

DATED

2003

NETRO 42 LIMITED (1)

- and -

[

] (2)

**PRO-FORMA SERVICE AGREEMENT:
AUTHORISED USE OF THE
"CASH OR FUEL?" WEBSITE**

THIS AGREEMENT is made the _____ day of _____ 2003

BETWEEN:

1. **NETRO 42 LIMITED** a private limited company incorporated under the laws of England and Wales (registered no. 03104226) the address of whose registered office is 39-51 Highgate Road, London NW5 1RT] ("the Service Provider") of the first part; and
2. **THE PARTY** whose details are set out in the Schedule A ("the User") of the second part.

RECITALS:

- (A) The Service Provider operates the Website.
- (B) The Service Provider offers the Service by means of the Website.
- (C) The User has requested the Service Provider to provide the Service to it, and the Service Provider agrees to do so on the terms and conditions set out in the Agreement.

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless expressly stated otherwise the following definitions shall apply to the terms used in this Agreement:

"Agreement" means this written agreement including the Schedules;

"Authorized Access" means access to those pages of the Website that are not freely accessible to the general public;

"Commencement Date" is as defined in Clause 6.1;

"Computer Virus" means any program or software that disrupts or harms the proper operation of a computer hardware system or the associated software data;

"Due Date" means the date on which payment of the Service Fee is to be paid by the User to the Service Provider as specified in Clause 7.3;

"Equivalent Costs" is as defined in Clause 7.2.1;

"Intellectual Property" means all intellectual property rights throughout the Territory whether currently in existence or otherwise and whether vested or contingent, including copyright, rights in the nature of copyright, moral rights, database right, trade marks, designs, design rights, patents, utility models, logos, trade secrets, know-how, confidential processes and information, inventions, discoveries and improvements, trading and business names, moral rights, get-up, rights in internet domain names and any rights in the nature of intellectual property rights (in each case whether registered or not and including applications for registration thereof) and all rights or forms of protection of a similar or

- 1.2.2 the headings of Clauses and the Schedules are included for convenience only and shall not affect the interpretation of the Agreement;
- 1.2.3 the Schedules are an integral part of the Agreement and any reference to the Agreement includes the Schedules;
- 1.2.4 the Recitals are not parts of the Agreement, and are included herein for informational purposes only;
- 1.2.5 a "**party**" means either party to the Agreement and includes its permitted assignees (if any) and/or the successors in title to substantially the whole of its undertaking which includes the Agreement and, in the case of an individual, includes the successor in title to his estate which includes the Agreement and his personal representatives;
- 1.2.6 references to "**persons**" shall include individuals, bodies corporate, unincorporated associations, undertakings, firms, partnerships, governments, states or agencies of any state or any undertaking, in each case whether or not having a separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists;
- 1.2.7 words denoting the singular shall include the plural and vice versa; references to a gender shall include all other genders; and references to the word "**include**" or "**including**" are to be construed without limitation;
- 1.2.8 any reference to a statute, statutory provision or subordinate legislation ("**Legislation**") shall (except where the context otherwise requires) be construed as referring to such Legislation as amended and in force from time to time and to any Legislation which enacts or consolidates (with or without modification) any such Legislation; and
- 1.2.9 "**writing**" includes any methods of representing words in a legible form other than writing on an electronic or visual display screen or in other non-transitory form, and "**notify**" means "notify in writing".

2. ACCESS

- 2.1 The Service Provider shall provide the User with a user identification and password to enable Authorized Access.
- 2.2 The User shall keep the said user identification and password strictly confidential at all times (both during and after the Term). If the User becomes aware of any actual, suspected or threatened misuse of the said user identification and/or password it shall immediately notify the Service Provider and take all such steps as the Service Provider may reasonably request to assist the Service Provider in restraining such misuse.
- 2.3 The User shall be entirely responsible for all Authorized Access where the same is facilitated by its identification and password, whether such access is with or without its knowledge or consent. The User shall be responsible for all Authorized Access by its directors, employees and advisors.

- 2.4 The User shall (as between the parties) be exclusively responsible for all telecommunications and other services, computers and any other hardware and any ancillary software required to enable its to access the Website.
- 2.5 The User shall comply with all rules, regulations, terms and conditions and conduct policies of any telecommunications provider, systems, services or software provider required to facilitate access to the Website.
- 2.6 The Service Provider shall not be liable under any circumstances for any unauthorized access whatsoever to the User's information or material posted on the Website.

3. USE OF THE SERVICE

- 3.1 The User acknowledges that the provision to it of the Service by the Service Provider is dependent upon User Data being input into the Website by or on behalf of the User. The Service Provider will not be responsible or liable for the content of any User Data and is not responsible for its accuracy and/or functionality. The parties acknowledge and agree that the Service Provider shall be under no obligation whatsoever to monitor or review any User Data unless directed to do so pursuant to applicable law.
- 3.2 The User acknowledges that the Service has been designed on the basis of the following fiscal assumptions details of which are set out in Schedule B.
- 3.3 The Service Provider reserves the right to inspect User Data in order to ascertain compliance with the Agreement and may do so without prior permission or authority from the User. For the avoidance of doubt, the User may not use the Service for just a few employees to benchmark whether it is advisable to implement changes to Free Fuel. If the User implements the findings of the Service even if only upon a restricted number of users, the Service Provider maintains the right to demand the Service Fee on all employees even though those employees may not have been modelled through the Service.
- 3.4 If the Service Provider, in its sole judgement, reasonably believes that any User Data is or may be considered to be pornographic, defamatory, misleading, deceptive or otherwise infringes any third party rights or is in breach of any laws, regulations, international conventions, licences or policies the Service Provider without liability to the User may remove that User Data from the Service Provider's server immediately.
- 3.5 The Service Provider will not be responsible or held liable in any way for any content, including its accuracy or quality, other than content authorized by the Service Provider and displayed on the Website.
- 3.6 The User agrees to use the Service at all times in accordance with the laws, rules, regulations and conduct policies of the country or countries of the Service Provider and the User and in accordance with international conventions, regulations, licences and codes of practice.

4. AVAILABILITY

- 4.1 The Service Provider will endeavour to provide the Service on a continuous basis subject to the terms of this Agreement.
- 4.2 The User acknowledges that the Internet or the Service Provider's systems, servers, and equipment may from time to time be inoperative in full or in part as a consequence of but not limited to mechanical breakdown, maintenance, hardware or software upgrades, telecommunication connectivity problems or other factors beyond the control of the Service Provider. The Service Provider will not be liable for its failure or inability to provide a continuous, error-free, uninterrupted Service under these or any other circumstances.
- 4.3 Where the Service is inoperative, in full or in part, for reasons within the Service Provider's control the Service Provider will use its reasonable endeavours to rectify faults or problems to restore it to full operational capacity as soon as reasonably practicable. If the Service Provider is wholly or partially precluded from complying with its obligations under this Agreement by any event outside its reasonable control then its obligations to perform in accordance with the Agreement will be suspended for the duration of the event.

5. LIMITATION OF LIABILITY

- 5.1 The User acknowledges that any information, data, software or any material available through the Service may contain Computer Viruses for which the Service Provider accepts no responsibility or liability whatsoever.
- 5.2 The User acknowledges that the Service is provided on an "as is" and "as available" basis. The Service Provider gives no condition, warranty, undertaking or representation to the User, whether express or implied, in respect of the suitability or fitness for purpose of the Service. This does not affect any statutory or other rights available to the User.
- 5.3 Nothing in this Agreement excludes or limits the liability of the Service Provider for death or personal injury caused by the Service Provider's negligence or for fraudulent misrepresentation.
- 5.4 Subject to Clauses 5.1, 5.2 and 5.3:
- 5.4.1 the Service Provider's total liability to the User in contract, tort, (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the Service Fee actually paid by the User and received by the Service Provider; and
- 5.4.2 the Service Provider shall not be liable to the User or any third party whether arising under the Agreement or in tort (including negligence or breach of statutory duty), misrepresentation or however arising, for any Consequential Loss. "Consequential Loss" shall for these purposes mean (i) pure economic loss (ii) loss of profits (whether categorised as direct or indirect) (iii) losses arising from business interruption (iv) loss of business revenue, goodwill or anticipated

savings (v) losses whether or not occurring in the normal course of business, wasted management or staff time and/or (vi) loss or corruption of data.

