

# FlexUp Professional Services Agreement – General Conditions (Services-GC)

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## **Preamble**

The present FlexUp Professional Services Agreement – General Conditions ("**Services-GC**") set out the general terms and mechanisms that govern all professional services agreements that expressly refer to it. It applies uniformly worldwide, ensuring consistency, legal certainty, and modularity across jurisdictions.

The Services-GC is to be read together with the FlexUp General Conditions ("**FlexUp-GC**"), which sets out the general terms applicable to all contracts under the FlexUp contractual framework where expressly incorporated. In the event of any inconsistency between the Services-GC and the FlexUp-GC, the Services-GC shall prevail to the extent of the inconsistency.

The Services-GC is incorporated by reference into each Professional Services Agreement – Special Conditions ("**Services-SC**"), which identifies Parties, specifies which contractual documents apply, and defines the parameters of the professional services relationship. Together with the other documents applicable to the Contract as specified in the Services-SC, the Services-GC forms the binding agreement between Parties.

All templates and documents composing the Contract are published and maintained by FlexUp and distributed under the FlexUp Licence ([www.flexup.org](http://www.flexup.org)).

## **Article 1. Composition of the Contract**

- 1.1 The Contract may include the following documents, listed in descending order of priority:
  - a) the FlexUp Professional Services Order – Special Conditions ("**Services-OSC**"), if applicable, which contains the specific elements of each Order;
  - b) the FlexUp Professional Services Agreement – Special Conditions ("**Services-SC**"), which identifies Parties and the specific parameters of the Contract;
  - c) the FlexUp Charter – Special Conditions ("**Charter-SC**"), if applicable, which is specific to the Project defined therein;
  - d) one or more FlexUp Professional Services Agreement – Additional Conditions ("**Services-AC**"), if applicable, which supplement or adapt the Contract to the relevant context or jurisdiction;
  - e) the FlexUp Professional Services Agreement – General Conditions ("**Services-GC**"), the present document, which applies to all professional services contracts that refer to it;
  - f) the FlexUp Charter – General Conditions ("**Charter-GC**"), if applicable, which applies to all FlexUp projects worldwide;
  - g) the FlexUp General Conditions ("**FlexUp-GC**"), which applies to all FlexUp contracts that refer to it.
- 1.2 The Contract is composed of the documents listed in Article 1.1 that are expressly designated as applicable in the Services-SC, together with any additional documents expressly incorporated therein. The applicable documents form an inseparable contractual whole and are collectively referred to as the "**Contract**". In the event of any inconsistency between these documents, the order of priority set out in Article 1.1 shall apply.
- 1.3 For clarity, the following terminology applies:
  - a) "**Special Conditions**" refers to the Services-SC and, where applicable, to the Services-OSC and Charter-SC.

- b) "**General Conditions**" refers to the Services-GC, the FlexUp-GC and, where applicable, the Services-AC and/or the Charter-GC.
  - c) "**Charter**" refers collectively to the Charter-SC and the Charter-GC.
- 1.4 The documents composing the General Conditions are incorporated by reference and are not required to be appended to the Contract.
- 1.5 For each document composing the General Conditions, the applicable version is the latest version published on the FlexUp website ([www.flexup.org](http://www.flexup.org)) as of the date of signature of the Services-SC or, where relevant, the applicable Services-OSC, subject to the update mechanisms described in the General Conditions.

## **Article 2. Composition of Orders**

In accordance with Article "Orders" of the FlexUp-GC, an Order under a Professional Services Contract comprises the following elements, whether contained in the Order itself or in the Contract that the Order is part of:

- a) identities of Supplier and Client;
- b) services to be Delivered by Supplier;
- c) Remuneration to be paid by Client for the Delivery of Services;
- d) Payment Structure, detailing, if applicable, the division of the Remuneration into distinct Tranches, with their corresponding Payment Terms;
- e) specific criteria for the Confirmation, Delivery, Declaration, and Acceptance of the Order.

## **Article 3. Supplier obligations**

- 3.1 Supplier shall Deliver Services to Client for Confirmed Orders on the terms and conditions indicated in the Contract.
- 3.2 It is expressly agreed that the obligations undertaken by Supplier under the Contract are obligations of means, unless expressly agreed otherwise In Writing.
- 3.3 Supplier shall exercise due care in the performance of the Services and do everything in its power to ensure that the Services rendered to Client are satisfactory.
- 3.4 Supplier shall co-ordinate its activities with Client and perform the Services as per the schedule to be agreed upon and updated as necessary with Client.
- 3.5 Supplier shall allocate the most appropriate material and human resources to the performance of the Services, it being specified, however, that it shall be solely responsible for defining such resources, without Client being able to interfere in any way with this choice.
- 3.6 Supplier shall keep Client reasonably informed of the progress of the Services, and shall in any event ensure that execution times are compatible with the nature of the assistance to be provided and the degree of urgency of Client's requests.
- 3.7 In addition, Supplier has a duty to advise Client as to the usefulness of the Services.

## **Article 4. Client Obligations**

- 4.1 Client shall pay Remuneration to Supplier in accordance with Article "Payment obligations" and subsequent articles of the FlexUp-GC.
- 4.2 Client shall provide Supplier with access to sufficient information and resources to enable it to carry out the Services. Client therefore shall cooperate with Supplier to provide it in good time with all documents,

information, and explanations that Supplier may need to carry out the Services in the required time and under the best possible conditions.

- 4.3 In general, Client shall facilitate Supplier's Delivery as much as possible and not do anything, or allow anything to be done, that could hinder them or make them more difficult or costly.

## Article 5. Delivery

Without prejudice to Article "Deliveries" of the FlexUp-GC, in the case of Recurring Orders, Supplier's obligation to submit a Delivery Declaration is waived. If Supplier does not make a Delivery Declaration, the Delivery Declaration shall be deemed tacit on the fifteenth (15th) day following the Delivery Date. For Recurring-Order Contracts, the Delivery Date is the last day of the period (i.e., the last day of the month for monthly Orders) unless provided otherwise in the Contract.

## Article 6. Success-based Remuneration

This Article applies only if the Special Conditions provide for remuneration linked to revenues generated by Client from third parties as a result of Supplier's referral, sales, delivery, or other contribution under the Contract, including a Referral Success Fee, Sales Success Fee, Billable Bonus, or any similar revenue-based remuneration ("**Revenue-Based Remuneration**").

6.1 For the purposes of this Article:

- a) "**Third-Party Client**" means any third party from which Client generates revenue as a result of Supplier's referral, sales, delivery, or other contribution under the Contract.
- b) "**Underlying Transaction**" means any order, contract, subscription, assignment, transaction, or other remunerated operation between Client and a Third-Party Client.
- c) "**Success Fee Revenue Base**" means the net amounts actually received by Client from a Third-Party Client under an Underlying Transaction or, where the relevant revenue is paid under the FlexUp Economic Model, the net amounts committed, issued, or recognised under the applicable Charter. The Success Fee Revenue Base excludes VAT and other sales taxes, refunds, credits, chargebacks, discounts granted at or before invoicing, pass-through costs, reimbursable expenses invoiced at cost, and any other amount expressly excluded in the Special Conditions.
- d) "**Billable Amount**" means the portion of the amounts invoiced, received, committed, issued, or recognised by Client from a Third-Party Client that is attributable to Supplier's billable work under the Contract, excluding VAT and other sales taxes, refunds, credits, chargebacks, discounts granted at or before invoicing, pass-through costs, reimbursable expenses invoiced at cost, and any other amount expressly excluded in the Special Conditions.
- e) "**Referral Validity Period**" means the period of twelve (12) months starting from the date on which Supplier refers a Third-Party Client to Client, or any other period specified in the Special Conditions.
- f) "**Adjustment Factor**" means the percentage allocated to Supplier's contribution where several persons contributed to the same referral, sale, delivery, or revenue-generating activity.

6.2 A "**Referral Success Fee**" rewards Supplier for introducing a Third-Party Client to Client where that introduction is an effective and traceable cause of a commercial relationship. Unless the Special Conditions provide otherwise, a Referral Success Fee applies only if Client signs a first Underlying Transaction with the Third-Party Client during the Referral Validity Period, and then applies client-wide to the Success Fee Revenue Base generated from that Third-Party Client during the applicable fee period.

6.3 A "**Sales Success Fee**" rewards Supplier for materially conducting or closing the sales process for an Underlying Transaction, including qualification, presentation, negotiation, and obtaining signature or other binding commitment from the Third-Party Client. Unless the Special Conditions provide otherwise:

- a) for an Underlying Transaction structured as a single order or recurring-order contract, the Sales Success Fee applies to that order or recurring series; and
- b) for an Underlying Transaction structured as an occasional-order framework, the Sales Success Fee applies only to the specific orders secured by Supplier.

For recurring-order contracts, the Sales Success Fee also applies to any incremental Success Fee Revenue Base generated by Supplier's material contribution to an upsell, renewal, expansion, additional recurring order, or similar increase in the recurring revenue of the relevant Third-Party Client.

- 6.4 A "**Billable Bonus**" rewards Supplier for Services performed under the Contract that are directly billable by Client to a Third-Party Client. Unless the Special Conditions provide otherwise, a Billable Bonus is calculated on the Billable Amount.
- 6.5 Unless the Special Conditions provide otherwise, Revenue-Based Remuneration is calculated as follows:
  - a) Referral Success Fee or Sales Success Fee = applicable rate x Success Fee Revenue Base x applicable Adjustment Factor.
  - b) Billable Bonus = applicable rate x Billable Amount x applicable Adjustment Factor.
- 6.6 Where Supplier performs several remunerated activities for the same Third-Party Client or Underlying Transaction, including referral, sales, and delivery activities, the corresponding Revenue-Based Remuneration components are cumulative, unless the Special Conditions provide otherwise. No double remuneration shall be due for the same activity on the same calculation basis.
- 6.7 Unless the Special Conditions provide otherwise, Referral Success Fees apply for thirty-six (36) months from the date of signature of the first Underlying Transaction with the relevant Third-Party Client.

Sales Success Fees apply for the duration of the relevant Underlying Transaction to which they relate, including any similar orders in a recurring-order contract, renewals of that Underlying Transaction, and any incremental Success Fee Revenue Base generated by Supplier's material contribution to recurring revenue. Billable Bonuses apply for the duration of the billable work to which they relate.
- 6.8 Under a classic payment structure, Revenue-Based Remuneration is earned and payable only when Client has actually received the corresponding Success Fee Revenue Base or Billable Amount in cleared funds. Under the FlexUp Economic Model, Revenue-Based Remuneration is earned when the corresponding amount is committed, issued, or recognised under the applicable Charter, and shall be allocated to Supplier in the same form and payment structure as the corresponding revenue, unless the Special Conditions provide otherwise.
- 6.9 No Revenue-Based Remuneration is due in respect of revenue or Billable Amount that is unpaid, disputed, cancelled, refunded, charged back, generated outside the applicable fee period, generated outside the scope specified in the Special Conditions, or attributable to activities that Supplier did not perform or materially contribute to.
- 6.10 Where several persons contributed to the same referral, sale, delivery, or other revenue-generating activity, the relevant Revenue-Based Remuneration shall be allocated through Adjustment Factors reflecting their respective contribution. The combined Adjustment Factors for the same activity and calculation basis shall not exceed one hundred per cent (100%). Unless the Special Conditions provide another allocation method, Client shall determine the applicable Adjustment Factors reasonably and in good faith, based on the nature, timing, and materiality of each contribution.
- 6.11 Client shall keep sufficient records to calculate Revenue-Based Remuneration and shall provide Supplier, upon reasonable request, with a summary of the amounts attributable to Supplier's Revenue-Based Remuneration. Such summary shall not require disclosure of confidential pricing structures, contracts, or commercial terms beyond what is reasonably necessary to verify the calculation.
- 6.12 Contract Cessation shall not affect Revenue-Based Remuneration relating to Third-Party Clients or Underlying Transactions confirmed before the effective date of Cessation. Such rights shall survive until

the expiry of the applicable fee period, subject to the exclusions and conditions set out in this Article and in the Special Conditions.

## **Article 7. Vesting of Flexible Commitments**

This Article applies only if the Contract is an Associate Contract, following the FlexUp Economic Model and subject to a FlexUp Charter.

- 7.1 This Article outlines the general mechanism governing the conditions under which Supplier secures definitive rights ("**Vesting**") over certain Flexible Commitments during the term of the Contract. The Vesting conditions specifically govern the status of Flexible Commitments upon Contract Cessation and apply only if, and to the extent, expressly stated in the Special Conditions.
- 7.2 Where Vesting provisions are intended to apply, the Special Conditions must specify:
  - a) the particular types of Flexible Commitments subject to these Vesting conditions (the "**Vested Commitments**");
  - b) the applicable look-back period(s) preceding the effective date of Contract Cessation during which Vesting Commitments were created and are subject to Vesting conditions (each a "**Vesting Period**"); and
  - c) the specific Cessation scenario(s) that trigger the potential cancellation of unvested Vesting Commitments (each a "**Cessation Event**").
- 7.3 If a Cessation Event, as defined in the Special Conditions, occurs, Supplier shall retain rights only over those Vesting Commitments created during the corresponding Vesting Period that have fully vested as of the effective date of Contract Cessation, according to the criteria defined in the Special Conditions. All other such Vesting Commitments shall be deemed unvested and shall be automatically and irrevocably cancelled. For the avoidance of doubt, in this context "cancellation" means that Supplier permanently loses all rights to any future payment related to the unvested Vesting Commitment, as well as, in the case of Token Commitments, to any associated voting rights.
- 7.4 Notwithstanding Article 7.3 above, a Vesting Commitment shall be deemed fully vested if, as of the effective date of Contract Cessation, it has achieved the status of "Payable" or "Paid" as defined in the FlexUp Charter, irrespective of the Vesting Period during which it was created.
- 7.5 The specific details governing Vesting, including the identification of Vesting Commitments, the duration of Vesting Periods, and the definition of Cessation Events, shall be determined exclusively by the Special Conditions.

## **Article 8. Independent contractor**

- 8.1 Notwithstanding Article "Independence and absence of partnership" of the FlexUp-GC, the following provisions apply to Professional Services Contracts and shall prevail to the extent of any inconsistency.
- 8.2 Parties agree that Supplier is an independent contractor and not an employee, partner, or agent of Client. Supplier shall not be entitled to any rights, benefits, or privileges of employment provided to Client's employees, such as health insurance, retirement benefits, or unemployment insurance. Client shall not withhold taxes on behalf of Supplier, and Supplier is responsible for paying any taxes due on payments received under this Contract.
- 8.3 Supplier shall determine its own schedule for performing the Services. Client and Supplier may agree on deadlines or milestone dates for deliverables, but Supplier retains control over the time, place, and manner in which the Services are performed, unless otherwise mutually agreed upon In Writing.
- 8.4 Supplier is not integrated into Client's business or operations. Supplier shall perform the Services independently and shall not participate in Client's day-to-day activities, management meetings, or

business decision-making processes, except as explicitly agreed in relation to the specific Services outlined in this Contract.

- 8.5 Supplier shall have full discretion in determining how to fulfil its obligations under this Contract, including the method, resources, and personnel used. Client may provide general direction on the goals of the project but shall not control the day-to-day activities or the means used by Supplier to accomplish the Services.
- 8.6 Supplier shall provide its own tools, equipment, and resources necessary for the completion of the Services, unless explicitly agreed otherwise by Parties. Client is not responsible for providing any materials or resources for Supplier to perform the Services.
- 8.7 This Contract is for the provision of specific, project-based Services, and there is no guarantee of ongoing work beyond the scope of this Contract. Each project or Order shall be treated as a standalone engagement, and Supplier is free to accept other projects from other clients, provided there is no direct conflict of interest with Client's business.

## **Article 9. Non-Competition**

- 9.1 Supplier agrees that, for the duration of this Contract and for a period of twelve (12) months following its Cessation, it shall not directly or indirectly:
  - a) compete with Client in any business activity that is substantially similar to the Services provided under this Contract; or
  - b) provide services to, or otherwise engage with, any competitor of Client that would be in direct conflict with Client's business interests.
- 9.2 The non-competition obligation applies to the territories and markets where Client conducts its business at the time of signature of the Contract.
- 9.3 Any exemption to this obligation must be explicitly authorised In Writing by Client prior to engagement.

## **Article 10. Non-Solicitation**

- 10.1 Both Client and Supplier agree that, for the duration of this Contract and for a period of twelve (12) months following its Cessation, neither Party shall directly or indirectly:
  - a) solicit, recruit, or encourage any employee, contractor, or agent of the other Party to terminate their relationship with their current employer to work for the soliciting Party; or
  - b) solicit, approach, contract with, or attempt to do business with any client or prospect of the other Party with whom the soliciting Party had contact or became aware of in connection with the performance of the Services, for the purpose of offering competing or substitutable services.
- 10.2 This clause does not apply where:
  - a) the restriction relates to general advertisements for employment not specifically directed at the other Party's employees or contractors; or
  - b) the soliciting Party can demonstrate that a direct and substantive business or professional relationship with the relevant person or entity existed prior to the signature of the Contract.
- 10.3 In the event of a breach of this provision, the non-breaching Party shall be entitled to claim compensation for any direct or indirect damages incurred as a result.

