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G-CLOUD SERVICES MASTER SERVICES AGREEMENT

APRIL 2020

Framework reference: RM1557.12

MASTER SERVICES AGREEMENT

This Services Agreement (the "**Agreement**") is effective as of [REDACTED] (the "**Effective Date**") between **Dept Design and Technology UK**, a company incorporated in England and Wales with registered number 06175049 and whose registered office is at 9th Floor, Bridgewater House, Manchester, M1 6LT ("**Dept Design and Technology UK**") and the **[CLIENT]**, a [REDACTED] company incorporated in [REDACTED] [whose registered office is at [REDACTED] (the "**Client**"). In this Agreement, Dept Design and Technology UK and the Client may each be referred to as a "Party" or collectively as the "Parties".

WHEREAS, Dept Design and Technology UK is experienced in designing, developing, creating, building and testing software applications and internet services and has the skill, expertise and knowledge with respect to the same to advise, design and provide services for the Client to suit the Client's particular requirements.

WHEREAS, the Client has requested Dept Design and Technology UK to provide certain services, including but not limited to the development and delivery of certain software (the "**Software**"), all as set out in the statement of work(s) ("**SOW**") that are or become part of Annex 1 of this Agreement (the "**Services**"), which Annex may be amended and/or supplemented from time to time by mutual written consent of the Parties. Where the Services (or part thereof) are to be provided on a time and materials basis, meaning that the basis of the Price (as defined below) is the time and materials devoted by Dept Design and Technology UK in the provision of such Services, a SOW that details such Services has been prepared on the basis of Dept Design and Technology UK's understanding of the Client's requirements as at the date of the SOW. Due to the nature of such an arrangement, the final scope of the Services may change during a project. The Parties undertake to discuss any changes to the Services, including but not limited to, changes in time and materials required, the scope of the Services, the timescales and the Price and the changes agreed between the Parties shall be recorded in a SOW or a revision to an existing SOW.

WHEREAS, Dept Design and Technology UK is willing to provide the Services on the terms and conditions set out in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants set out in this Agreement, the Parties agree as follows:

1. Appointment and Services

1.1 The Client appoints Dept Design and Technology UK, and Dept Design and Technology UK accepts the appointment of an independent contractor to perform the Services in accordance with the terms of this Agreement.

2. Price, Expenses and Payment

2.1 The consideration due to Dept Design and Technology UK in relation to the Services is set out in the relevant SOW, ("**Price**") and the Client shall pay all taxes, duties, levies or fees, or other similar charges incurred by Dept Design and Technology UK or on the Client by any taxation authority (other than taxes imposed in respect of Dept Design and Technology UK's revenue) in relation to the provision of the Services.

2.2 The Client shall pay all of Dept Design and Technology UK' travel and other expenses related to the performance of the Services ("**Expenses**"), either as stated in the relevant SOW, or as separately agreed upon by the Parties.

2.3 Dept Design and Technology UK shall at monthly intervals submit to the Client an invoice including such part of the Price and Expenses as are due for invoicing in accordance with a SOW, which shall be paid to Dept Design and Technology UK by telegraphic or bank transfer within fifteen (15) days of date of the invoice. The Client shall not be entitled to make any deduction, set-off or withholding in respect of any amount owing from Dept Design and Technology UK to the Client save as may be permitted by law. All amounts will be due immediately, in the event that the Client terminates or suspends all or a substantial portion of its business activities, becomes insolvent, admits it is unable to pay its debts, or in case of the voluntary or involuntary filing of a winding-up petition or other court process by the Client under any insolvency act, the appointment of a receiver, trustee, custodian, or liquidator, or any act or action constituting a general assignment by the Client of its properties and/or interest for the benefit of creditors.

2.4 If Dept Design and Technology UK considers that the Client's financial position and/or payment performance justifies such action, Dept Design and Technology UK has the right to demand that the Client immediately provide security in a form to be determined by Dept Design and Technology UK and/or make an advance payment in respect of the Price. If the Client fails to provide the requested security or advanced payment, Dept Design and Technology UK has the right without prejudice to its other rights, to immediately suspend the further performance of its obligations under this Agreement, and all sums due from the Client to Dept Design and Technology UK for whatever reason will become immediately due and payable.

2.5 The Client shall be liable in respect of amounts which Dept Design and Technology UK incurs to collect payment, including without limitation, collection agency fees, reasonable legal fees and arbitration or court costs.

