



MASTER SERVICES AGREEMENT

		Effective Date: [DATE]
PARTY	SUPPLIER	CLIENT
Name:	Instil Software Ltd	[CLIENT NAME]
Incorporation Location:	Northern Ireland	[LOCATION]
Company Reg Number:	NI054248	[COMPANY REG NUMBER]
Address:	Linen Loft 27-37 Adelaide Street Belfast BT2 8FH	[CLIENT ADDRESS]

IN CONSIDERATION of the mutual covenants and undertakings contained in this document, and intending to be legally bound, Supplier and Client (as designated above) agree as follows:

1. DEFINITIONS

- 1.1 **Specific Words or Phrases:** For purposes of this Agreement, each word or phrase listed below has the meaning designated. Other words or phrases used in this Agreement may be defined in the context in which they are used.

Acceptance shall mean acceptance of each Deliverable by Client as determined by the Acceptance Tests;

Acceptance Tests shall mean the tests agreed between the Parties which tests are designed to show that the Services and each Deliverable have been supplied in accordance with the agreed Specifications and otherwise meet the applicable requirements set out in this Agreement;

Affiliate means an entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with Client. As used herein, "control" means the power to direct the management or affairs of an entity, and "ownership" means the beneficial ownership of fifty percent (50%) or more of the voting equity securities or other equivalent voting interests of the entity;

Agreement the provisions of this Master Services Agreement and any schedule hereto;

Applicable Laws means all laws, statutory instruments, regulations, orders and other legislative provisions which in any way relate to this Agreement and the provision of the Services;



Business Day	a day other than a Saturday, Sunday or public holiday in Northern Ireland when banks in Belfast are open for business;
Charges	the charges (excluding VAT) for the Services as set out in any SOW and any other charges which may be payable pursuant to the terms of this Agreement or any SOW;
Client Data	means any data that is provided by Client an Affiliate, User or Personnel (in each case, as such terms are defined herein) to Supplier (including through the Services) or processed (as defined herein) by Supplier on behalf of Client, an Affiliate, User or Personnel, including any Personal Data;
Client's Systems	means all information technology equipment, all associated or interconnected network equipment, routers, semi-conductor chips, software, and communication lines, and all other equipment (including printers, copiers, fax machines and telephones) owned, licensed or operated by, or operated on behalf of, Client, Affiliate, or by their respective clients, customers, service providers or other third parties;
Data Protection Laws	has the meaning given in Schedule 1;
Defect	any material defect, non-conformity or malfunction of any Service provided by Supplier;
Deliverable	means any deliverable (in any medium and in any stage of development or completion) provided by Supplier to Client or created by Supplier (including any of its employees, agents or subcontractors), alone or jointly with others, in connection with performing the Services;
Good Industry Practice	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a software company;
Intellectual Property Rights	copyright, database rights, patents, patent applications, patent rights, rights in designs, trademarks, trademark applications, trademark registrations, trademark rights, trade secrets and all other intellectual property and proprietary information rights as may exist now or hereafter come into existence, all modifications, continuations, renewals and extensions of the foregoing, and all claims, actions, causes of action, damages, costs, expenses, profits, penalties, recoveries and remedies relating to any past, present or future infringement of any of the foregoing, arising under the laws of any country, state or jurisdiction in the world;
ITEPA	the Income Tax (Earnings and Pensions) Act 2003;



NICs Legislation	the Social Security Contributions (Intermediaries) Regulations 2000;
Open Source Materials	software or other material that is distributed as “open source software” or under similar licensing or distribution terms (including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache Software License, any of the Creative Commons suits of licenses, and any other licenses identified as open source licenses at www.opensource.org ;
Party	means either Supplier or Client individually, as the context so requires and “ Parties ” means Supplier and Client collectively;
Pre-Existing Intellectual Property	means any material that was developed by Supplier prior to rendering any Services under this Agreement;
Restrictive Open Source Materials	software or other materials that is subject to a “copyleft” license or other agreement that requires as a condition of use, modification or distribution of such code, that such code or other software code combined or distributed with such code, be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributed at no licence fee;
Services	means the services described in the applicable SOW that are to be provided by Supplier to Client (including the provision of Deliverables, and any related services, information or materials to be provided by Supplier under this Agreement);
SOW	a statement of work for Services in a form agreed in Schedule 2 and executed by an authorised representative of each of the Parties, and which incorporates the terms of this Agreement and any additional terms set out therein;
Specification(s)	in relation to a SOW, the specification for any Deliverable to be provided under that SOW;
Subcontractor	means a contractor, agent, service provider, third party or consultant retained by Supplier pursuant to a written Agreement, or otherwise used by Supplier, including any person (whether a natural person or a corporation), directly or indirectly employed by or otherwise retained by that contractor, agent, service provider, third party or consultant;



Third Party Service Provider means any of Supplier's contractors, Subcontractors, authorised agents, vendors and third party service providers with access to Client Data or Client Systems;

Third Party Materials means any Deliverable that is not the sole property of Supplier; and

User means a past, present or prospective end user or customer of Products and Services offered by Client or an Affiliate, whether such end user or customer is an individual or entity.

- 1.2 Clause and schedule headings do not affect the interpretation of this Agreement. Words in the singular include the plural and, in the plural, include the singular. A reference to a clause or a schedule is a reference to a clause or a schedule of this Agreement. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it. References to **including** and **include(s)** shall be deemed to mean respectively **including without limitation** and **include(s) without limitation**. If the terms in any SOW conflict with the terms of this Agreement, the terms of this Agreement shall take precedence unless the SOW terms expressly dis-apply the terms of this Agreement.

