

CONSULTANCY SERVICES AGREEMENT

BACKGROUND

- A Supplier is a provider of professional services for Kubernetes.
- B Supplier's provision of these services and Customer's receipt of these services shall be on the terms and conditions set out in this Agreement.

THE PARTIES AGREE:

1 Definitions and interpretation

- 1.1 Words shall have the meanings given to them in this Agreement, including without limitation as set out below:

Authorised Representative

means the person designated by each Party who will act as the project manager in connection with the Services and the prime point of contact with the Authorised Representative of the other Party;

Business Day

means a day, other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in the City of London;

Confidential Information

means any and all confidential information, (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any Associate, person, firm, or organisation associated with that party;

Customer Data

means all data, information, and other materials in any form (including derivatives) relating to Customer and which may be accessed, generated, collected, stored or transmitted by Supplier (or any Supplier contractor) in the course of the performance of the Services;

Customer Materials

means any Customer Policies, software, Customer Data, calculations, algorithms, methods, information and other materials created or supplied by Customer and made available to Supplier for use in the Services;

Customer Policies

means those Customer policies as notified to the Supplier by the Customer;

Data Protection Laws

means the General Data Protection Regulation 2016/679 and the Data Protection Act 2018 to the extent it relates to processing of personal data and privacy, and at any time any subsequent United Kingdom or European Union legislation in relation to the protection of personal data including any similar or equivalent legislation in any other relevant jurisdiction;

Fees

means the fees and other amounts payable under the Agreement and/or Schedule 2 for the Services;

Force Majeure

means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including war, revolution, terrorism, riot or civil commotion, or precautions against any such; strikes, lock outs or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, ionising radiation, radioactive contamination; flood, natural disaster, or adverse weather conditions. Force Majeure does not include (without limitation) inability

to pay, mechanical difficulties, shortage or increase of price of raw materials, over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a party;

Intellectual Property Rights

means copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, domain names and all similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future; and
- (e) wherever existing;

Services

means the Services detailed in Schedule 1 (as amended from time to time);

Supplier Personnel

means an employee, consultant or subcontractor of Supplier tasked with undertaking duties in connection with this Agreement;

Third Party Software

means any software programs or applications supplied to Customer by third parties and not by Supplier and any additional third party software subsequently transferred to, procured by or managed by Supplier in the provision of the Services;

VAT

means United Kingdom value added tax, and any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to sub-clauses or clauses or Schedules or Appendices are to sub-clauses or clauses or Schedules or Appendices of this Agreement, and references to paragraphs are to paragraphs in a Schedule or in an Appendix;
- 1.2.3 the Schedules and Appendices form part of this Agreement, and any additional schedules, orders or other documents agreed by the parties in future which are not referred to in this Agreement shall not form part of this Agreement unless expressly incorporated by agreement in writing between the parties in accordance with the terms of this Agreement;
- 1.2.4 references to this Agreement include its Schedules and Appendices;
- 1.2.5 references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- 1.2.6 'including' (or similar words) means including without limitation;
- 1.2.7 references to this Agreement or any specified clause in this Agreement are to this Agreement or the specified clause as in force for the time being and as amended, varied, novated or supplemented from time to time in accordance with this Agreement;
- 1.2.8 clause headings do not affect their interpretation; and
- 1.2.9 references to legislation (including any subsidiary legislation) include any modification or re-enactment thereof.

2 Priority and form of agreement

- 2.1 This Agreement consists of the terms and conditions in the main body of this Agreement and any Schedules and Appendices incorporated by reference into this Agreement.
- 2.2 In the event of any conflict or inconsistency between different parts of this Agreement, the following descending order of priority applies:
 - 2.2.1 the terms and conditions in the main body of this Agreement
 - 2.2.2 the Schedules
 - 2.2.3 the Appendices.
- 2.3 Subject to the above order of priority between documents, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

3 Duration

- 3.1 This Agreement commences and takes effect from the Commencement Date and shall continue for twelve (12) months (Term) , unless terminated earlier, in accordance with this Agreement. This Agreement can be extended on the written agreement of both parties.

4 Fees

- 4.1 All amounts due under this Agreement are exclusive of VAT, sales or other tax applicable which shall be paid in addition by Customer at the rate and in the manner for the time being prescribed by law.
- 4.2 Supplier shall invoice Customer electronically to the email address notified by Customer to Supplier for all sums due under this Agreement as specified in this Agreement.
- 4.3 Customer shall pay such sums in full within fourteen (14) days from the date of invoice.