5.5 Without prejudice to the generality of the foregoing the Service Provider shall not be liable for defects or defaults resulting from improper use of the Service by or on behalf of the User.

6. TERM

6.1 The Agreement will come into force on the date on which the Service is first made available to the User by means of the issue to the User by the Service Provider of its user identification and password ("Commencement Date").

6.2 The Agreement shall continue thereafter and, unless and until terminated under the provisions of Clause 12, shall expire on the 4th (fourth) anniversary of the Commencement Date.

7. SERVICE FEE AND PAYMENT

7.1 In consideration for the provision of the Service the User shall pay to the Service Provider in accordance with this Clause 7 a sum equivalent to 30% (thirty per cent) of the Total Savings ("the Service Fee").

7.2 For the purpose of the Agreement:-

7.2.1 the "Total Savings" shall mean the aggregate of all financial savings (whether of fuel costs, administrative costs, tax, duties, National Insurance contributions or otherwise) achieved by the User during the Relevant Period by reference to and comparison with the equivalent costs, expenses, taxes contributions and duties paid, payable or otherwise incurred by or on behalf of the User during the 12 (twelve) month period immediately prior to the Commencement Date ("the Equivalent Costs"); and

7.2.2 the "Relevant Period" shall mean the period of 12 (twelve) months immediately following the Commencement Date, whether or not the Agreement has been terminated during the said period.

7.3 Within 30 (thirty) days after the first anniversary of the Commencement Date the User shall serve on the Service Provider a written statement setting out full, true and accurate particulars of the Total Savings and Equivalent Costs ("the Statement"). Failure to serve this at the appropriate time will mean that the User agrees that the Service Provider may submit an invoice for their share of the first year's Total Savings calculated upon the User's figures..

7.4 On the basis of the said Statement and of any other relevant information available to it the Service Provider shall serve an invoice for the Service Fee on the User. The User shall settle the said invoice in full in the currency in which it is expressed within 30 (thirty) days after its date of service ("the Due Date") to such bank account as the Service Provider may notify to the User from time to time. Payment by cheque or other negotiable instrument is ineffective until such

instrument is honoured and the Service Provider's bank account has been irrevocably credited with the amount due.

- 7.5 The User shall pay all sums due hereunder free and clear of any deduction, counter-claim or other condition.
- 7.6 Unless expressly stated in writing by the Service Provider all fees, charges and payments due under the Agreement are exclusive of VAT.
- 7.7 The User acknowledges that there may be additional charges in relation to additional services required by the User beyond those set out in the Agreement. Any additional charges will be agreed on in writing in advance between the parties and invoiced separately from the Service Fee under the Agreement.
- 7.8 If the User fails to pay any sum due to the Service Provider under the Agreement by its Due Date, the User shall pay, in addition to the arrears, interest at the rate of 10% per cent over the HSBC Bank plc base interest rate, such interest commencing on the day after the Due Date and continuing to the date that payment is received by the Service Provider (inclusive in both cases), both before and after judgment, accruing from day to day and compounding weekly.
- 7.9 If the User fails to pay any amount due to the Service Provider under the Agreement by its Due Date the Service Provider may (without prejudice to its other rights hereunder) suspend the provision of the Service with immediate effect.
- 7.10 The User shall at its own cost and expense at all times during the period of 60 (twenty-four) months following the Commencement Date (whether or not the Agreement has since been terminated) maintain full and accurate books and records reporting the Total Savings, the Equivalent Costs and its implementation of the Service. The Service Provider and those of its authorised representatives whose particulars are notified to the User in advance may during the aforesaid period examine the said books and records and take copies of them for the purposes of verifying the Statement. Each such examination shall take place at the premises where the said books and records are normally kept on Working Days during business hours, subject only to the service of prior notice thereof on the User. The User shall at its own cost and expense provide reasonable office facilities for the purposes of each such examination. The costs of each such examination shall be borne by the Service Provider unless it reveals that any sum payable hereunder to the Service Provider has not been paid or that any sum paid hereunder to the Service Provider has been underpaid by 5 (five) per cent or more in which case the costs of the said examination shall be borne by the User.

8. WARRANTIES

- 8.1 Each party warrants that it has authority to enter and to perform its obligations under this Agreement.
- 8.2 The Service Provider warrants that it has obtained or will use all reasonable endeavours to obtain any consents, licences, agreements or other permits necessary to provide the Service.
- 8.3 The User warrants that:
- 8.3.1 the use by the Service Provider of any User Data will not infringe the Intellectual Property rights of any person or contravene any law or regulation anywhere in the Territory;
- 8.3.2 at the time of entering into this Agreement it is not relying on any condition, warranty, undertaking or representation made by the Service Provider which has not been expressly set out in this Agreement;
- 8.3.3 it shall install Computer Virus protection software of not less than industry standard, and take all other reasonable steps to ensure that any software used in connection with the Service, and any User Data provided to the Service Provider, will be free from any Computer Virus and will not damage or corrupt any other data or system.

9. USER'S UNDERTAKINGS

The User undertakes:

- 9.1 not to send or download any information or otherwise use the Service in any way which would be prohibited under the laws, regulations or policies of the country/countries of the Service Provider and/or the User or under international conventions, codes, regulations or licences;
- 9.2 not to create or introduce into the Service any Computer Virus;
- 9.3 to use a current Computer Virus scanning program on all material downloaded from the Service; and
- 9.4 at all times (both during and after the Term) to protect and keep confidential all Service Provider works, items, materials, software and information disclosed to the User pursuant to the Agreement and make no attempt to copy, alter or interfere with it in any way.

10. INDEMNITY

The User hereby agrees at all times (both during and after the Term) fully and effectively to indemnify the Service Provider and to keep it so indemnified from and against any and all losses, costs, expenses, damages and liabilities (including any damages or compensation paid by the Service Provider on the advice of its legal advisers to compromise or settle any Claim and any legal costs or expenses incurred by the Service Provider) which it or any of its directors, officers,

employees or agents may sustain or incur arising directly or indirectly from any action, claim, suit or proceeding (together "Claim") brought, made or threatened by any third party against any of the foregoing persons resulting from any actual or alleged breach by or on behalf of the User of any of its obligations or warranties expressed or implied herein.

11. TITLE

11.1 The User agrees that any works, items, materials, software, data or information produced or developed by the Service Provider or under the Service Provider's direction pursuant to or in the course of providing the Service, and all Intellectual Property rights therein, shall remain the sole property of the Service Provider and that this Agreement does not have the object or effect of transferring to the User ownership of any of the foregoing in any circumstances.

11.2 The Service Provider grants to the User a non-exclusive, royalty-free, non-transferable, revocable licence to use such works, items, materials, software, data and information referred to in Clause 11.1 solely for the purpose of enabling the User to use the Service and only to the extent and for a period necessary to enable the User to use the Service.

12. TERMINATION

12.1 The Service Provider may terminate this Agreement immediately by the service of notice on the User if the User fails to perform any of the obligations required of it under this Agreement and such failure (if remediable) is not remedied by the User within 14 (fourteen) days after service on it of a notice requiring it to be remedied.

12.2 If the Service Provider terminates the Agreement it shall retain all payments made by the User under the Agreement and the User acknowledges that no refunds will be made under any circumstances.

12.3 On termination or expiry of the Agreement:-

12.3.1 the Service Provider may immediately deny Authorized Access to the User;

12.3.2 the licence granted to the User pursuant to Clause 11.2 shall determine; and

12.3.3 the User shall remove from the User's computer equipment any of the Service Provider's works, items, materials, software, data or information which has been provided to the User by the Service Provider in order to utilise the Service and undertakes to destroy any copies made of the same.

12.4 There shall survive the expiry or termination of the Agreement:-

12.4.1 Clauses 1, 2.2, 2.6, 3.4, 5, 7, 9.4, 10, 11.1, 12.2-12.5 and 13; and

12.4.2 any other provision of the Agreement whose terms or context require its survival.

12.5 The termination or expiry of the Agreement shall be without prejudice to any rights accrued in favour of the Service Provider in respect of any breach

committed by the User prior to the Termination Date, including any breach giving rise to termination thereof.

13. MISCELLANEOUS

- 13.1 Whilst each party acknowledges that his or its obligations herein are reasonable in all the circumstances, the parties agree that if any provision of the Agreement is held by any court or other authority of competent jurisdiction to be void or unenforceable in whole or part, the other provisions of the Agreement and the remainder of the affected provision shall continue to be valid and enforceable to the fullest extent permitted by law.
- 13.2 The Agreement shall be governed by and construed in all respects in accordance with the laws of England, and the parties hereby submit to the non-exclusive jurisdiction of the English courts in connection with any dispute relating thereto.
- 13.3 Any notice required or authorised to be given under or pursuant to the Agreement by any party to any other shall be in writing and shall be sent by hand or by first-class pre-paid post or transmitted by facsimile or other means of telecommunication resulting in the receipt of a written communication in permanent form to the address of the other party specified above or as otherwise notified by it to the serving party from time to time. The date of service of notices shall be:-
- 13.3.1 (for notices served by hand) the day of delivery or (if the same is not a Working Day) the next Working Day thereafter;
- 13.3.2 (for notices by first class prepaid post) 2 (two) days after the date of posting; and
- 13.3.3 (for notices transmitted by facsimile or other means of communication) the day of transmission or (if the same is not a Working Day and/or if transmission takes place after 17:00 hours) the next Working Day thereafter, provided that a hard confirmation copy thereof is sent by first class prepaid post to the other party at its said address within 24 (twenty-four) hours after transmission.
- 13.4 No waiver or forbearance by the Service Provider (whether express or implied) in enforcing any of its rights against the User shall prejudice its rights to do so in the future.
- 13.5 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 13.6 The Agreement embodies the entire contract between the parties in respect of the subject matter hereof and supersedes all prior agreements, arrangements, understandings, representations and warranties made between the parties or by one party to the other relating to the said subject matter.
- 13.7 The parties are not partners or joint venturers or in a relationship of principal and agent or in a relationship of employer and employee.
- 13.8 Each party shall bear its own costs and expenses in relation to the preparation, execution and carrying into effect of the Agreement.

- 13.9 The User may not, without the prior written consent of the Service Provider, assign, mortgage, charge or dispose of any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations under this Agreement.
- 13.10 Nothing in the Agreement shall prevent the Service Provider or any liquidator, receiver, administrative receiver or administrator for the Service Provider from assigning, mortgaging, charging, sub-contracting, delegating or otherwise disposing of any of its rights or obligations hereunder this Agreement to any other person subject only to the service of prior notice on the User to that effect.
- 13.11 The Service Provider reserves the right at any time to amend the terms of this Agreement including the features of the Service and the level of the Service Fee, subject only to the service of prior notice on the User. If the User continues to use the Service after notification the User shall be deemed to have accepted the amended terms.

SCHEDULE A: DETAILS OF THE USER

1. Full Name:
2. Address:
3. Telephone No.
4. Facsimile No.
5. Email address:
6. (If limited company) place of incorporation,
address of registered office and registered number:

SCHEDULE B: FISCAL ASSUMPTIONS

1. The Service Providers have made a number of assumptions which the User agrees to in the calculation of Total Savings: -
2. The User and employees' forecast is computed over four complete tax years, commencing with the 2003/04 tax year. When the User agrees to the implementation of the savings, each employee's position is time apportioned at that date.
3. Fuel costs. Initial Petrol (unleaded) and Diesel costs have been and will be set by the Service Provider from time to time. In successive tax years these will be uplifted by 6 (six) per cent
4. Annual fuel benefit charge. The initial Inland Revenue set figure of £14,400 has been uplifted by 10 (ten) per cent in successive tax years.
5. Employers' Class 1A National Insurance Contributions are assumed to be 12.8 per cent over the four year term of the forecast.

IN WITNESS whereof the parties have executed this Agreement on the day and year first above written.

SIGNED by)
for and on behalf of **NETRO 42 LIMITED**)
in the presence of:-)

Signature of witness

Name of witness

Address of witness

Occupation of witness

SIGNED by (or for and on behalf of))
THE USER in the presence of:-)

Signature of witness

Name of witness

Address of witness

Occupation of witness