2. TERM AND TERMINATION

- 2.1 This Agreement begins on the Effective Date and continues in effect unless superseded or otherwise terminated by either party. For the avoidance of doubt, the termination of the Agreement does not result in the termination of any previously issued SOW, each SOW being terminable only in accordance with its own provisions.
- 2.2 Either Party may terminate this Agreement if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, or if any such proceeding is instituted against such Party (and is not dismissed within sixty (60) days thereafter). In addition, either Party may terminate this Agreement at any time when there is no SOW in effect upon thirty (30) days advance written notice to the other Party.
- 2.3 Each duly executed SOW will commence as of the Effective Date designated thereon, and will continue in effect thereafter until the earliest of (i) the expiration date designated thereon (if any), (ii) the date the Services have been satisfactorily completed and have been accepted and all applicable warranty and license periods have expired or otherwise terminated, or (iii) the date of termination specified by either Party in accordance with the following conditions:
- 2.3.1 Supplier may, by providing written notice of termination to Client, terminate (in whole or in part) a SOW if Client breaches a material obligation (including, without limitation, its payment obligations under clause 13) under such SOW or this Agreement and fails to cure such breach within thirty (30) days after written notice of such breach;
- 2.3.2 Client may, by providing written notice of termination to Supplier, terminate (in whole or in part) any or all SOWs if Supplier: (a) breaches a material obligation under a SOW and fails to cure such breach within thirty (30) days after written notice of the breach; or (b) violates any Applicable Law.



For the avoidance of doubt, notice of termination for any one SOW is not a notice of termination for any other SOW.

3. **SCOPE OF AGREEMENT**

- 3.1 This Agreement does not commit Client or any Client Affiliate to purchase any services, deliverable or products, nor does it preclude or limit Client (or any Client Affiliate) from independently acquiring or developing competitive products or services for itself or its customers, or from providing competitive products or services to its customers, provided that Client does not breach its confidentiality obligations under this Agreement in doing so. This Agreement sets forth the terms and conditions that will govern the provision of Services as a result of the execution of a SOW by Supplier (or a Supplier Affiliate) and Client (or a Client Affiliate), save to the extent such terms are disappplied by Agreement in a SOW.
- 3.2 Either the entity designated above as Supplier (or any Affiliate of Supplier) and either the entity designated above as Client (or any Affiliate of Client) may enter into a SOW under this Agreement. The entity that executes (or is deemed to have executed) a SOW is considered "Supplier" and "Client" (respectively) for all purposes of the SOW and the SOW is considered a two party agreement between those entities that incorporates the provisions of this Agreement as if those provisions were set forth in their entirety. Each SOW shall be in the form of a written document substantially in the form of Schedule 2.

4. **DELIVERY**

- 4.1 Supplier acknowledges that Client and its Affiliates, as well as their respective Personnel, clients and service providers, may use or benefit from the use of any Services or any information or materials provided by Supplier.
- 4.2 Each Party will designate a suitably qualified relationship manager who will be responsible for oversight of all SOW. Each Party will also designate a suitably qualified project manager who will represent that Party and be responsible for assigning, scheduling and supervising that Party's Personnel for each SOW. During a project, Supplier's project manager will provide Client project manager with status and other reports at intervals and with all information as Client may reasonably request.
- 4.3 Supplier will provide all Services as an independent contractor. Neither this Agreement nor Supplier's provision of Services will create an association, partnership, joint venture or relationship of principal and agent, matter and servant, or employer and employee, between Client and Supplier, and neither Party will have the right, power or authority (whether expressed or implied) to enter into or assume any duty or obligation on behalf of the other Party.
- 4.4 Supplier's obligation to provide the Services shall be performed by personnel of the Supplier as the Supplier may consider appropriate (**Supplier Personnel**), subject to the Client being reasonably satisfied that the Supplier Personnel have the required skills, qualifications and resources to provide the Services to the required standard. The Client may reject Supplier Personnel at its sole discretion at any time, in the event that the Client rejects such Supplier Personnel the Supplier shall promptly provide an alternative suitable replacement.
- 4.5 Supplier will provide Client with Personnel who are trained and familiar with delivering the type of Services contemplated. Supplier will use adequate numbers of individuals with suitable training, education, experience and skill to perform the Services in the most effective and cost



efficient manner (determined in the Supplier's sole judgement) consistent with the terms of this Agreement.

