

**DATED**

**Insert Date**

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(1) **TEAMKINETIC LIMITED**

(2) **Insert Name**

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**THIS AGREEMENT** is dated (insert date)

#### **PARTIES**

- (1) **TEAMKINETIC LIMITED**, a company incorporated and registered in England and Wales (registered number 8181594) whose registered office is at Office 14, Parkway 2, Parkway Business Centre, Princess Rd, Manchester, M14 7HR (**Supplier**); and
- (2) **Insert Name**, a company incorporated and registered in England and Wales (**Company Number**) whose registered office is at **Insert Registered Address**, (**Customer**).

#### **BACKGROUND**

- (A) The Supplier has developed certain software applications and platforms which it makes available to customers via the cloud for the purposes of online recruitment and administration of volunteers. The Supplier provides services in relation to the use of this software.
- (B) The Customer wishes to use the Supplier's service in its business operations.
- (C) The Supplier has agreed to provide, and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

#### **AGREED TERMS**

##### **1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

##### **Additional Off-Site Training:**

additional training as requested by the Customer and delivered by the Supplier online for the Additional Off-Site Training Fee;

##### **Additional On-Site Training:**

additional training as requested by the Customer and delivered by the Supplier at the Customer's Site for the Additional On-Site Training Fee;

##### **Additional Off-Site Training Fee:**

those fees detailed in Schedule 1;

##### **Additional On-Site Training Fee:**

those fees detailed in Schedule 1;

##### **Additional Product Fee:**

as detailed in Schedule 1;

##### **Additional SMS Products:**

any sms text messages which the Customer wishes to purchase in addition to the SMS Products for which the Customer shall pay the Additional Product Fee;

##### **Authorised Users:**

those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation;

##### **Commencement Date:**

21<sup>st</sup> March 2020

##### **Customer Account:**

means the account created by the Supplier on behalf of the Customer where the Customer can access the Services and the Documentation;

**Customer Data:**

the data inputted by the Customer or by the Supplier on behalf of the Customer for the purpose of facilitating the Customer's use of the Services;

**Customisations:**

Extended functionality beyond that described by the Software

**Documentation:**

the document which sets out a description or instructions of the Services made available to The Customer by the Supplier online, by email or post or such other method notified by the Supplier to the Customer from time to time and includes help and support documentation at <http://guide.volunteerkinetic.com/>;

**Events:**

events and other opportunities organised by the Customer or Placement Providers for which the recruitment of Volunteers is required;

**Fees:**

the fees payable by the Customer to the Supplier for the Services as detailed in the Payment Schedule;

**Information:**

any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one party and disclosed to or otherwise obtained by the other party in connection with this agreement;

**Intellectual Property:**

any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, domain names, topography rights, know-how, look and feel, rights in confidential information and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with the right to apply for registration of and/or register such rights and any and all goodwill relating or attached thereto and all extensions and renewals thereof;

**Initial Period:**

a period of **6 months** commencing on the Commencement Date;

**Law:**

any and all applicable rules of law, statutes, statutory instruments, directives, regulations, orders and other instruments having the force of law and any applicable codes of conduct, guidance, directions and/or determinations with which Customer or Supplier is bound to comply;

**material breach**

is any failure to perform that permits the other party to the contract to either compel performance, or collect damages because of the breach

**Modifications:**

means New Releases and Upgrades (and Modified shall be construed accordingly)

**New Release:**

a modification to the Software which remedies defects in the Software or improves the functionality of the software including temporary fixes, bug fixes, upgrades and maintenance releases;

**Payment Schedule:**

as detailed in Schedule 1;

**Placement Provider:**

the person providing the event or other opportunity for which Volunteers are recruited;

**Restrictions:**

those limitations detailed in Schedule 4;

**Services:**

the services provided by the Supplier to the Customer as detailed in schedule 3;

**SMS Products:**

means one hundred (100) sms text messages purchased by the Supplier from the SMS Product Provider on behalf of the Customer(at the Supplier's cost) which the Customer can send direct to the Volunteers which will be credited to the Customer Account;

**SMS Product Provider:**

the third party provider of the SMS Products and the Additional SMS Products;

**Software and Software Documentation IP:**

the online software application and all support and training materials provided by the Supplier as part of the Services for the purpose of the online recruitment and administration of volunteers;

**Upgrade:**

a modified version of the Software which provides additional or enhanced functionality;

**User Generated Data:**

data inputted by Volunteers to the Software including CV's, comments, feedback, photos and other media, or uploaded material;

**Virus:**

any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

**Volunteers:**

persons wishing to volunteer at the Placement Provider's events or other opportunities;

**Year:**

the period of 12 months from the Commencement Date and each subsequent period of 12 consecutive months after that first period that falls within the term of this agreement, it being acknowledged that where this agreement is terminated or expires part way through a Year reference to a Year shall include the period from the end of the Year just completed (or, in the case termination within the first Year, the Commencement Date) until the date of termination.

- 1.2 Headings are included for convenience only and shall not affect the construction or interpretation of this agreement.
- 1.3 Any reference to a clause or schedule or appendix shall (unless expressly provided otherwise) be a reference to a clause of or schedule or appendix to this agreement. Schedules and appendices shall have the same force and effect as if set out in the body of this agreement.
- 1.4 Any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender.
- 1.5 Any reference to a person shall, unless the context otherwise requires, include individuals, partnerships, companies and all other legal persons.
- 1.6 The words "include", "includes", "including" and "included" and like words and expressions will be construed without limitation unless inconsistent with the context.

- 1.7 Working days shall be all days other than Saturdays, Sundays and public holidays in the part of the United Kingdom in which the Software is used by the Customer and working hours shall be the hours of 09.00 to 17.00 (GMT/BST) on a working day.
- 1.8 Any reference in this agreement to Law or to any statute, statutory instrument, directive, regulation, order or other enactment shall mean the same as shall be amended, enacted, replaced, extended, modified, consolidated or repealed from time to time.

## **2. RIGHTS GRANTED**

- 2.1 Subject to the Customer paying the Fees in accordance with clause 10 and complying with the other terms and conditions of this agreement, the Supplier grants to the Customer subject always to the Restrictions:
- 2.1.1 a non-exclusive, non-transferable right to permit the Authorised Users to use the Services, the Customer URL and the Documentation during the Term solely in accordance with the terms of this agreement;
- 2.1.2 a non-exclusive, non-transferable licence to permit Authorised Users to use the User Generated Content for the purposes of recruiting Volunteers for Events.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- 2.2.1 each Authorised User shall keep a secure password for its use of the Services and Documentation, that such password shall kept confidential;
- 2.2.2 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within [5] Business Days of the Supplier's written request at any time or times;
- 2.2.3 it shall permit the Supplier, upon reasonable notice to the Customer, to audit the Services in order to establish the name of each Authorised User. Such audit may be conducted no more than once per quarter;
- 2.2.4 if any of the audits referred to in clause 2.2.3 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords.
- 2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services (including through its use of the SMS Products and Additional SMS Products) that:
- 2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 2.3.2 facilitates illegal activity;
- 2.3.3 depicts sexually explicit images;
- 2.3.4 promotes unlawful violence;
- 2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 2.3.6 in a manner that is otherwise illegal or causes damage or injury to any person or property.
- 2.4 The Customer shall not:
- 2.4.1 except as may be allowed by any Law which cannot be excluded:
- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

- 2.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - 2.4.3 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any person except the Authorised Users, or
  - 2.4.4 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this agreement.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

### **3. PRODUCTS AND TRAINING**

- 3.1 Within thirty (30) days of the Commencement of this agreement, the Supplier shall credit the Customer's Account with the SMS Products.
- 3.2 The Customer shall be entitled at any time during the Term of this agreement to purchase Additional Products or Additional On-Site or Additional Off-Site Training (together **Additional Training**) subject to paying the payment of the Additional Product Fees or the Additional Training Fees.
- 3.3 The Additional Training shall be provided by the Supplier within fourteen (14) Working Days of a request made by the Customer. Such request shall take the form of a valid purchase order. the Customer shall pay any invoice in respect of any Additional Training within thirty (30) days of receipt.
- 3.4 The Customer shall notify the Supplier in writing of its requirement for Additional Products and within seven (7) Working Days of receipt of a valid purchase order, Supplier shall credit the Customer Account with the Additional Products. Supplier shall send the Customer an invoice for the Additional Product Fee, such invoice to be paid within thirty (30) days of receipt.

### **4. MODIFICATIONS**

- 4.1 The Supplier will notify the Customer of any significant Modification of the Software following its release.
- 4.2 The Supplier shall provide all New Releases of the Software to the Customer and details of any additional charge and shall offer all Upgrades to the Customer on terms no worse than those offered to Supplier's other customers.
- 4.3 Within fourteen (14) working days of receipt of such notice, the Supplier shall confirm whether such changes are acceptable and provide the Customer with complete details as to any increase in the fees that are payable. For the avoidance of doubt, the Supplier shall be under no obligation to make any Customer Modification.
- 4.4 Within seven (7) working days of receipt of the details referred to in clause 4.3, the Customer shall inform the Supplier in writing of whether or not it wishes for the requested change to be made. If the change is required, then the Supplier shall make the change in question and the fees shall be deemed as amended accordingly and the increase shall be payable in accordance with clause 9.2.

### **5. SERVICES**

- 5.1 The Supplier shall, during the Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

- 5.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 5.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
  - 5.2.2 unscheduled maintenance performed outside a Working Day, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 hours notice in advance.

## **6. SUPPLIER'S OBLIGATIONS**

- 6.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation.
- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. The Supplier:
- 6.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
  - 6.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
  - 6.2.3 is not responsible for any delays, failures or other loss or damage as a result from the Customer's failure to comply with any software and network specification notified by the Supplier from time to time.
- 6.3 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 6.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
- 6.5 The Supplier agrees to comply with the obligations set out in Schedule 6 of this agreement with regards to the processing of personal data under this Agreement.

## **7. CUSTOMER'S OBLIGATIONS**

The Customer shall:

- 7.1 provide the Supplier with:
- 7.1.1 all necessary co-operation in relation to this agreement; and
  - 7.1.2 all necessary access to such information as may be required by the Supplier; in order to provide the Services, including Customer Data, security access information and configuration services;
- 7.2 The Customer shall:
- 7.2.1 comply with all Laws and regulations with respect to its activities under this agreement;
  - 7.2.2 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;



- 7.2.3 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
  - 7.2.4 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement;
  - 7.2.5 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;
  - 7.2.6 grant the Supplier the right to use any Customer Data for the purpose of research and development relating to the Supplier's products. On occasion The Supplier publish academic papers in partnership with research institutions or report data at conference events based on user data. All research data is always fully anonymised in accordance with guidance from the Information Commissioners Office.
- 7.3 The Supplier shall have the right to remove any Customer Data without the Customer's consent if such content is, in the opinion of the Supplier acting reasonably, inappropriate, offensive or illegal.
- 7.4 The Customer acknowledges and agrees that the Customer's access to Volunteers and Volunteers use of the Software and Customer URL shall be governed by such terms and conditions (including privacy policies) as the Supplier shall provide the Customer a copy of.
- 7.5 As regards Customer's use of the SMS Products and the Additional SMS Products this shall be governed by the terms and conditions of the SMS Product Provider.

## **8. MANAGEMENT AND REPORTING**

- 8.1 Each party shall nominate a representative to deal with the management of this agreement and shall notify the other of that person's name within seven (7) days of the commencement of this agreement ("**Representative**"). Each party may change the identity of any of its Representatives at any time and each Representative may appoint a suitable deputy or alternate to perform some or all of the Representative's functions in his absence. Each party shall notify the other in writing of any change or appointment of a deputy or alternate.
- 8.2 Supplier shall provide to the Customer, within seven (7) days of the date a request is made by the Customer, a report detailing (in writing):
- 8.2.1 the server uptime;

## **9. CHARGES AND PAYMENT**

- 9.1 In consideration of Supplier's provision of the Software and Services in accordance with the provisions of this agreement, the Customer shall pay the Fees in accordance with this clause 9 and the Payment Schedule.
- 9.2 Fees are payable within thirty (30) days of the Customer's receipt of Supplier's invoice and are exclusive of VAT.
- 9.3 If the Supplier has not received payment within 30 days after the due date the Supplier may, without liability to the Customer, disable the Customer Account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

## 10. INTELLECTUAL PROPERTY

- 10.1 All right, title and interest (including all Intellectual Property) in and to the Software and Documentation (**Software and Documentation IP**) shall be the property of Supplier and Customer shall acquire no right, title or interest in the same and shall not be entitled to use the same except in accordance with clause 2.1.

## 11. LIABILITY

- 11.1 In respect of any claim arising under or in connection with this Agreement (and whether arising in Agreement, tort (including negligence) or otherwise) (a “**Claim**”), neither party shall in any event be liable for:

- 11.1.1 any loss of profits; or
- 11.1.2 loss of bargain; or
- 11.1.3 loss of anticipated savings or business opportunity; or
- 11.1.4 any indirect, special or consequential loss.