3. Delivery and Acceptance

3.1 In the event that the Parties agree in a SOW that the Client shall be entitled to test any deliverable detailed in a SOW before accepting it, acceptance shall be deemed to be made fourteen (14) days from the delivery or installation of the deliverable and no written complaint specifically detailing purported Errors (as defined below) has been received by Dept Design and Technology UK. "**Errors**" shall mean any substantive failure of a deliverable to comply with functional or technical specifications set out in the relevant SOW. If a written complaint detailing purported Errors has been received by Dept Design and Technology UK, acceptance shall be deemed to be made fourteen (14) days from completion of repairs of items specifically detailed in the written complaint. Notwithstanding the above, a deliverable shall be deemed accepted upon the Client making any use of the deliverable for any purpose related to its business operations.

3.2 In the event that the Client reports any purported Errors in a deliverable detailed in a SOW within fourteen (14) days after delivery or installation, such written report shall provide a detailed description of the Client's testing, and the nature of any purported Errors. In the event a deliverable is found to contain Errors by Dept Design and Technology UK, Dept Design and Technology UK will make reasonable repairs or

replace the deliverable, at Dept Design and Technology UK' sole discretion, within a reasonable period of time.

3.3 If the Services are delivered and tested in stages and/or parts, the non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage and/or other part, where appropriate.

3.4 The sole and exclusive remedy of the Client in respect of for alleged Errors or any defect in a deliverable is the repair or the delivery of replacement deliverable, at Dept Design and Technology UK' sole discretion, at no further cost to the Client.

4. Intellectual Property Rights

4.1 "**Intellectual Property Rights**" means any patents, trademarks, service marks, business or trade names (including internet domain names and email address names), rights in computer software, design rights, registered designs, copyrights, rights in trade secrets and other confidential information, know-how and any other intellectual property rights, including any applications or rights to apply relating to them.

4.2 The Software and all deliverables specifically created for the Client by Dept Design and Technology UK under this Agreement, but excluding all other Intellectual Property Rights (including Pre-Existing Materials (as defined below)), will be considered specially commissioned for the Client under applicable copyright laws and all rights therein will be the sole property of the Client. "**Pre-Existing Materials**" means Dept Design and Technology UK' Intellectual Property Rights, to the extent (i) developed before the Effective Date; (ii) developed during or after the term of this Agreement, for other purposes than the performance of the Services under this Agreement; and (iii) any third party materials (including Intellectual Property Rights owned by any third party licensed to Dept Design and Technology UK) included in the Software, and/or any other deliverable or materials provided to the Client pursuant to this Agreement.

4.3 Upon receipt of all funds due to Dept Design and Technology UK, and provided that the Client has not and is not breaching any of its obligations hereunder, Dept Design and Technology UK hereby grants to the Client, a perpetual, irrevocable, royalty-free, non-exclusive license, to use the Pre-Existing Materials solely and exclusively for the purpose of the authorised use and maintenance of the Software. The Client undertakes to and covenants with Dept Design and Technology UK not to assign, transfer, sublicense or otherwise dispose of any of its licensed rights to the Pre-Existing Materials.

4.4 Unless otherwise agreed in writing in advance by Dept Design and Technology UK, the Client may not use, copy, amend, modify, reverse engineer or in any other way alter or deal with, any Pre-Existing Materials, the Software and/or any other deliverables provided by Dept Design and Technology UK, nor shall the Client allow or enable any third parties to do so. The Client may not, nor may enable and/or allow third parties to copy, translate, or reverse engineer any Pre-Existing Materials and/or other deliverable provided by Dept Design and Technology UK.

4.5 The Client shall indemnify and hold harmless Dept Design and Technology UK in respect of any action by the Client (including its employees, agents and representatives) or any third party in contravention of the provisions of this clause 4.

5. Confidential Information

5.1 **"Confidential Information"** means (i) the existence and terms of any agreement between the Parties and (ii) any non-public, confidential or proprietary information relating to a disclosing Party, whether or not technical in nature, including any that is designated by the disclosing Party as Confidential Information at the time of its disclosure or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how which: (i) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving Party; (ii) is lawfully obtained by the receiving Party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving Party at the time of disclosure by the disclosing Party and not otherwise subject to restriction on disclosure; (iv) is approved for disclosure by prior written authorisation of the disclosing Party; (v) is disclosed pursuant to an order of a government body or court of competent jurisdiction; or (vi) is developed independently and separately by either Party without use of the disclosing Party's Confidential Information.

5.2 Each Party agrees that it will use any Confidential Information supplied by the other party only for the proper purpose for which it was disclosed under this Agreement and that it will safeguard such Confidential Information at all times during and after the expiration or termination of this Agreement, and each Party agrees that it will observe the same due care with respect to such Confidential Information as it would observe with respect to its own Confidential Information. The other Party shall not sell, copy and/or distribute in any way Confidential Information to third parties, without disclosing Party's prior written consent, which consent may be granted or withheld in such Party's sole and absolute discretion.

5.3 Each Party agrees that it will only disclose Confidential Information of the other Party to authorised employees engaged in the subject matter of a SOW or to third parties that it has retained in relation to the subject matter of a SOW, and who, in each case, shall have access to the other Party's Confidential Information only on a need to know basis and only on condition that such employees and third parties are bound by the same level of confidentiality as set out in this Agreement.

5.4 Immediately following the receipt of a written request to this effect by the disclosing Party the receiving Party will return any and all Confidential Information received from the disclosing Party or destroy such Confidential Information, if the disclosing Party so requests.

6. Indemnification and Limitation of Liability

6.1 Each Party ("**Indemnifying Party**") shall indemnify and hold harmless the other Party, its employees and representatives from and against any claims, demands, lawsuits, or administrative proceedings, whether for personal injuries, property damages, economic losses, tax claims, penalties, fines, or otherwise, arising from the Indemnifying Party's failure to comply with any law or regulation applicable to the performance under this Agreement.

6.2 Dept Design and Technology UK, at its own expense, shall defend any action brought against the Client based upon a claim that [the Software] as such, directly

incorporate and infringe any third party's patents or copyrights and shall indemnify the Client against any final award or agreed-upon settlement of damages or reasonable costs in such action. This indemnity is conditional upon the Client giving Dept Design and Technology UK prompt notice in writing of any suit for such infringement, full authority at Dept Design and Technology UK' sole discretion to settle or to conduct the defence thereof, and full assistance and co-operation by the Client in such defence.

6.3 No cost or expense shall be incurred on behalf of Dept Design and Technology UK without its prior written consent. In the event that the Software or any other deliverables are held to constitute infringement by a court of law, Dept Design and Technology UK, at its own election and its own expense may either procure for the Client the right to continue the use of the Software and/or the deliverables, or modify such to make them non-infringing.

6.4 Notwithstanding the foregoing, there shall be no indemnification by Dept Design and Technology UK with respect to any claim, loss, damage, expense or liability:

- (i) unless Dept Design and Technology UK shall have been given the opportunity to defend the matter and the Client fully co-operates in such defence;
- (ii) if the claimed infringement is settled without Dept Design and Technology UK' consent;
- (iii) if the infringement results from the use of the Software or any deliverables that were modified by the Client, or that were combined with other materials or works not delivered by Dept Design and Technology UK, where such infringement would not have occurred from the use of the Software or the deliverables alone;
- (iv) to the extent that the claim, loss, damage, expense or liability exceeds the Price.

6.5 Dept Design and Technology UK will not be responsible and liable for any third party software, materials and/or content that has been requested or approved by the Client. In addition, neither party will be liable to the other for damages exceeding the total of any amounts paid by the Client to Dept Design and Technology UK in connection with the Services hereunder during the twelve (12) month period immediately preceding the event that gave rise to the claim. Neither party will be liable for any direct, special, consequential, incidental, indirect, exemplary or punitive damages, including without limitation loss of profit or revenues, or increased costs of operation, even if such damages were foreseeable or a Party has been specifically advised of the possibility of such damages, and no matter how that claim is pursued or on what legal grounds it is based (such as contract, tort, statute or otherwise). The limitations on Dept Design and Technology UK' liability above shall apply whether or not Dept Design and Technology UK, its employees, licensors or its affiliates have been advised of the possibility of such losses or damages arising.

7. Term, Suspension, and Termination

7.1 This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of 24 months from the Effective Date, unless terminated earlier in accordance with this Agreement. The Parties will agree in each SOW the duration and term of such SOW.

7.2 If either Party materially breaches a material provision of this Agreement, the other Party may terminate this Agreement upon thirty (30) days written notice unless the breach is remedied within this notice period. In addition if either Party materially breaches a material provision of a SOW, the other Party may terminate this Agreement upon fifteen (15) days written notice unless the breach is remedied within this notice period. If an invoice is not paid within fifteen (15) days of the date of invoice, Dept Design and Technology UK may suspend its performance hereunder, without incurring any liability in connection to such suspension, upon five (5) days written notice, and payment has not been received within this notice period. The termination or expiration of a SOW does not automatically affect the term of this Agreement.

7.3 Either Party may terminate this Agreement or any SOW with immediate effect if the other Party goes into compulsory or voluntary liquidation, or if a receiver, administrative receiver, administrator or manager is appointed in respect to the whole or any part of its assets or if a Party is unable to pay its debts in accordance with applicable law.

7.4 Upon expiry or termination of this Agreement:

- (i) the Client's right to receive the Services shall immediately cease;
- (ii) all Confidential Information shall be dealt with in accordance with clause 5;
- (iii) all amounts due from the Client under this Agreement shall be paid in accordance with this Agreement; and
- (iv) this shall not affect any accrued rights or liabilities of any Party under this Agreement.

8. Representations and Warranties

8.1 The Client warrants and represents to Dept Design and Technology UK that (i) it has full power and authority to enter into this Agreement and (ii) nothing in this Agreement is or will be inconsistent with any obligation the Client may have to third parties.

8.2 Dept Design and Technology UK warrants and represents to the Client that (i) the Services will be performed in a professional and workmanlike manner with due care and attention, and that none of such Services or any part of this Agreement is or will be inconsistent with any obligation Dept Design and Technology UK may have to others; (ii) Dept Design and Technology UK has the skills, knowledge and capacity to perform the Services; (iii) in performing the Services, Dept Design and Technology UK shall comply with all applicable laws, rules and regulations.

8.3 Dept Design and Technology UK' services, including all content, software, functions, materials, and any other deliverables, are provided "as is." To the fullest extent permissible by law, Dept Design and Technology UK makes no representations or warranties of any kind whatsoever for (1) the currency, accuracy, or completeness of any information available by means of the services, the software, and/or any other deliverables, (2) for any information or materials provided by third parties and accessible on or through the services, the software, and or any other deliverables, (3) for any "viruses" or malicious computer code transmitted on or through the services, the software, and or any other deliverables, and (4) for any breach of security or

unauthorised access to the services, the software, and or any other deliverables, or Client information. Dept Design and Technology UK further does not represent or warrant that the services, the software, and or any other deliverables will always be secure, uninterrupted, timely, accurate, complete, error-free or free from viruses nor does Dept Design and Technology UK warrant any quality of the services, the software, and or any other deliverables.

9. Relationship of the Parties

9.1 Notwithstanding any provision of this Agreement, for all purposes of this Agreement, each Party shall be and act as an independent contractor and nothing in this Agreement is intended to, nor shall be deemed to, establish any partnership or joint venture between Dept Design and Technology UK and the Client.

9.2 The Parties agree that Dept Design and Technology UK is free to select the means and methods of performing the Services under this Agreement, provided, however, that such Services shall be performed in a manner which conforms to the requirements of this Agreement.

10. Insurance and Work Space Access

10.1 The Client shall pay all necessary costs to maintain sufficient insurance policies to cover its personnel and premises for activities contemplated by or performance in connection with the Services, including without limitation Dept Design and Technology UK' personnel performing services on the Client's premises. Under no circumstances shall Dept Design and Technology UK be liable to the Client for any damages to the premises of the Client, the employees or agents of the Client, or to any other claim due to or relating to the Services, unless due to gross negligence or wilful misconduct.

10.2 If Services are to be performed on the premises of the Client, the Client shall give access to the work site during the Client's normal business hours, and provide adequate working space, access to and use of information, the Client's resources, and facilities as reasonably determined by the Parties. The Client must notify Dept Design and Technology UK in advance if the Client's premises, or part thereof, might pose a health or safety hazard to Dept Design and Technology UK. Dept Design and Technology UK may postpone Services until the Client remedies such hazards, without being liable to the Client for any damages.

11. Miscellaneous Provisions

11.1 Non Solicitation. During the term of this Agreement and for a period of six (6) months after the termination or expiration of this Agreement, the Parties will not, directly or indirectly, solicit, divert, or take away any of the other Party's employees.

11.2 Notices. Except as otherwise expressly provided for in this Agreement, all notices required or permitted under this Agreement shall be in writing and shall be either delivered by hand or sent by pre-paid, recorded delivery or registered post to a Party due to receive it at its address as set out in this Agreement, or to such other address as is last notified in writing to the other Party. In the absence of evidence of earlier receipt, any notice or communication given pursuant to this clause shall be deemed to have been received:

- (i) if delivered by hand, at the time of actual delivery; and

- (ii) if sent by pre-aid recorded delivery or registered post, two days after the date of posting.