- 4.6 Supplier has the right, at its own expense, to enlist additional or substitute Supplier Personnel in the performance of the Services, provided that Supplier provides details of the proposed substitute(s) in advance of the planned substitution and subject to Client being reasonably satisfied that such Supplier Personnel have the required skills, qualifications and resources to provide the Services to the required standard.
- 4.7 Where Supplier provides a substitute pursuant to clause 4.6 above, Supplier shall be responsible for paying the substitute and shall ensure that any agreement between the Supplier and any such substitute shall contain obligations which correspond to the obligations of the Supplier under the terms of this Agreement and the Supplier shall remain responsible for the acts or omissions of any such substitute.
- 4.8 Supplier is solely responsible for all employer related responsibilities with respect to its Personnel including but not limited to maintaining all required insurance coverages, filing all applicable tax returns and making all required payments and deposits of taxes in a manner consistent with Supplier's status as an independent contractor.
- 4.9 Save as otherwise stated in this Agreement, Client acknowledges and accepts that the Supplier is in business on its own account and Supplier shall be entitled to seek, apply for, accept and perform contracts to supply its services to any third party during the term of this Agreement provided that this in no way compromises or is to the detriment to the performance of the Services.
- 4.10 Supplier will not directly or indirectly solicit any Client employee for employment or services while a SOW is in effect and for the twelve (12) month period following the date the SOW terminates or expires.
- 4.11 Client will not directly or indirectly solicit or hire any Supplier Personnel for employment or services who has been assigned by Supplier to provide Services to Client under a SOW at any time while a SOW is in effect and for the twelve (12) month period following the date the SOW terminates or expires.
- 4.12 For the purposes of clauses 4.10 and 4.11, the advertisement of employment opportunities by a Party in any public forum (including magazines, trade journals, publicly accessible internet sites, classified advertisements, or job fairs open to the public) will not be considered solicitation, and the hiring of the other Party's Personnel as a result of his or her response to a general employment advertisement or in response to his or her unsolicited employment inquiry will not constitute a breach of this Agreement by the hiring Party.

5. EQUIPMENT

- 5.1 Supplier shall provide at its own cost, subject to any agreement to the contrary specified in a SOW, all such necessary equipment as is reasonable for the satisfactory performance by the Supplier Personnel and any substitutes of the Services.
- 5.2 If as a matter of convenience, Supplier is provided with equipment by Client or a Client Affiliate for the purposes of a SOW, Supplier shall be responsible for ensuring that the security and condition of such equipment is preserved. If and to the extent that any equipment is lost or



damaged while in the Supplier's possession, Supplier shall be responsible for the cost of any necessary repairs or replacement.

6. METHOD OF PERFORMING SERVICES

- 6.1 Supplier's Personnel are professionals who will use their own initiative as to the manner in which the Services are delivered provided that in doing so Supplier shall co-operate with Client and comply with all reasonable and lawful instructions of Client.
- 6.2 Supplier may provide the Services at such times and on such days as Supplier shall decide but shall ensure that Services are provided at such times as are necessary for the proper performance of the Services.
- 6.3 Supplier may provide the Services from such locations as are appropriate in Supplier's sole judgment. When necessary, Client will provide Supplier with appropriate access to the Client's facilities as is necessary for the effective conduct of the Services.
- 6.4 Upon completion or termination of a SOW, Client shall be under no obligation to offer the Supplier further work, nor shall the Supplier be under any obligation to accept any offer of further work made by Client.

7. RELATIONSHIP BETWEEN CLIENT AND SUPPLIER

- 7.1 The relationship between the parties is between independent companies acting at arm's length and nothing contained in this Agreement shall be construed as constituting or establishing any partnership or joint venture or relationship of employer and employee between the Parties or their personnel.
- 7.2 Neither Client nor its Affiliates are under an obligation to offer work to Supplier and Supplier is under no obligation to accept any work that may be offered by Client or an Affiliate. Neither party wishes to create or imply any mutuality of obligation between themselves either in the course of, or between, any performance of the Services under this Agreement.

8. ACCEPTANCE

- 8.1 After Services have been provided to Client, Client may test the Services to determine if the Services conform to the Acceptance Criteria in all material respects. Supplier will provide any assistance as Client reasonably requires to conduct acceptance testing.
- 8.2 If Client determines that the Services operate in accordance with and otherwise conform to, the Acceptance Criteria in all material respects, then Client will notify Supplier that Client accepts the Services. If Client determines that the Services do not operate in accordance with, or otherwise confirm to, the applicable Acceptance Criteria in all material respects, then Client will provide Supplier with a notice describing the Defect. Supplier will have ten (10) Business Days following the date it receives Client's notice of Defect to correct the Services, at no additional cost to Client. If Supplier delivers a corrected version of the Services, then Client may repeat the Acceptance Testing process. If through no fault of Client Supplier fails to deliver within the ten (10) Business Day period a corrected version of the Services that conforms substantially to the Acceptance Criteria, in all material respects then Client may reject the Services and terminate the applicable SOW (in whole or in part) upon notice to Supplier.



9. CHANGE CONTROL

- 9.1 If either Party identifies a requirement for a change in this Agreement and/or any SOW including any requirement for services additional to those set out in any SOW, a change request will be sent to the other party detailing the change requirements. If sent by Supplier the change request shall state the effect such a change shall have on the provision of the Services. If sent by Client, the receipt of the change request by Supplier will constitute a request to Supplier to state in writing the effect such a change shall have on the provision of the Services. Supplier shall use all reasonable endeavours to supply the necessary details within ten (10) Business Days from receipt of the change request or such other period as may be agreed.
- 9.2 Where a change to the Charges is required, the rates used as the basis for the additional costs for the change request shall be Supplier's standard daily rates prevailing at the time of the request. The Parties will then decide whether or not to implement the change.
- 9.3 Supplier shall not implement any changes unless requested to do so by Client.

