacy and the Customer both agree to comply with all relevant laws relating to the activities covered by this Agreement and under any SOW including, without limitation, the Data Protection Act 1998 and the Bribery Act 2010.

19. **Non-solicitation**

- 19.1. Neither party shall, without the prior written consent of the other party, at any time during the term of this Agreement and for a period of 12 months after its termination, solicit or entice away from the other party or employ or attempt to employ or engage in any capacity any person who is, or has been, engaged as an employee, consultant or sub-contractor of the other party and who has been engaged in the performance of any activities under any SOW. Save that a party shall not be in breach of this clause 19 as a result of running a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.

20. **Governing law and jurisdiction**

- 20.1. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation are governed by and construed in accordance with the law of England.
- 20.2. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.

THIS AGREEMENT has been entered into on the date of the last signature appearing below.

Netpremacy Limited

CUSTOMER

By:

Name:

Position:

Date:

By:

Name:

Position:

Date: