

Business to Business – Service Level Agreement for a Contract for Services

THIS AGREEMENT is made on [insert date]

AND IS MADE BETWEEN:

[Name of Business] whose registered office is at [insert address] ('the Business'); and
Mike Preston Consultancy] of 26 Bertram Street, Cardiff. CFF241NX ['the Contractor']

1. Definitions

In this Agreement the following terms and phrases shall have the following meaning unless the context requires otherwise:

Commencement Date	[Insert date]
Services	The agreed services to be performed by the Contractor as set out in Schedule 1 to this Agreement, such Services to be provided using reasonable skill and care and to the Service Levels.
Service Levels	The agreed standards to which the Services must be carried out as set out in Schedule 2.
Termination Date	The date on which the Contractor's engagement hereunder is terminated.
Intellectual Property Rights:	Patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.
Data Protection Legislation	Means the Data Protection Act 2018 which incorporates the UK GDPR.
Service Credits	The sums attributable to a Service Failure as specified in Schedule 3.
Service Failure	A failure by the Contractor to deliver any part of the Services in accordance with the Service Levels.
Deliverables	As set out on proposal

2. Engagement

The Contractor is (subject to Clause 6) engaged by the Business to carry out the Services.

3. Services

The Contractor agrees:

- 3.1 To undertake and provide the Services in accordance with any brief and deadline agreed with the Business and;
- 3.2 To carry out the Services in accordance with the Service Levels.
- 3.3 To manage and carry out the Services in an expert and diligent manner and to provide his/her services to the best of his/her technical and creative skill and to be solely responsible for how the services are provided;
- 3.4 To the best of his/her ability, promptly and faithfully to meet the Deliverables and deadlines agreed with the Business;
- 3.5 The Contractor is free to undertake and accept other engagements, except those which lead or might lead to any conflict of interest between the Contractor and the Business during his or her engagement;
- 3.6 To use such suitably qualified and experienced personnel as he or she may from time to time deem appropriate;
- 3.7 The Contractor has the right to supply a substitute of equivalent knowledge and expertise and acknowledges that the Business has the right to refuse the replacement if, in the reasonable view of the Business, the replacement is not sufficiently qualified to undertake the work. Where substitution occurs, the Business will remain responsible for its obligations under the agreement and will be responsible for the payment of the replacement, so that there will be no further payments outside of the agreed terms to pay for any handover period between the original consultant and the replacement.
- 3.8 To keep the Business informed of progress on the Services in which they are engaged and shall produce written reports on the same from time to time when so requested by the Business. While the Contractor's method of working is entirely their own and they are not subject to the control of the Business, they shall nevertheless comply with this and any other reasonable requests of the Business (or its clients) which do not impact upon the Contractor's method of working.

4. Invoices and Payment

Fees for the Services are set out in the project proposal

- 4.1 Where necessary, VAT will be added at the appropriate rate.
- 4.2 Unless specifically agreed otherwise, invoices will be submitted monthly by the Contractor and payment made within 30 days. [In the event that there are periods when there are no Services for the Contractor to perform, the Contractor shall not be paid a retainer for these periods. The fee is only payable in respect of Services actually provided.]
- 4.3 The Contractor shall be entitled to be reimbursed by the Business for all out of pocket expenses wholly, exclusively and properly incurred in the performance of the Services subject to the Contractor providing the Business with vouchers, receipts or other evidence of actual payment of such expenses and subject to the arrangement being specifically agreed in advance by the Business to the Contractor.
- 4.4 Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of [8%] per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgment.
- 4.5 The Business shall pay all accounts in full and not exercise any rights of set-off or counterclaim against invoices submitted by the Contractor.