10. THIRD PARTY MATERIALS AND PRE-EXISTING INTELLECTUAL PROPERTY

- 10.1 Supplier shall not incorporate into, embody in or provide with any Deliverable any Third Party Materials or Pre-Existing Intellectual Property, unless Supplier (i) has specifically identified such Third Party Materials or Pre-Existing Intellectual Property in the applicable SOW or otherwise obtained Client's prior written consent and (ii) has obtained any third-party rights necessary to provide the license to Client as set forth in clause 10.3 below.
- 10.2 The obligations set forth in clause 10.1 apply to any use of Open Source Software in connection with any Deliverable (excluding the obligation to obtain a license under clause 10.3). In addition, if Client approves use by Supplier of particular items of Open Source Software in connection with a Deliverable, Supplier shall include with such Deliverable a document identifying each such item of Open Source Software and including the full text of the related license. Client acknowledges that its license to any such Open Source Software shall be the Open Source Software license applicable to such code provided by Supplier. Notwithstanding anything to the contrary in this Agreement, Supplier may not incorporate into any Deliverable any Open Source Software which is Restricted Open Source Materials.
- 10.3 Supplier hereby grants Client a non-exclusive, royalty-free, irrevocable, worldwide, perpetual right and license (with right to sublicense through multiple tiers) to make, have made, sell, use, import, export, execute, reproduce, distribute, modify, adapt, publicly display, publicly perform, make derivative works of, and disclose any Third Party Materials or Pre-Existing Intellectual Property incorporated into, embodied in or provided with any Deliverable in connection with Client's use or exploitation of such Deliverable and the Services and as otherwise necessary to enable Client to exercise all of the rights assigned to Client under this Agreement.

11. WARRANTIES

- 11.1 Supplier warrants to Client that:



- (a) It has full right and power to enter into and perform this Agreement without the consent of any third party, and its performance under this Agreement will not conflict with any other obligation Supplier may have to any other party;
 - (b) it shall perform the Services with reasonable care and shall in accordance with Good Industry Practice;
 - (c) it shall ensure that the Services (including all Deliverables) and Supplier's performance of its obligations under this Agreement are in compliance at all times with all Applicable Laws;
 - (d) it shall use all reasonable endeavours in accordance with Good Industry Practice to ensure that the Services and all Deliverables shall be free of any: (i) viruses, worms, time bombs, Trojan horses or other harmful, malicious or destructive code; (ii) software disabling devices, time-out devices, counter devices and devices intended to collect data regarding usage of the software without the knowledge of Client and (iii) Open Source Software (except as expressly authorized by Client in writing in accordance with Clause 10 (Third Party Materials and Pre-Existing Intellectual Property));
 - (e) each Deliverable is and will be an original work of Supplier, except for any Third Party Materials and Pre-Existing Intellectual Property incorporated therein. Neither the Services nor Deliverables will (i) infringe the Intellectual Property Rights of any third party or incorporate any third party's confidential information or (ii) be subject to any restrictions or to any mortgages, liens, pledges, security interests, encumbrances or encroachments;
 - (f) it has and will have all necessary rights to grant the licenses and make the assignments set forth in this Agreement (including having all necessary assignment agreements or other proprietary rights agreements in place with employees and subcontractors); and
 - (g) Client's (and its licensees') exercise of all rights assigned and granted under this Agreement will not require any third party consents or clearances or any payment of fees, residuals or other amounts of any kind to any third party.
- 11.2 Supplier shall, without charge, correct any Defect in any Deliverable reported by Client within thirty (30) days of receipt of written notice from Client, or if Supplier is unable to make the Deliverable operate as warranted within such 30-day period, then Client may immediately terminate the applicable SOW, and Supplier shall refund to Client all fees paid for the corresponding Services within ten (10) days of termination.
- 11.3 EXCEPT FOR SUPPLIER'S WARRANTIES SET FORTH IN THIS AGREEMENT AND ANY SOW, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 12. OWNERSHIP OF DELIVERABLES**
- 12.1 Supplier agrees that all Deliverables will be the sole and exclusive property of Client. Supplier shall and hereby does irrevocably assign to Client all right, title and interest in and to the Deliverables and all related Intellectual Property Rights save that Supplier (or its licensors) shall retain ownership of any Pre-Existing Intellectual Property and Third Party Materials.
- 12.2 If Supplier has any rights in a Deliverable that cannot be assigned to Client (including any moral rights, such as the right to be named as author, the right to modify, the right to prevent mutilation and the right to prevent commercial exploitation), Supplier hereby unconditionally



and irrevocably waives the enforcement of such rights and waives any and all claims and causes of action of any kind against Client, its Affiliates, and its licensees with respect to such rights, and agrees, at Client's request and expense, to consent to and join in any action to enforce such rights. Supplier further agrees to and hereby does license such rights under the same terms as the license grant in clause 10.3.

- 12.3 At Client's request and expense, during and after the term of this Agreement, Supplier shall assist and cooperate with Client in all respects and shall execute documents and, subject to the reasonable availability of Supplier, shall give testimony and take such further acts reasonably requested by Client to enable Client to acquire, transfer, maintain, perfect and enforce its Intellectual Property Rights and other legal protections for the Deliverables.
- 12.4 In the event that Client is unable for any reason, after reasonable effort, to secure Supplier's signature on any document needed in connection with the actions specified in this clause 12, Supplier hereby irrevocably appoints Client as Supplier's attorney (for as long as Supplier's obligations under this Agreement remain undischarged), to act for and on its behalf to execute, verify and file any such documents and to do all other lawfully permitted acts reasonably necessary to further the purposes of this clause 12 with the same legal force and effect as if executed by Supplier.