- 11.2 Without prejudice to the provisions of clauses 11.1 and clause 11.3, and excluding the indemnity clause under Schedule 6, each party’s entire liability shall be limited, in respect of any Claim, to the greater of:

- 11.2.1 such amount as equals the sum of the Fees paid by the Customer under the Agreement prior to the date of the Claim in question less any sum paid in respect of any previous Claim; and
- 11.2.2 the amount (after deduction of any applicable excess) that the liable party can successfully recover in respect of the Claim in question under any policy of insurance we have in place.

- 11.3 Failure by the Supplier to meet the service level described in schedule 1, 2 ,3 will limit the liability for the Customer to pay any outstanding fees to the Supplier in accordance to clause 13.4.

- 11.4 Nothing in the Agreement shall limit or exclude any liability: (i) which cannot, under English law, be limited including liability for death or personal injury caused by a person’s negligence and fraudulent misrepresentation.

- 11.5 Supplier shall at its own expense effect and maintain the following insurances:

- 11.5.1 professional indemnity insurance in the amount of £2,000,000;
- 11.5.2 public liability insurance in the amount of £1,000,000; and
- 11.5.3 product liability insurance of £10,000,000.

## 12. CONFIDENTIALITY

- 12.1 Each party shall keep the other’s Information confidential and shall not divulge the same to any third party except for the purposes of this agreement or use it itself for any other purpose without the prior written consent of the other party.

- 12.2 The provisions of this clause 12 shall not apply to any Information that the receiving party can show:

- 12.2.1 is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of this agreement or any other obligations of confidentiality;
- 12.2.2 is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto;

- 12.2.3 is required to be disclosed under operation of Law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required);
- 12.2.4 is approved for disclosure in writing; or
- 12.2.5 was developed independently of and without reference to confidential information disclosed by the other party provided always that each party shall provide the other with at least ten (10) days' written notice of its intention to rely upon one or more of these exceptions, such notice specifying details of the exception to be relied upon and the information concerned.
- 12.2.6 Each party shall be entitled to divulge the other party's Information to its employees, agents, directors, officers, authorised sub-contractors, professional advisors and consultants who have a need to know the same in connection with this agreement, provided that the receiving party shall ensure that such persons are aware of, and shall procure that such persons comply with, these obligations as to confidentiality.

### 13. TERM AND TERMINATION

- 13.1 This agreement shall begin on the Commencement Date and shall continue for the Initial Period and, unless terminated earlier in accordance clause 13.3 and 13.4, shall continue until terminated in accordance with its terms.
- 13.2 This agreement shall terminate after the Initial Period (1 year from Commencement Date). The Customer has an option to extend the agreement for a further year and must exercise this option by providing the Supplier with notice of the Customer's intention to do so at least one month prior to the expiry of the Initial Period.
- 13.3 In the event that the Term extends beyond the Initial Period, the Supplier shall be entitled to increase the Fees payable in line with the consumer price index (**Fee Increase**) on the first of September of each Year after the Initial Period has expired provided that it has given the Customer not less than one (1) month's prior notice of its intention to make such increase. Upon receipt of such notice, the Customer shall be entitled to terminate this agreement upon giving one (1) month's written notice to the Supplier.
- 13.4 A party shall be entitled to terminate this agreement immediately upon notice in writing to the other if:
  - 13.4.1 the other commits a material breach of this agreement and, where the breach is capable of remedy, has failed to remedy such breach within thirty (30) days of written notice requiring remediation; or
  - 13.4.2 the other makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, scheme of arrangement, receivership, administration, liquidation, bankruptcy or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of a distraint, execution, event of insolvency or event of bankruptcy or any similar process or event, whether in the United Kingdom or otherwise.
- 13.5 Each party's rights, liabilities and obligations under this agreement shall cease upon its termination or expiration. Each party's accrued rights and liabilities and the rights and obligations of each party that are expressly or by implication intended to come into force upon, or remain in force following, the termination or expiration of this agreement (including under clauses 1, 9, 10, 11, 12, 13.1, 13.6, 15, 16, 17 ) shall survive any termination or expiration of this agreement.
- 13.6 On termination for any reason identified in Clauses 13.2, 13.3 and 13.4:
  - 13.6.1 all rights granted to the Customer under this agreement shall cease;
  - 13.6.2 the Customer shall cease all activities authorised under this agreement

- 13.6.3 the Customer shall immediately pay to the Supplier the Fees and
- 13.6.4 the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software and Documentation then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.
- 13.7 On termination of this Agreement or expiry of the Initial Period the Supplier shall transfer the Customer URL to the Customer and shall pay any reasonable expenses (including cost of registration) in relation to such transfer.

#### **14. ASSIGNMENT AND SUBCONTRACTING**

- 14.1 Neither party shall assign nor transfer the whole or any part of this agreement or the benefits or obligations under it without the written consent of the other party . Such consent shall not be unreasonably withheld or delayed.

#### **15. NOTICES**

- 15.1 Notices sent in respect of any legal action arising under this agreement or terminating this agreement be in writing and must be sent either:-

15.1.1 by first class post; or

15.1.2 delivered by hand.

15.1.3 In respect of both postal delivery and delivery by hand the notice shall be sent to the address of the party to be served as set out at the beginning of this agreement or such other address as that party may advise the other party as being its address for service.

- 15.2 All communications in connection with this agreement other than those referred to in clause 15.1 may also be sent by email to the following addresses:

Supplier: email: [chris@teamkinetic.co.uk](mailto:chris@teamkinetic.co.uk)

Customer: email: [takki.sulaiman@royalgreenwich.gov.uk](mailto:takki.sulaiman@royalgreenwich.gov.uk)

Notice is deemed given:

15.2.1 in the case of hand delivery – at the time the delivery is made;

15.2.2 in the case of posting – 2 Working Days after the notice is posted;

15.2.3 in the case of email at the time of transmission provided that notice of failed or incomplete transmission is not received by the sender

#### **16. GENERAL**

- 16.1 No variation of or amendment to this agreement shall be effective unless made in writing and signed by authorised representatives of the parties.
- 16.2 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 16.3 The rights and remedies available to the parties under this agreement shall not limit or exclude any other right and/or remedies that either party may have against the other.
- 16.4 The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this agreement does not constitute and shall not be construed as a waiver of such term or right, remedy, power or privilege and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

- 16.5 The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to this agreement shall not in any way affect the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.
- 16.6 This agreement (including the schedules and appendices) contains all the terms agreed by the parties and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing, relating to its subject matter. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to this agreement except as set out in this agreement. Each party acknowledges and accepts that, in entering into this agreement, it has not relied upon any representation, undertaking or promise except as set out in this agreement.
- 16.7 In the event of conflict between the terms set out in the body of this agreement and the schedules the terms in the body of this agreement shall take precedence.

## **17. GOVERNING LAW AND JURISDICTION**

- 17.1 This agreement (including any associated non-contractual disputes or claims) is governed by the law of England and Wales. .
- 17.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

### **SCHEDULE 1 Fees**

The Customer shall pay the Supplier the fees in respect of the Services in accordance with the following timetable for payment:

<b>Invoice submission date</b>	<b>Payment Amount</b>
<b>21<sup>st</sup> March 2020</b>	<b>£9125.00 +VAT</b>

The Supplier shall invoice the Customer for the above payments in accordance with clause 3 of the Agreement.

#### **Additional Fees**

Any Additional Fees payable by the Customer to the Supplier shall be charged in accordance with Schedule 5.

## **SCHEDULE 2**

### **The Specification and Service**

- 1.1 The Software aims to provide the Customer with an integrated solution to the management of volunteers and volunteer placement providers
- 1.2 The user interface is designed for all modern browsers and is guaranteed to provide at least the minimum required functionality on any browser version from five years before the commencement date.
- 1.3 The Supplier shall ensure that the Customer will be able to manage and create admin users, volunteer placement provider admins and manage the individual accounts of volunteers. These pages will include integrated SMS and email options. Providers and volunteers will both receive pages that allow them to manage their personal and account information, their volunteer placement information and additional information.
- 1.4 The Software runs entirely online from EU based server centres in accordance with guidance and best practise from the ICO (Reg no. ZA036104). In accordance with EU law no data will be transferred outside the EU by the supplier.
- 1.5 The application can be accessed using an internet enabled device. There is also a customised application for volunteers designed for mobile and small screen devices.
- 1.6 The Authorised Users will have full control over all aspects of the volunteer, placement and provider data.
- 1.7 The website will adhere to minimum accessibility standards, W3C standards for HTML and CSS by default.

### **Service Levels and Support**

#### Overview

- 1.8 The Supplier aims to provide a high standard of service at all times. The arrangements below define how unforeseen issues are managed.