5. Confidentiality

- 5.1 The Contractor hereby agrees that during the course of his or her engagement under this Agreement they are likely to obtain knowledge of trade secrets and also other confidential information with regard to the business

and financial affairs of the Business and those of the Business's clients, customers and suppliers details of which are not in the public domain ('Confidential Information'), and accordingly the Contractor hereby undertakes to and covenants with the Business that:

- 5.1.1 They shall not at any time during this Agreement or [at any time OR for a period of [5] years] after the Termination Date use or procure the use of the name of the Business in connection with their own or any other name in any way calculated to suggest that they continue to be connected with the business of the Business or in any way hold themselves or herself out as having such connection;
 - 5.1.2 They shall not use the Confidential Information other than during the continuance of this Agreement and in connection with the provision of the Services; and
 - 5.1.3 They shall not [at any time OR for a period of [5] years] after the date of this Agreement (save as required by law) disclose or divulge to any person other than to officers or employees of the Business whose province it is to know the same any Confidential Information and he or she shall use his or her best endeavours to prevent the publication or disclosure of any Confidential Information by any other person.
- 5.2 The restrictions set out in Clause 5 shall cease to apply to information or knowledge which comes into the public domain otherwise than by reason of the default of the Contractor.

6. Termination of Agreement

- 6.1 [Either party shall have the right at any time to terminate this Agreement by not less than 1 weeks notice in writing to the other party.] or [This Agreement will terminate on fulfilment of the Services.]
- 6.2 In addition, either party shall have the right to terminate this Agreement at any time by summary notice without any payment in lieu in the event of:
- 6.2.1 The other party being in material or persistent breach of any of the terms of this Agreement, including but not limited to Service Failures; or
 - 6.2.2 The other party persistently and wilfully neglecting or becoming incapable for any reason of efficiently performing the Services or failing to remedy any default in providing the Services; or
 - 6.2.3 The other party dying or becoming by reason of incapacity incapable of managing their affairs; or
 - 6.2.4 The other party having a bankruptcy order made against him or her or making any arrangement with his or her creditors or having an interim order made against him or her; or
 - 6.2.5 The other party taking any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction]
 - 6.2.6 There being a change of control of the other party
 - 6.2.7 A party's financial position deteriorates to such an extent that in the other party's [reasonable] opinion that party's capability to adequately fulfil its obligations under this Agreement have been placed in jeopardy
 - 6.2.8 A party doing any action manifestly prejudicial to the interests of the other party or which in the opinion of the other party may bring them into disrepute; or
 - 6.2.9 [The other party being convicted of any criminal offence other than a minor driving offence under the road traffic legislation in the UK or elsewhere for which a fine or non-custodial penalty is imposed]; or

6.2.10 [The other party offering, promising or giving a bribe or requesting, agreeing to receive or accepting a bribe or bribing a foreign public official in connection with the Services contrary to the Bribery Act 2010];

and that party shall have no claim against the terminating party in respect of the termination of his or her appointment for any of the reasons specified pursuant to Clauses 6.2.1 to [6.2.8- 6.2.10].

7. Consequences of Termination

- 7.1 Upon the expiration or termination of the engagement under this Agreement for whatsoever cause, the Contractor shall forthwith deliver up to the Business or its authorised representative all its property, including all equipment, materials, tools, keys, swipe cards, computer hardware and/or software, books, documents, account records and any other papers which may be in his or her possession, custody or control and which are the property of the Business or which otherwise relate in any way to the business or affairs of the Business and no copies of the same or any part thereof shall be retained by him or her. He or she shall then (if required by the Business) make a declaration that the whole of the provisions of this clause have been complied with.
- 7.2 The Business shall immediately pay to the Contractor all of the Contractor's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Contractor may submit an invoice, which shall be payable immediately on receipt;
- 7.3 The Business shall, within 30 days return all of the Contractor's equipment. [If the Business fails to do so, then the Contractor may enter the Business's premises and take possession of the Contractor's equipment. Until they have been returned or repossessed, the Business shall be solely responsible for their safe keeping];
- 7.4 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.
- 7.5 The termination of this agreement howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of having effect after such termination.

8. Insurance

The Contractor further warrants to the Business that they will:

- 8.1 Take out and maintain throughout the term of this Agreement, adequate professional indemnity insurance to protect themselves against any liabilities arising out of this Agreement and shall produce, at the request of the Business, a copy of the insurance policy or policies and relevant renewal receipts for inspection by the Business;
- 8.2 Take out and maintain throughout the term of this Agreement, adequate public liability insurance coverage [minimum £5 million cover] to protect themselves against any liabilities arising out of this Agreement in respect of all and any contractors/employees they utilise to carry out the Services and shall produce, at the request of the Business, a copy of the insurance policy or policies and relevant renewal receipts for inspection by the Business.

9. Data Protection and Data Processing

- 9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this Clause Applicable Laws means (for so long as and to the extent that they apply to the Contractor) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

- 9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Business is the data controller and the Contractor is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 9.3 [Without prejudice to the generality of Sub-clause 9.1, the Business will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Contractor for the duration and purposes of the Contract.]
- 9.4 [Without prejudice to the generality of Sub-clause 9.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under the Contract:
- 9.4.1 [Process that Personal Data only on the written instructions of the Business unless the Contractor is required by Applicable Laws to otherwise process that Personal Data. Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Business of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Business;]
- 9.4.2 Ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Business, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 9.4.3 Ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 9.4.4 Not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Business has been obtained and the following conditions are fulfilled:
- i. The Business or the Contractor has provided appropriate safeguards in relation to the transfer;
 - ii. The Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - iii. The Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. The Contractor complies with reasonable instructions notified to it in advance by the Business with respect to the processing of the Personal Data;
- 9.4.5 [Assist the Business, at the Business' cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;]
- 9.4.6 [Notify the Business without undue delay on becoming aware of a Personal Data breach;]
- 9.4.7 [At the written direction of the Business, delete or return Personal Data and copies thereof to the Business on termination of the agreement unless required by Applicable Law to store the Personal Data; and]
- 9.4.8 [Maintain complete and accurate records and information to demonstrate its compliance with this Clause 9.]

9.5 [The Business does not consent to the Contractor appointing any third-party processor of Personal Data under the Contract.]

OR

9.5 [The Business consents to the Contractor appointing [Name third-party processor] as a third-party processor of Personal Data under the Contract. The Contractor confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement Incorporating terms which are substantially similar to those set out in this Clause 9. As between the Business and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 9.]

9.6 [Either party may, at any time on not less than 30 days' notice, revise this Clause 9 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract)].

10. Intellectual property

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than intellectual property rights in any materials provided by the Business) shall be owned by the Contractor.

10.2 The Contractor grants to the Business, or shall procure the direct grant to the Business of, a fully paid-up, worldwide, non-exclusive, royalty-free [perpetual and irrevocable licence OR licence during the term of the Agreement] to copy [and modify] the Deliverables (excluding materials provided by the Business) for the purpose of receiving and using the Services and the Deliverables [in its business].

10.3 The Business shall not sub-license, assign or otherwise transfer the rights granted in Sub-clause 10.2.

10.4 The Business grants the Contractor a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Business to the Contractor for the term of the Agreement for the purpose of providing the Services to the Business.

11. Limitation of Liability

11.1 Nothing in this Agreement shall limit or exclude the Contractor's liability for:

11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

11.1.2 fraud or fraudulent misrepresentation;

11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

11.1.4 defective products under the Consumer Protection Act 1987; or

11.1.5 any matter in respect of which it would be unlawful for the Contractor to exclude or restrict liability.

11.2 Subject to clause 11.1:

11.2.1 The Contractor shall under no circumstances whatsoever be liable to the Business, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

i. loss of profits;

ii. loss of sales or business;

iii. loss of agreements or contracts;

- iv. loss of anticipated savings;
- v. loss of use or corruption of software, data or information;
- vi. loss of damage to goodwill; and
- vii. any indirect or consequential loss, and

11.3 The Contractor's total liability to the Business, in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Services.

11.4 This clause 11 shall survive termination of the Agreement.

12. **No Employment or Partnership**

12.1 The Contractor is an independent contractor and nothing in this Agreement shall render or be deemed to render the Contractor an employee, worker or agent of the Business and the Contractor shall not hold himself or herself out as such. This Agreement does not create any mutuality of obligation between the Contractor and the Business and neither party seeks to create or imply any mutuality of obligation between the parties in the course of the performance of this engagement or during any notice period. The Business is not obliged to offer work to the Contractor, nor is the Contractor obliged to accept work where it is offered.

12.2 The Contractor may choose to delegate performance of the Services to such suitably qualified and experienced personnel as he or she may from time to time deem appropriate. The Business has the right to refuse the replacement if, in the reasonable view of the Business, the replacement is not sufficiently qualified to undertake the work. The Contractor must provide details of the name of the delegate/substitute. The Contractor will be responsible for remunerating the delegate/substitute, such that there will be no further payments outside of the agreed terms to pay for any handover period between the Contractor and the delegate/substitute. When a delegate/substitute is appointed, the provisions relating to sub-processor obligations under Clause 9 will apply.

12.3 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Contractor shall be fully responsible for and shall indemnify the Business for and in respect of:

12.3.1 Any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Contractor shall further indemnify the Business against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Business in connection with or in consequence of any such liability, deduction, contribution, assessment other than where the latter arise out of the Business' negligence or wilful default;

12.3.2 Any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Contractor or any substitute against the Business arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the Business.

12.4 The Business may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Contractor.

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

13. **Notices/Communications**

13.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing, addressed to that party at its registered office or such other address as that party may have specified

to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail.

13.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address stated in this Agreement or to such other address (being in Great Britain) as the addressee may from time to time have notified for the purpose of this Clause; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by ore-mail, one Business Day after transmission.

13.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14. Entire Agreement

14.1 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.

14.2 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.

15. Force Majeure

15.1 If either party to this Agreement is prevented or delayed in the performance of any of its respective obligations under this Agreement by "force majeure", then such party shall be excused the performance for so long as such cause of prevention or delay shall continue;

15.2 For the purpose of this Agreement 'force majeure' shall be deemed to be any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of such party and inter alia including, but not limited to the following:

15.2.1 Strikes, lockouts or other industrial action;

15.2.2 Terrorism, civil commotion, riot, invasion, war threat or preparation for war;

15.2.3 Fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic, bad weather or other natural physical disaster;

15.2.4 Impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; and

15.2.5 Political interference with the normal operations.

16. Assignment and Other Dealings

16.1 The Business may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.

16.2 The Contractor shall not, without the prior written consent of the Business, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Agreement.

17. Survival of Causes of Action

The termination of this Agreement howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of

having effect after such termination.

18. Severability

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the illegal or unenforceable provision eliminated.

19. Waiver

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20. Variation

20.1 No variation of this Agreement shall be effective unless it is in writing and signed by both parties (or their authorised representatives).

20.2 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

21. Law and Jurisdiction

21.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

21.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SIGNED:

.....
For and on behalf of the Business

SIGNED:

.....
[Name of Contractor]

SCHEDULE 2 - SERVICE LEVELS

- 1.1 The Contractor shall ensure that the operational services meet or exceed the Service Levels at all times from the operational services Commencement Date.
- 1.2 The Contractor shall provide the Business with a monthly report detailing its performance in respect of each of the Service Levels.
- 1.3 If there is a Service Failure, the Contractor shall:
 - 1.3.1 Notify the Business immediately of the Service Failure; and
 - 1.3.2 Deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring.
- 1.4 In the event that the Service Levels are not met the Contractor shall automatically credit the Business with the applicable Service Credits as set out in Schedule 3. Service Credits shall either be shown as a deduction from the amount due from the Contractor to the Business in the next invoice then due to be issued under this agreement, or the Business shall issue a credit note against a previous invoice and the amount for the Service Credits shall be repayable by the Contractor as a debt within 30 Business Days of issue of the credit note. [The parties agree that any such Service Credits have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by the Business.]
- 1.5 The Business and the Contractor shall agree to meet at mutually convenient times in order to review the performance of the Services. Such meetings shall be minuted by the Business and copies of those minutes shall be circulated to and approved by both parties.
- 1.6 Prior to any meeting, the Business shall notify the Contractor, and vice-versa, of any problems relating to the provision of the operational services for discussion at the meeting. At the meeting, the parties shall agree where appropriate a plan to address such problems.
- 1.7 A review meeting to assess the performance of the Services shall be held at mutually convenient times. Each meeting shall be attended by senior representatives of the Business and of the Contractor.

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