13. CHARGES AND PAYMENT

- 13.1 Client shall pay the Charges for the Services as detailed in the relevant SOW in accordance with the SOW's terms.
- 13.2 Save as otherwise agreed in a SOW, Client will pay all invoiced Charges (including expenses) within sixty (30) days of receipt of invoice. Subject to any expenses being agreed in advance prior to being incurred.
- 13.3 All Charges shall be exclusive of value added tax or any other tax, duty, levy, fee or charge which shall be added to invoices at the rate applicable at the date of invoice and which shall be payable by Client.
- 13.4 If Client fails to make any payment due to the Supplier under this Agreement or a SOW by the due date for payment, then without limiting the Supplier's remedies under clause 2, Client shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate. Such interest shall accrue on a daily basis from the due date of payment until actual payment of the overdue amount. Client shall pay interest together with the overdue amount.
- 13.5 Supplier reserves the right to re-negotiate the Charges for the Services as detailed in any SOW during the term of such SOW to take account of any additional tax liability incurred by the Supplier as a result of any proceedings, claims or demands by any third party (including specifically, but without limitation, HM Revenue and Customs and any successor, equivalent or related body) pursuant to the ITEPA or the NICs Legislation (and/or any supporting or consequential secondary legislation relating thereto) which result from Supplier being treated as making to a Subcontractor (and a Subcontractor as receiving) a payment which is to be treated as earnings from employment. In such event, the Charges shall be re-negotiated by the Parties in good faith. If the Parties fail to reach agreement on the new Charges within thirty (30) days, either Party shall have the right to terminate the SOW on thirty (30) day's written notice to the other Party. Client shall pay Supplier the Charges due under the SOW with respect to Services provided by Supplier up to and including the date of termination.



14. CONFIDENTIALITY

- 14.1 In relation to either Party, Confidential Information as used in this Agreement shall mean any and all information relating to that Party (or to any parent undertaking and/or subsidiary undertaking of that Party, as those terms are defined by section 1162 of the Companies Act 2006 (as amended)) which is disclosed before or after the Effective Date by that Party (**Discloser**) to the other Party (**Recipient**), and which is provided, either directly or indirectly, in writing, orally or by inspection, and being any and all information which is specified as confidential or which a reasonably prudent person should know is expected to be treated as confidential.
- 14.2 Each Party agrees that it will not use any Confidential Information of the other Party for any purpose, nor disclose any such Confidential Information to any third party without the other Party's prior written consent (and in the event that such consent is given Recipient will ensure, prior to such disclosure, that each such third party is made aware of the confidential nature of the Confidential Information and agrees in writing to be bound by conditions of secrecy no less strict than those set out in this Agreement).
- 14.3 Each Party agrees that, without affecting any rights or remedies that Discloser may have, damages would not be an adequate remedy for any breach by Recipient of the provisions of this Agreement and Discloser shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this letter by Recipient and that no proof of special damages shall be necessary for the enforcement of this Agreement.
- 14.4 Information shall not be deemed to be Confidential Information to the extent that it was in the public domain at or subsequent to the time it was communicated to Recipient by Discloser through no fault of Recipient; it was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time it was communicated to Recipient by Discloser; it was communicated by the Discloser to an unaffiliated third party free of any obligation of confidence; or the communication was in response to a valid order by a court or other governmental body or was otherwise required by law.

15. DATA PROTECTION

- 15.1 Each Party shall at all times comply with the Data Protection Laws and its obligations under the Data Processing Schedule set out in Schedule 1.

16. ACCESS TO CLIENT'S SYSTEMS & FACILITIES

- 16.1 Access if any, to Client's System is granted solely to allow Supplier to provide the Services and is limited to those specific Client Systems, time periods, and personnel as are separately designated in the applicable SOW or otherwise by Client in writing from time to time. In connection with access to Client's Systems, Supplier will comply with all data security and business control and information protection policies, standards, obligations, and guidelines as may be provided by Client. Supplier will not use Client's Systems during other time periods or by individuals not authorised by Client's. Any other use of any Client's System is expressly prohibited. Without limiting the foregoing, Supplier warrants that it has adequate security measures in place to comply with the above obligations and to ensure that access granted hereunder will not impair the integrity and availability of Client's Systems. Upon reasonable



notice, Client may audit Supplier to verify its compliance with these obligations. To the extent Supplier is granted access to Client's facilities, Supplier will comply with any safety control, protection and other policies and guidelines as Client may provide from time to time and will be solely liable for its acts or omissions while at any site, including without limitation those resulting in personal injury or property damage.

17. **LIMITATION OF LIABILITY**

17.1 Neither party excludes or limits liability to the other party for;

(a) fraud or fraudulent misrepresentation;

(b) death or personal injury caused by negligence;

(c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(d) any matter for which it would be unlawful for the parties to exclude liability.

17.2 Subject to clause 17.1, neither party shall in any circumstances be liable whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

17.3 Subject to clause 17.1 and clause 17.2, Supplier's total aggregate liability to Client in contract, tort (including without limitation, negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any SOW shall be limited to the Charges paid or payable by Client in the 12 months immediately preceding the date of the event giving rise to the claim.

17.3 Subject to clause 17.1 and clause 17.2, Client's total aggregate liability to Supplier in contract, tort (including without limitation, negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any SOW shall be limited to the Charges paid or payable by Client in the 12 months immediately preceding the date of the event giving rise to the claim.

18. **FORCE MAJEURE**

18.1 Neither Party shall be liable for delay in performing the obligations or for the failure to perform obligations if the delay or failure results from any cause beyond its reasonable control including without limitation acts of God, fire, explosion, war, terrorism, embargo, and any governmental action (**Force Majeure Event**). Either Party may terminate this Agreement or a SOW in the event that a Force Majeure Event has occurred preventing either Party from performing or continuing to perform its obligations for a period of more than eight (8) weeks.

18.2 Neither Party may rely upon this clause 18 and may not be relieved of the performance of any of its obligations under this Agreement if a Force Majeure Event is proven reasonably by the other Party to be caused by the deliberate, direct or indirect instigation of the Party



so intending to rely upon this clause as aforesaid. The Party claiming a Force Majeure Event shall take all action which is reasonable under the circumstances to overcome any such cause of prevention or delay and to proceed with the performance of its obligations hereunder. Notice of any Force Majeure Event and any abatement thereof shall forthwith be given to the other Party by the Party claiming the benefit of clause 18.1.

19 DISPUTE RESOLUTION

19.1 The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation.

19.2 If the dispute is not resolved within 14 days of the reference in accordance with clause 19.1, the parties may attempt to resolve the dispute by mediation in accordance with clause 19.3.

19.3 Either Party may refer any dispute for mediation pursuant to this clause. The following provisions shall apply to any such reference to mediation:

19.3.1 the reference shall be a reference under the Model Mediation Procedure (**MMP**) of the Centre of Dispute Resolution (**CEDR**) for the time being in force;

19.3.2 both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and

19.3.3 to the extent not provided for by such agreement of the MMP:

- (i) the mediation shall commence by either Party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other Party to agree the appointment of a mediator; and
- (ii) the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.

19.4 Notwithstanding the provisions of clauses 19.1, 19.2 and 19.3, any technical dispute, including interpretation of any Specification or relating to the functions or capabilities of any Deliverable, shall be handled as follows:

19.4.1 the dispute shall be referred for final settlement to an expert agreed by the parties or, if not agreed within 14 days of either Party's written request to the other, as determined, at the written request of either Party, by the President of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. The expert's decision shall, in the absence of manifest error, be final and binding on the Parties;

19.4.2 the parties are entitled to make submissions to the expert including oral submissions and will provide (or procure that others provide) the expert with



such assistance and documents as the expert reasonably requires for the purpose of reaching a decision; and

- 19.4.3 each Party shall bear its own costs in relation to the reference to the expert. The expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the expert) shall be borne by the parties equally or in such other proportions as the expert shall direct.
- 19.4.4 Neither discussions, mediation or expert determination in accordance with this clause 19 shall be a condition precedent to the commencement of any court proceedings, and either Party may issue and commence court proceedings prior to or contemporaneously with the commencement of discussions, mediation or expert. Nothing in this clause 15 shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

20. INSURANCE

- 20.1 Supplier is solely responsible for maintaining such adequate and appropriate insurance required by law or as is common practice in Supplier's business. Upon request Supplier shall provide Client with certificates of insurance of evidence of coverage before commencing performance under this Agreement. Supplier shall provide adequate coverage for any Client property under the care, custody or control of Supplier or Supplier's Personnel.

21. EFFECT OF TERMINATION

- 21.1 Upon any expiration or termination of this Agreement for any reason, or upon earlier request by Client, Contractor will promptly deliver to Client all Deliverables (in whatever state of completion) and return or (if directed by Client) destroy all Confidential Information and derivatives thereof. Termination of this Agreement is not an exclusive remedy and the exercise of either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise. Client will not have any liability resulting from termination of this Agreement in accordance with its terms. Clauses 7, 10.3, 11, 12, 14, 17, 22 and 23 and the provisions of this clause 21 will survive any expiration or termination of this Agreement.

22 GENERAL

- 22.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law. If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the Parties. Save as expressly provided in this Agreement, no amendment or variation of this Agreement and/or any



SOW shall be effective unless in writing and signed by a duly authorised representative of each of the Parties.

- 22.2 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each Party acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement other than as expressly set out in this Agreement.
- 22.3 Neither Party may transfer, assign or novate the whole or any part of the Agreement and/or any SOW or the benefit of it or any right under it without the other Party's prior written approval (not to be unreasonably withheld or delayed)

23. GOVERNING LAW AND JURISDICTION

- 23.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the laws of England and Wales.
- 23.2 The Parties irrevocably agree that the Courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

SIGNED BY:

[SUPPLIER SIGNATORY NAME]

For and on behalf of

INSTIL SOFTWARE LIMITED

SIGNED BY:

[CLIENT SIGNATORY NAME]

For and on behalf of

[CLIENT NAME]

THIS AGREEMENT IS ENTERED INTO on the date which first appears above:



Schedule 1

Data Processing Agreement

1. Definitions

1.1 In this Schedule

Controller	has the meaning given in applicable Data Protection Laws from time to time;
Data Protection Laws	means any applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Services, including: <ul style="list-style-type: none">(a) the GDPR;(b) the Data Protection Act 2018 (DPA 2018);(c) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;(d) any laws which implement any such laws;(e) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and(f) all guidance, guidelines, codes of practice and codes of conduct issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (in each case whether or not legally binding);
Data Protection Supervisory Authority	means any regulator, authority or body responsible for administering Data Protection Laws;
Data Subject	has the meaning given in applicable Data Protection Laws from time to time;
EEA	the European Economic Area;
EU GDPR	the General Data Protection Regulation ((EU) 2016/679).
GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018
International Organisation	has the meaning given in applicable Data Protection Laws from time to time;
Personal Data	has the meaning given in applicable Data Protection Laws from time to time;
Personal Data Breach	has the meaning given in applicable Data Protection Laws from time to time;
Processing	has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including process , processing , processed , and processes shall be construed accordingly);



Processor	has the meaning given in applicable Data Protection Laws from time to time;
Protected Data	means Personal Data received from or on behalf of the Client, or otherwise obtained in connection with the performance of Supplier's obligations under this Agreement; and
Sub-processor	means any agent, subcontractor or other third party engaged by Supplier (or by any other Sub-Processor) for carrying out any processing activities in respect of the Protected Data.