#### Data Back Up and Service Uptime

- 1.9 The Supplier shall ensure that the server and associated data is transactional backed up every 30 minutes and a complete backup shall be performed each night and moved to an off-site back up area. In the event of total data loss the Supplier shall ensure that the server is recovered within 24 hours of data loss.
- 1.10 The Supplier will maintain the availability of the Services for a minimum of 99.4% in any twelve (12) month period during the Term.

#### Support to THE CUSTOMER

1.11 The Supplier will respond to specific support requests, and provide general advice on the usage of the Services as follows:

1.11.1 Support availability: 10am to 4pm (BST) on English and Welsh Business Days. At other times, the Supplier will provide support on a “best efforts” basis, with the severity of the issue in mind.

1.11.2 Support Methods: by support ticket (preferred to allow accurate record keeping).

1.11.3 Response Times:

1.11.3.1 Severe (e.g. total loss of service): 1 hour;

1.11.3.2 We aim to respond to all support tickets with 48 hours or 2 business days.

1.11.3.3 Notwithstanding the Response Times in paragraph 3.12, the Supplier shall rectify any problems reported by the Customer:

1.11.3.4 in the case of a severe fault, within two (2) Business Days; and

1.11.3.5 in all other cases, within four (4) Business Days

1.12 The provision of Support Services during the Term shall be included in the Fees.

#### The Services

1.1 The Supplier shall provide the Customer during the Term of this Agreement with the following:

1.2 A non-exclusive licence to use the Software during the Term;

1.2.1 “Feel and Look” branding;

1.2.2 Appropriate URL for the Website or redirecting;

1.2.3 Website hosting;

1.2.4 100 free text messages which the Customer may send directly from the Website to third parties registered as volunteers on the Website

1.2.5 Updates including but not exclusively bug fixes, new features and updates in accordance with browser technology

1.2.6 support and assistance throughout the Term in accordance with the Service Levels

1.3 In addition to the above, the Supplier shall provide the Customer with 1 ticket to attend Manchester Metropolitan Universities – Developing Volunteer Symposium at no additional cost.

1.4 The Software made available by the Supplier to the Customer shall conform to the Specification

1.5 Any maintenance or technical assistance required due to a fault in or failure of the Software shall be included in the Services provided by the Supplier under this Agreement.



1.6 An annual review will be initiated by the Supplier to assess the satisfaction of the Customer's use of the Services, the support arrangements and the Service Lev

### **SCHEDULE 3 SERVICES**

Please note, we will consider any customisations that are not accessible or adjustable using the provided tools but these will be chargeable at our standard rates.

If you require more assistance in using the tools we can provide that assistance at our standard rates beyond your agreed included hours.

Where the Customer requires extended functionality or additional customisation to the Software beyond that described in Schedule 2, the Parties agree to undertake the required development covenant and agree as follows

#### **SUPPLIER'S DUTIES.**

The Customer hereby engages the Supplier and the Supplier hereby agrees to be engaged by the Customer to develop the Software in accordance with the specifications attached hereto as Exhibit A (the "Specifications of additional works").

- a. The Supplier shall complete the development of the Software according to the milestones described on the form attached hereto as Exhibit B. In accordance with such milestones, the final product shall be delivered to the Customer by the delivery date.
- c. Except as expressly provided in this Software Development Agreement, the Customer shall not be obligated under this Agreement to provide any other support or assistance to the Supplier.
- d. The Supplier shall provide to the Customer after the Delivery Date, with training in respect to the operation of the Software if requested by the Customer.

#### **DELIVERY.**

The Software shall function in accordance with the Specifications on or before the Delivery Date.

- a. If the Software as delivered does not conform with the Specifications, the Customer shall within 14 days of the Delivery Date notify the Supplier in writing of the ways in which it does not conform with the Specifications. The Supplier agrees that upon receiving such notice, it shall make reasonable efforts to correct any non-conformity.
- b. The Customer shall provide to the Supplier written notice of its finding that the Software conforms to the Specifications within 14 days of the Delivery Date (the "Acceptance Date") unless it finds that the Software does not conform to the Specifications as described in Section 2(A) herein.

#### **COMPENSATION.**

In consideration for the Service, the Customer shall pay the Company at the rate the Hourly Rate" as agreed in schedule 5. Fees billed under the Hourly Rate shall be due and payable upon the Supplier providing the Customer with an invoice. Invoices will be provided for work completed by the Supplier once every four weeks.

#### **CHANGE IN SPECIFICATIONS.**

The Customer may request that reasonable changes be made to the Specifications and tasks associated with the implementation of the Specifications. If the Customer requests such a change, the Supplier will use its best efforts to implement the requested change at no additional expense to the Customer and without delaying delivery of the Software. In the event that the proposed change will, in the sole discretion of the Supplier, require a delay in the delivery of the Software or would result in

additional expense to the Customer, then the Customer and the Supplier shall confer and the Customer may either withdraw the proposed change or require the Supplier to deliver the Software with the proposed change and subject to the delay and/or additional expense. The Customer agrees and acknowledges that the judgment as to if there will be any delay or additional expense shall be made solely by the Supplier.

#### **CONFIDENTIALITY.**

The Supplier shall not disclose to any third party the business of the Customer, details regarding the Software, including, without limitation any information regarding the Software's code, the Specifications, or the Customer's business (the "Confidential Information"), (ii) make copies of any Confidential Information or any content based on the concepts contained within the Confidential Information for personal use or for distribution unless requested to do so by the Customers, or (iii) use Confidential Information other than solely for the benefit of the Client.

#### **DEVELOPER WARRANTIES.**

The Supplier represents and warrants to the Customer the following:

- a. Development and delivery of the Software under this Agreement are not in violation of any other agreement that the Supplier has with another party.
- b. The Software will not violate the intellectual property rights of any other party.
- c. For a period of 180 days after the Delivery Date, the Software shall operate according to the Specifications. If the Software malfunctions or in any way does not operate according to the Specifications within that time, then the Supplier shall take any reasonably necessary steps to fix the issue and ensure the Software operates according to the Specifications.

#### **NO CUSTOMISATION UNLESS IN WRITING.**

No modification of this Agreement shall be valid unless in writing and agreed upon by both Parties. Request all Customisation via the support tickets in you Admin dashboard.

## **Exhibit A - Specification of Additional Works**

**NA**

The Customers are entitled to 20 customisation of their Software as part of the Implementation process. These hours can be used on any of the following customisations in the first 3 months of the contract period.

**Exhibit B - Timeframe and Milestones of Additional Works**

**Data Migration**

**Cost of additional works**

Line Items	Payment Amount
Data Migration 2.5 days	£2125.00

## **SCHEDULE 4 Restrictions**

The rights granted in accordance with clause 2.1 shall be subject to the following restrictions:

**1. Admin Users**

1.1. The Customer shall only be entitled to **Unlimited Admin users**

**2. Number of PODs**

2.1. The Customer shall only be entitled to **Unlimited PODs**

2.2. POD details are in Exhibit C

**Exhibit C – POD details**

**To be confirmed**

## Schedule 5 – Rate Card

<b>Consultancy</b>	<b>Standard</b>
Hourly rate	£250
Day rate	£900

<b>Development work and Data Migration (web and mobile)</b>	
Hourly rate	£250
Day rates	£900

### **On-site training and Onsite support**

*Session length is 5 hours over 1 day, a maximum of 12 administrators per training session; All require access to the internet. We ask for mileage and expenses at £0.40p and up to £99 per night for accommodation where required.*

Inside Greater London	£650
Outside Greater London(standard day rate)	£550

### **Online Training**

Hourly rate	£150
Day rate	£550

### **Reports**

Standard bespoke reports	£250
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### **SMS Messages**

for Additional SMS Messages, the Customer shall purchase from the Supplier in advance SMS credit at a rate of £0.07 per additional SMS message it requires. Any change to the Additional Fees for Additional SMS Messages detailed in this paragraph shall be notified to the Customer in advance in writing

## Schedule 6 Data Protection

### 1. Data Protection

1.1 For the purposes of this clause, the following definitions apply;

- (i) 'Data Controller', 'Data Processor' and 'process' have the meanings given to them in the Data Protection Act 2018 and from May 2018 the General Data Protection Regulation 2018;
- (ii) Service Users shall mean those users who sign up to use the Services.
- (iii) 'Personal data breach' has the meaning given to it in article 4(12) of the General Data Protection Regulation 2016/679;
- (iv) 'Personal Data' shall mean the personal data of the Service Users including their name, contact details, email, address, disability information, gender and employment or education experience.
- (v) 'Privacy Laws' means the Data Protection Act 1998, Directive 95/46/EC, the General Data Protection Regulation 2016/679 and the Privacy and Electronic Communications Regulations 2003; and
- (vi) 'Privacy notice' means a notice providing individuals with information about the purpose for which and manner in which their personal data will be processed and the organisations that will be undertaking that processing.