5 Limits on liability

- 5.1 Subject to the following sub-clauses, in no event shall the aggregate liability of either party (whether in contract, tort (including negligence) or otherwise) and in respect of all claims, losses and damages arising under or in connection with this Agreement exceed the Fees paid by the Customer during the 12-month period before the date on which the loss or damage giving rise to the claim arose.
- 5.2 In no circumstances shall a party's liability to the other in contract, tort (including negligence), misrepresentation (whether innocent or negligent), breach of statutory duty or otherwise arising under or in connection with this Agreement extend to any:
 - 5.2.1 loss of profits;
 - 5.2.2 loss of business opportunity;
 - 5.2.3 loss of goodwill;
 - 5.2.4 loss of data;
 - 5.2.5 loss of anticipated savings; or
 - 5.2.6 any special, indirect or consequential loss or damage whatsoever.
- 5.3 Notwithstanding the limitations and exclusions of liability set out in this Agreement, neither party excludes or limits any liability for:
 - 5.3.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of a party or its employees; or
 - 5.3.2 fraud or fraudulent misrepresentation; or
 - 5.3.3 any other liability to the extent the same cannot be excluded or limited by law.

6 Supplier Obligations

- 6.1 Customer appoints Supplier to supply the Services and Supplier agrees to provide those Services in accordance with this Agreement.

- 6.2 Supplier shall provide the Services:
- 6.2.1 with reasonable skill and care;
 - 6.2.2 in compliance with all statutory requirements and applicable regulations relating to the Services as applicable in England and Wales;
 - 6.2.3 in accordance with the Service Levels; and
 - 6.2.4 in compliance with such Customer Policies as are relevant to Supplier's provision of the Services (provided that Supplier shall not be obliged to comply with changes to Customer Policies which are more onerous than those in effect at the Commencement Date where those Customer Policies have the effect of materially altering Supplier's obligations under this Agreement or necessarily result in material expense to Supplier).

7 Customer Obligations

- 7.1 Customer shall provide or procure for Supplier and/or Supplier Personnel:
- 7.1.1 reasonable access to premises and facilities at the locations for delivery of Services set out in the Agreement;
 - 7.1.2 reasonable access to Customer software, systems and data; and
 - 7.1.3 relevant information, instructions and assistance, including reasonable access to and cooperation by Customer personnel;
- in each case as reasonably necessary for Supplier to perform its obligations under this Agreement (which shall include any dependencies set out in Schedule 1).
- 7.2 Customer undertakes to ensure that the computer and operating system and any other hardware or software which Supplier is asked by Customer to use or modify for the purposes of performing Supplier's obligations is either the property of Customer or is legally licensed to Customer and that Supplier is authorised to use the same.
- 7.3 The Services are provided at Customer's request and Customer is responsible for ascertaining that the Services are suitable for its own needs.
- 7.4 Customer shall only use the Services for its own benefit and not for the benefit of any third party and for the purpose of Customer servicing its own customers in the usual course of Customer's business.
- 7.5 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then:
- 7.5.1 the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay; and
 - 7.5.2 in respect of any delay which affects any deadline of the Supplier, the Supplier shall be afforded an extension of its deadline by a period equivalent to the Customer delay.

8 Warranties

- 8.1 Supplier warrants and represents to Customer that:
- 8.1.1 Supplier has the right, power and authority to enter into this Agreement and to supply the Services; and
 - 8.1.2 (subject to clause 8.2) the Services do not and shall not infringe the Intellectual Property Rights of any third party.
- 8.2 The Customer acknowledges that to the extent the Services involve the delivery and configuration of Third-Party Software (which may include open source software), the warranty at clause 8.1.2 is limited to passing through any standard warranties from the suppliers of such Third-Party Software.
- 8.3 Supplier does not warrant or represent that the Services will be free from errors and interruptions.
- 8.4 The warranties and representations specified in this clause above are subject to Customer giving notice to Supplier as soon as it is reasonably able upon becoming aware of the breach of warranty or representation. When notifying Supplier of a breach Customer shall use its reasonable endeavours to

provide Supplier with such documented information, details and assistance as Supplier may reasonably request.

8.5 All other warranties and representations as to the Services, whether statutory or implied, are hereby expressly excluded to the fullest extent permitted by law. This does not exclude any liability for fraudulent misrepresentation.

8.6 Supplier will not be liable under this clause or be required to remedy any problem arising from or caused by Customer's use of the Services in a manner other than as directed by Supplier.

8.7 Customer warrants and represents to Supplier that:

8.7.1 Customer has the right, power and authority to enter into this Agreement, to grant to Supplier the rights (if any) contemplated in this Agreement and to receive the Services;

8.7.2 any Customer Materials do not and shall not infringe the Intellectual Property Rights of any third party; and

8.7.3 it has in place appropriate virus protection and information security measures.

9 Intellectual Property Rights

Unless otherwise expressly agreed in the Agreement (or other Schedules as appropriate) no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement. Any Third-Party Software delivered as part of the Services is licensed on the basis of its standard terms.

10 Insurance

The Supplier shall maintain in force all insurances required by applicable law and such other insurances as would be reasonably prudent taking into account the size and nature of the Supplier's business and the nature of the risks in this Agreement. The Supplier shall maintain these insurances with a reputable insurer and they shall not include unreasonable excesses or deductibles which are unusual for the type of insurance.

11 Rights of third parties

Except as expressly provided in the Agreement (or other Schedules as appropriate) for the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. However, this does not affect any right or remedy of such a person that exists or is available apart from that Act.

12 Entire agreement

This Agreement contains the whole agreement between the parties relating to its subject matter and supersedes any prior agreements, representations or understandings between them unless expressly incorporated by reference in this Agreement. Each party acknowledges that it has not relied on, and shall have no remedy in respect of, any representation (whether innocent or negligent) made but not expressly embodied in this Agreement. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.

13 Force Majeure

13.1 A party will not be liable if delayed in or prevented from performing its obligations hereunder due to Force Majeure, provided that it:

13.1.1 promptly notifies the other of the Force Majeure event and its expected duration, and

13.1.2 uses reasonable endeavours to minimise the effects of that event.

13.2 If, due to Force Majeure, a party:

13.2.1 is unable to perform a material obligation, or

13.2.2 is delayed in or prevented from performing its obligations for a continuous period of more than ninety (90) days,

the other party may, within a further ten (10) days terminate this Agreement on notice, otherwise this Agreement shall continue in full force and effect.

14 Termination

14.1 Either party may without prejudice to its other rights and remedies by notice in writing to the other party immediately terminate this Agreement if the other:

14.1.1 is in material or persistent breach of any of its obligations under this Agreement and if that breach is capable of remedy and the other has failed to remedy that breach within thirty [30] days after receiving written notice requiring it to remedy that breach; or

14.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.

14.2 In the event of termination of this Agreement for any reason, each party shall:

14.2.1 within seven (7) days of such termination return (or, at the other party's option, destroy) all Confidential Information of the other party in its possession or under its control and all copies of such information.

14.3 Termination of this Agreement for whatever reason shall not operate to affect any provisions that expressly or by implication survive termination.

15 Notices

15.1 Notices under this Agreement must be in writing and sent to the other party at the address stated above (or such other applicable address for service as notified from time to time in writing). Any notice of termination under clause 14 may not be sent by email; other notices may be sent by email. Email notices shall be sent to either Matthew Barker or Matthew Bates and copied to notices@jetstack.io. Notices may be given, and will be deemed received if correctly addressed:

15.1.1 by first-class post: two (2) Business Days after posting;

15.1.2 by hand: on delivery;

15.1.3 by e-mail: on receipt of a read return email from the same email address within twenty-four (24) hours from delivery if no notice of delivery failure is received.

16 Data Protection

Each party must comply with all Data Protection Laws that apply to it in relation to any personal data processed in connection with this Agreement, including putting in place and maintaining throughout the Term of the Agreement appropriate technical and organisational measures against the accidental, unauthorised or unlawful processing, destruction, loss, damage or disclosure of personal data and adequate security programmes and procedures to ensure that unauthorised persons do not have access to any equipment used to process personal data.

17 Confidential Information

17.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.

17.2 Each party undertakes to:

17.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and

- 17.2.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.
- 17.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 17.4 The provisions of this clause shall not apply to information which:
- 17.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
 - 17.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
 - 17.4.3 is independently developed by the recipient, without access to or use of such information; or
 - 17.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 17.5 The obligations under this clause shall survive the variation and expiry or termination of this Agreement for a period of five (5) years thereafter.
- 17.6 Each party will establish and maintain adequate security measures to safeguard Confidential Information and data of the other party in its possession from unauthorised access use or copying.
- 17.7 The Supplier may publicly use Customer's name and logo to refer to Customer as a customer of the Supplier. The Supplier will follow any applicable brand usage guidelines provided by Customer.

18 Relationship

The parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.

19 Severability

- 19.1 Each clause of this Agreement is severable and distinct from the others. If any clause in this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted or modified (or the duration of the relevant clause reduced):
- 19.1.1 the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable; and
 - 19.1.2 without limiting the foregoing, in such circumstances the parties will promptly and in good faith seek to negotiate a replacement provision consistent with the original intent of this Agreement as soon as possible.

20 Assignment and subcontracting

No party may assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the other's prior written consent (such consent not to be unreasonably withheld or delayed). Nothing in this clause 20 shall prevent the Supplier from entering into any agreement or arrangement in relation to any fundraising or public offering.

21 Variation

No amendment or variation of this Agreement will be valid unless agreed in writing by an authorised signatory of each party.

22 Waiver

- 22.1 Any rights, powers or remedies conferred upon a party by this Agreement shall be in addition to and without prejudice to all other rights, powers and remedies available to the party under general law (except as expressly excluded in this Agreement).
- 22.2 Unless otherwise expressly agreed, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

23 Anti-bribery and anti-corruption

Each party shall comply with all applicable laws relating to anti-bribery and anti-corruption, including the Bribery Act 2010.

24 Governing law and jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter is governed by and shall be construed in accordance with the laws of England and Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any disputes and claims which may arise out of, or in connection with, this Agreement.

25 Counterparts

This Agreement may be signed in any number of counterparts and by the parties on separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement. This Agreement shall not be effective until each party has signed one counterpart.