- 1.2 Unless otherwise expressly stated in this Agreement Supplier's obligations and the Client's rights and remedies under this Schedule are cumulative with, and additional to, any other provisions of this Agreement.

2. Compliance with data protection laws

The parties agree that the Client is a Controller and that Supplier is a Processor for the purposes of processing Protected Data pursuant to this Agreement. Supplier shall (and shall ensure its Sub-Processors shall) at all times comply with all Data Protection Laws in connection with the processing of Protected Data and the provision of the Services.

3. Instructions

- 3.1 Supplier shall only process the Protected Data in accordance with Section 1 of this Schedule, this Agreement and the Client's written instructions from time to time except where otherwise required by applicable law (and in such a case shall inform the Client of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest). Supplier will not process the Personal Data for any other purpose or in a way that does not comply with this Agreement or the Data Protection Law.
- 3.2 Supplier shall immediately inform the Client if, in its opinion, any instruction relating to the Protected Data infringes any Data Protection Law.
- 3.3 Supplier must comply promptly with the Client's written instructions requiring the Supplier to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- 3.4 Supplier will maintain the confidentiality of the Personal Data and will not disclose the Personal Data to third-parties unless the Client or this Agreement specifically authorises the disclosure, or as required by domestic law, court or regulator (including the Data Protection Supervisory Authority). If a domestic law, court or regulator (including the Data Protection Supervisory Authority) requires the Supplier to process or disclose the Personal Data to a third-party, the Supplier must first inform the Client of such legal or regulatory requirement and give the Client an opportunity to object or challenge the requirement, unless the domestic law prohibits the giving of such notice.

4. Security

Supplier shall at all times implement and maintain appropriate technical and organisational measures to protect Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

5. Sub-processing

- 5.1 Subject to obtaining the Client's prior written consent, the Supplier may use Sub-Processors in the provision of the Services.
- 5.2 Supplier shall ensure that access to Protected Data is limited to the authorised persons who need access to it to supply the Services.



- 5.3 Supplier shall prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a binding written contract containing the same obligations as under this Schedule in respect of Protected Data that is enforceable by Supplier and ensure each such Sub-Processor complies with all such obligations.
- 5.4 Supplier shall remain fully liable to the Client under this Agreement for all the acts and omissions of each Sub-Processor as if they were his own.
- 5.5 Supplier shall inform Client of any intended changes concerning the addition or replacement of a Sub-Processor and give Client the opportunity to object to such changes.

6. Assistance

- 6.1 Supplier shall (at Client's cost) promptly provide such information and assistance (including by taking all appropriate technical and organisational measures) as Client may reasonably require in relation to the fulfilment of Client's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws).
- 6.2 Supplier shall (at Client's cost) provide such information, co-operation and other assistance to Client as Client reasonably requires (taking into account the nature of processing and the information available to Supplier) to ensure compliance with the Client's obligations under Data Protection Laws, including with respect to:
 - 6.2.1 security of processing;
 - 6.2.2 data protection impact assessments (as such term is defined in Data Protection Laws);
 - 6.2.3 prior consultation with a Data Protection Supervisory Authority regarding high risk processing; and
 - 6.2.4 any remedial action and/or notifications to be taken in response to any Personal Data Breach and/or any complaint or request relating to either party's obligations under Data Protection Laws relevant to this Agreement, including (subject in each case to the Client's prior written authorisation) regarding any notification of the Personal Data Breach to Data Protection Supervisory Authorities and/or communication to any affected Data Subjects.

7. Data subject requests

Supplier shall record and refer all requests and communications received from Data Subjects or any Data Protection Supervisory Authority to the Client which relate (or which may relate) to any Protected Data promptly and shall not respond to any without the Client's express written approval and strictly in accordance with Client's instructions unless and to the extent required by law.

8. International transfers

- 8.1 Any transfers by Supplier to a Sub-Processor outside the UK shall be carried out in accordance with Chapter 5 of the GDPR and the following conditions are fulfilled:
 - 8.1.1 Supplier and Sub-Processor have provided appropriate safeguards in relation to the transfer;
 - 8.1.2 the data subject has enforceable rights and effective legal remedies;
 - 8.1.3 Supplier comply with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - 8.1.4 Supplier comply with reasonable instructions notified to the Supplier in advance by the Client with respect to the processing of the Personal Data.
- 8.2 In the event of the United Kingdom departing the European Union and being deemed by the European Commission to have inadequate levels of protection, in accordance with Article 45



of the EU GDPR, the Parties undertake promptly to enter into the appropriate versions of such model standard data protection clauses as the European Commission may from time to time publish in accordance with Article 46 (2) of the EU GDPR.

9. **Records**

Supplier shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of Client. Such records shall include all information necessary to demonstrate its and Client's compliance with this Schedule, the information referred to in Articles 30(1) and 30(2) of the GDPR and such other information as Client may reasonably require from time to time. Supplier shall make copies of such records available to Client (at Client's cost) promptly on request from time to time.

10. **Audit**

Supplier shall (and shall ensure all Sub-Processors shall) promptly make available to Client (at Client's cost) such information as is reasonably required to demonstrate Supplier's and Client's compliance with their respective obligations under this Schedule and the Data Protection Laws, and allow for, permit and contribute to audits, including inspections, by Client (or another auditor mandated by Client) for this purpose at the Client's request from time to time. Supplier shall provide (or procure) access to all relevant systems and records during normal business hours for the purposes of each such audit or inspection upon reasonable prior notice (not being more than 2 Business Days) and provide and procure all further reasonable co-operation, access and assistance in relation to any such audit or inspection.

11. **Breach**

- 11.1 Supplier shall promptly without delay notify Client if it (or any of its Sub-Processors) suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach in respect of any Protected Data.
- 11.2 Supplier shall promptly provide all information as Client requires to report the circumstances referred to in paragraph 11.1 (above) to a Data Protection Supervisory Authority and to notify affected Data Subjects under Data Protection Laws.

12. **Deletion/return**

- 12.1 Supplier shall (and shall ensure that each of the Sub-Processors shall) without delay, at Client's written request, either securely delete or securely return all the Protected Data to the Client in such form as the Client reasonably requests after the earlier of:
 - 12.1.1 the end of the provision of the relevant Services related to processing of such Protected Data; or
 - 12.1.2 once processing by Supplier of any Protected Data is no longer required for the purpose of Supplier's performance of its relevant obligations under this Agreement, and securely delete existing copies (except to the extent that storage of any such data is required by applicable law and, if so, Supplier shall inform Client of any such requirement).

13. **Survival**

This Schedule shall survive termination or expiry of this Agreement for any reason.

**Section 1 – Data Processing Details**

Processing of the Protected Data by Supplier under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Section 1.

Subject-matter of processing:

Supplier shall only process such personal data as is required to provide the Services to Client.

Duration of the processing:

The term of this Agreement.

Nature and purpose of the processing:

The processing of personal data is required in order to enable Supplier to deliver the Services to Client.

Type of Personal Data:

Identity and contact data (such as names, addresses, email addresses, IP addresses).

Categories of Data Subjects:

Employees, agents or contractors of Client, customers and potential customers of Client and their stakeholders and suppliers and potential suppliers of Client or its Affiliates.



Schedule [SOW NUM]
STATEMENT OF WORK

SOW: [SOW NUM]
Effective Date: [EFFECTIVE DATE]

THIS SOW is entered into as of the Effective Date designated above, by and between Supplier and Client (each as designated below). The Parties hereto acknowledge that they are entering into this SOW pursuant to the provisions of the Master Services Agreement dated [MSA AGREEMENT DATE], by and between Supplier and [CUSTOMER NAME] (Agreement). The Parties further acknowledge and agree that the provisions of the Agreement are incorporated by reference and will apply to this SOW as though the provisions were set forth in their entirety.

Party:	SUPPLIER	CLIENT
Name:	Instil Software Limited	[CLIENT NAME]
Address:	27-37 Adelaide Street, Belfast, BT2 8FE	[CLIENT ADDRESS]

Project Name: [PROJECT NAME]

Commencement Date: [START DATE]

Completion Date: [END DATE]

The inclusion of a Completion Date or any term length in this SOW will in no way impact a Party's rights to terminate this SOW pursuant to clause 2.3 of the Agreement.

Project Managers:

	For Supplier:	For Client:
Name:	[INSTIL PROJECT MANAGER]	[CLIENT PROJECT MANAGER]
Address:	27-37 Adelaide Street, Belfast, BT2 8FE	[CLIENT ADDRESS]
Phone:	+44 (0) 28 9027 8498	[CLIENT PHONE NUMBER]
Email:	[PM EMAIL ADDRESS]	[CLIENT EMAIL ADDRESS]

Project Fees and Other Terms:

Supplier will provide the Services set forth below on a time and material basis in accordance with the rates set forth below. Client is under no obligation to spend any minimum amount under this SOW. Should Client require additional Services the Parties will enter a separate SOW.

Description of Services: The resource will augment the client team delivering software development services in line with client direction.

Rates:



Supplier's Personnel Skill Set	Rate* per Day	Estimated Days	Estimated Fee
[ROLE DESCRIPTION]	[DAY RATE]	[ESTIMATE]	[FEE]
Estimated Aggregated Total Fees			[TOTAL FEE]
*Supplier's rates do not include travel and living expenses incurred by Supplier in conjunction with its provision of the Services.			

(iii) **Payment Schedule:** Supplier will invoice Client monthly, in arrears, for Project Fees and pre-approved, reimbursable expenses (if any) that have been earned or incurred during the preceding month.

(iv) **Acceptance Criteria:** [ACCEPTANCE CRITERIA]

Client Invoice Address:

[CLIENT INVOICE ADDRESS]

Client Systems:

Will access to Client's Systems be required by Supplier? (check one)

Yes ☐ No ☐

Subcontracting:

Will Supplier be using any Subcontractor to perform any obligations of Supplier? (check one)

Yes ☐ No ☐

[If Yes, Supplier will be required to sign Client's Consent to Supplier's Use of Subcontractors form prior to using any Subcontractor.]

Services Locations:

Supplier Locations:	Client Locations:
27-37 Adelaide Street, Belfast, BT2 8FE	[CLIENT LOCATIONS]



IN WITNESS WHEREOF, the Parties to this SOW, each acting with proper authority, have signed this SOW as of the Effective Date designated above.

SUPPLIER:

By: _____

Name: _____

Title: _____

Date: _____

CLIENT:

By: _____

Name: _____

Title: _____

Date: _____