1.2 With respect to the parties' rights and obligations under this Contract, it is acknowledged and agreed that the Customer is the Data Controller and the Supplier is the Data Processor in relation to the Personal Data.

1.3 Where processing Personal Data on behalf of the Customer the Supplier agrees to;

- (i) provide the Services in compliance with all relevant Privacy Laws;
- (ii) not do anything (or permit anything to be done) which would put the Customer in breach of its obligations under Privacy Laws;
- (iii) only process the Personal Data in accordance with the Customer's instructions and only for the purpose of delivering the Services and not for any other purpose;
- (iv) implement and maintain the technological and organisational measures to protect the Personal Data against accidental or unlawful loss, alteration, destruction, or unauthorised disclosure, dissemination or access, or alteration;
- (v) not disclose or transfer the Personal Data to any third party (save where disclosure has been specifically authorised by the Customer under this Contract) and only provide access to the Personal Data to your personnel where such access is necessary for the provision of the Services;
- (vi) take reasonable steps to ensure the reliability of any of your personnel who have access to the Personal Data, ensure that those personnel are aware of their obligations set out in this clause 1 and have undergone adequate training in the care, use and protection of personal data in compliance with the Privacy Laws.



- 1.4 Upon the Customer's request, the Supplier agrees to permit the Customer or its authorised agents to inspect the Supplier's premises, data processing activities and systems, and/or have access to, and be provided with copies of any information (including without limitation the Personal Data) to enable the Customer to be satisfied the Supplier are complying with the obligations under this Schedule 6.
- 1.5 The Supplier must not sub-contract or assign any of its rights or obligations under this Contract without the Customer's prior written consent.
- 1.6 Where the Customer provides written consent to sub-contracting of the Services under clause 1.6, then the Supplier agrees to impose a binding legal obligation on their sub-contractor to comply with the obligations in this Schedule 6 where that subcontractor has access to, or will be otherwise processing, the Personal Data. For the avoidance of doubt, any such subcontract shall not relieve the Supplier of its obligation to comply fully with this Schedule 6 and the Supplier shall remain fully responsible and liable for ensuring full compliance with this Schedule 6 in all respects.
- 1.7 The Supplier will not transfer any Personal Data processed under or pursuant to this Agreement outside of the European Union without the Customer's prior written authorisation. Where the Customer authorises the transfer of Personal Data outside of the European Union, the Supplier agrees to comply with any instructions the Customer may issue which are necessary to achieve compliance with the Privacy Laws.
- 1.8 The Supplier agrees to notify the Customer as soon as practical, and in any event within two working days, if the Supplier receives;
- i. a request from an individual to access their Personal Data or to exercise the rights of individuals under Privacy Laws including the rights of rectification, restriction, blocking, data portability and/or erasure;
  - ii. a complaint relating to the processing of Personal Data under this Agreement;
  - iii. notification that an individual wishes to withdraw their consent, or otherwise objects, to the processing of their Personal Data under this Agreement; or
  - iv. any communication from the Information Commissioner or any regulatory authority in connection with the Personal Data.
- 1.9 The Supplier agrees to comply with The Customer instruction regarding the response to and handling of a complaint, request, notification or communication described in clause 1.9 and provide such reasonable assistance to the Customer as is required to ensure that the Customer can comply with its obligations under the Privacy Laws.
- 1.10 The Supplier agrees to notify the Customer promptly, and within 24 hours, in the event of an actual or suspected personal data breach involving the Personal Data processed under this Agreement. The Supplier agrees to co-operate with the Customer fully to investigate such a breach by furnishing the Customer with information as may be reasonably required about the breach and the Supplier's processing activities. The Supplier also agrees to comply with the Customer's reasonable instructions regarding the management of and response to the breach and any steps necessary to prevent an equivalent breach in the future.

1.11 The Supplier agrees to comply with the Customer's instructions as to the period for which the Personal Data shall be retained and regarding secure destruction or return of the data to the Customer following expiry of the Term.

1.12 The Supplier agree to indemnify and keep indemnified the Customer against all claims, demands, actions, proceedings, charges, costs and expenses (including legal costs and expenses) which may be brought against us in respect of or in any way arising out of or in connection with;

- i. your breach of the obligations in this Schedule 6; or
- ii. a claim that we are in breach of our obligations under the Privacy Laws as a result of any of your actions.

Signed by **Insert name**  
for and on behalf **Insert Org name**

.....  
**Insert Title**

Signed by Christopher Martin  
for and on behalf of TeamKinetic  
Limited

.....  
Director