## **Article 11. Loyalty, Non-Circumvention, and protection of relationships**

### **11.1 Principle of loyalty**

Throughout the duration of the Contract, Supplier shall act loyally and in good faith towards Client and shall not seek to appropriate, circumvent, or exploit for its own benefit any business relationship, opportunity, or resource made available to it in the course of performing the Services.

#### 11.2 **Non-Solicitation of clients and prospects**

From the date of signature of the Contract and for a period of twelve (12) months following its termination or expiration, the Supplier shall not, directly or indirectly, solicit, approach, contract with, or attempt to do business with any client or prospect of the Client with whom the Supplier had contact or became aware of in connection with the performance of the Services, for the purpose of offering competing or substitutable services.

This restriction shall not apply where the Supplier can demonstrate that a direct and substantive business relationship with the relevant client or prospect existed prior to the signature of the Contract.

#### 11.3 **Non-Poaching of Personnel and Suppliers**

From the date of signature of the Contract and for a period of twelve (12) months following its Cessation, neither Party shall, directly or indirectly, solicit, recruit, engage, or attempt to engage any employee, contractor, advisor, or supplier of the other Party with whom they had contact or became aware of in connection with the performance of the Services.

This restriction shall not apply where the soliciting Party can demonstrate that a professional or commercial relationship with the relevant person or entity existed prior to the signature of the Contract, or where the other Party has given its prior written consent.

#### 11.4 **Compensation**

In the event of a breach of any obligation set out in this Article, the non-breaching Party shall be entitled to claim compensation for any direct or indirect damages incurred as a result.

#### 11.5 **Proportionality**

Parties acknowledge that the obligations set out in this Article are proportionate, necessary to protect each Party's legitimate business interests, and do not prevent either Party from carrying out its professional activity in general.

### **Article 12. Intellectual Property Rights**

Without prejudice and in accordance with Article "Intellectual Property" of the FlexUp-GC, the following additional provisions apply to the ownership and licensing of intellectual property under Professional Services Contracts.

#### 12.1 **Definitions:**

- a) "**Background**" means IP which is held by a Party before the signature of the Contract.
- b) "**Foreground**" means IP which is acquired or developed after the signature of the Contract and within the scope of the Contract.
- c) "**Individual Foreground**" means Foreground acquired or developed solely by one Party.
- d) "**Joint Foreground**" means Foreground acquired or developed jointly by both Parties.
- e) "**Sideground**" refers to IP acquired or developed by a Party after the signature of the Contract but independently of the Contract.

#### 12.2 **Ownership of Background IP:**

- a) Each Party shall remain the exclusive owner of the IP Rights related to its own Background and Sideground.
- b) Nothing in this Contract shall be construed as transferring ownership of any Background IP from one Party to the other.

### 12.3 **Licence to Use Background IP:**

- a) Supplier grants Client a limited, royalty-free, non-exclusive, non-transferable, and non-sublicensable licence to use Supplier's Background IP solely to the extent necessary for Client to use and enjoy the Foreground IP delivered under this Contract.
- b) This licence is limited to the purposes of the Contract and Client's internal business operations related to the Foreground IP.
- c) Client shall not use Supplier's Background IP for any other purpose without the prior written consent of Supplier.

### 12.4 **Ownership of Foreground IP:**

All Foreground IP developed under this Contract shall be the exclusive property of Client. Supplier hereby assigns to Client all right, title, and interest in and to such Foreground IP upon its creation.

### 12.5 **Supplier's Obligations Regarding Foreground IP:**

Supplier agrees to execute any documents and take any actions reasonably necessary, or as Client may reasonably request, to perfect Client's ownership of the Foreground IP. Supplier shall not use, reproduce, distribute, or otherwise exploit any Foreground IP without Client's prior written consent, except as necessary to perform its obligations under this Contract.

### 12.6 **Supplier's Retention of Rights:**

Nothing in this Contract shall restrict Supplier's right to use its general knowledge, skills, and experience, including those gained or enhanced during the performance of this Contract, in any manner or for any purpose, provided that such use does not involve the disclosure or use of Client's Confidential Information or Foreground IP.