11.3 Severability and Assignment. The terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any one of them, or any portion thereof, shall in no manner affect or impair the validity or enforceability of the remainder. Neither Party hereto shall assign any interest in this Agreement without the prior written consent of the other Party.

11.4 Rights of Third Parties. A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (the "**Act**") to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Act.

11.5 Force Majeure. Except for the obligation on the part of the Client to make punctual payments for the Services, any delay in or failure of performance by either Party to this Agreement, shall not constitute a default (and the Party's obligations under this Agreement are suspended during the time concerned) under this Agreement nor give rise to any claim for damages, costs, or expense, if and to the extent such delay or failure is caused by a Force Majeure Event (as defined below). "**Force Majeure Event**" shall mean any event affecting the performance by a Party of any obligations under this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of that Party including but not limited to strikes, lock-outs, industrial disputes or actions, fire, explosion, earthquakes, acts of God, flood, drought, abnormally inclement weather, war, rebellion, civil commotion, riot, terrorist action or otherwise. Notwithstanding the foregoing, a Party which is delayed in or prevented from performing due to a Force Majeure Event, shall promptly notify (and consult with in good faith) the other Party in writing of the reason for the non-performance and the anticipated extent of any delay or non-performance, and shall take reasonable steps to mitigate the adverse impact of the delay or non-performance¹.

11.6 Waivers and Remedies. The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If Dept Design and Technology UK waives a breach of any provision of this Agreement, this shall not operate as a waiver of a subsequent breach or that provision or as a waiver of a breach of any other provision.

11.7 Whole Agreement. This Agreement contains the entire agreement between the Parties as to the subject matter hereof, and supersedes all prior negotiations and representations, whether written or oral.

11.8 Amendments and Modifications. This Agreement may be amended or modified or renewed only in a written documents signed by authorised representatives of the Parties. Each Party may use its standard business forms (such as purchase orders, acknowledgments, invoices, or vouchers) to administer this Agreement. Notwithstanding the foregoing, the use of such forms shall be for convenience purposes only, and all provisions, terms and conditions contained in or on such forms shall be deemed to have no validity, force or effect on the terms of this Agreement.

¹ Do you want to go further and, for example, provide for other consequences of Force Majeure, for example, termination after a specified period of time?

11.9 Governing Law; Jurisdiction; and Dispute Resolution. The laws of England and Wales shall govern the interpretation, performance and enforcement of this Agreement and the relationship between the Parties. Any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall, initially, be referred to a director of each of the Parties who shall meet promptly on one or more occasions to undertake good faith discussions to try to agree or resolve the matter concerned. If, after a period of [twenty (20)] days of the date of the initial meeting, the Parties have not resolved their dispute, the dispute shall be referred by either Party for determination to a single arbitrator under the Rules of Arbitration of the International Chamber of Commerce in accordance with such rules. The decision of the arbitrator shall be final and binding save in the case of manifest error. The place of arbitration shall be England, the language of arbitration shall be English and the law governing the arbitration shall be the laws of England and Wales. Any cause of action against Dept Design and Technology UK, regardless whether in contract, tort or otherwise, must be commenced within twelve (12) months after the cause of action accrues, otherwise, such action is permanently barred.

11.10 Counterparts. This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts (which may be facsimile copies) but shall not take effect until each Party has executed at least one counterpart. Each counterpart shall constitute an original but all the counterparts together shall constitute a single agreement.

IN WITNESS OF WHICH, the Parties have executed this Agreement by their duly authorised representatives as of the Effective Date.

DEPT DESIGN AND TECHNOLOGY UK

[NAME CLIENT]

By: _____

By: _____

Name:

Name:

Title:

Title:

ANNEX 1

STATEMENT OF WORK ("SOW")

Overview Dept Design and Technology UK (UK) Limited is submitting this Statement of Work for [Job Name and Description].

Description of Services

[Insert Summary of Work to be undertaken, deliverables, timescales, costs and expenses (to include time and materials element)]

Signatures The individual signing below represents and warrants that he/she has the authority to place this order on behalf of the Client and affirms his/her commitment to pay for the services ordered in accordance with the terms of this Statement of Work.

Dept Design and Technology UK (UK)	[CLIENT NAME]
By:	By:
Position	Position:
Date:	Date:
Signature:	Signature: