

## WeShape Terms and Conditions

### INTRODUCTION AND PARTIES

[REDACTED] (CRN: [REDACTED]) ('Customer') has agreed to sign these Terms and Conditions for the purpose of regulating the terms that shall apply to all Services provided by We Shape Ltd (CRN: 11861753) ('WeShape') to the Customer from time to time.

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply to these Terms and Conditions and any Schedule unless the context requires otherwise:

**"Acceptance Criteria"** means the relevant criteria to a given Deliverable and Milestone set out in a Schedule, however if no Acceptance Criteria are set out in respect of a Deliverable or Milestone that is expressed to be subject to Acceptance Criteria then the Acceptance Criteria shall in any such case be whether the relevant Deliverable or Milestone meet specification set out for them in the relevant Schedule in all material respects;

**"Acceptance Testing"** means assurance activities to determine if a Deliverable or Milestone meets its relevant Acceptance Criteria pursuant to the process set out in clause 7;

**"Affiliate"** means in relation to any party (or other person), any subsidiary or holding company of that party (that person) and any subsidiary of any such holding company, in each case from time to time.

**"Applicable Law"** means any applicable law, rule, regulation, regulatory requirement; any form of secondary legislation, or case law; and any determination that a party (or its relevant Affiliate) is bound to have regard to in connection with these Terms and Conditions;

**"Assignment"** means the period during which WeShape is engaged to render services to the Customer;

**"Business Day"** means a day other than a Saturday, a Sunday or a public holiday in England;

**"Change"** means any change to an Assignment agreed following a Change Request in accordance with the process set out in clause 9;

**"Change Request"** has the meaning given to it in clause 9.1 and 9.2;

**"Confidential Information"** means any information disclosed by the Disclosing Party (or its Affiliate) to the Receiving Party, or which is received by the Receiving Party under or in connection with an Assignment and which relates to the Disclosing Party (or its Affiliate), and that is marked confidential, that the Receiving Party knows or reasonably ought to know is confidential, or which is of its nature confidential, including:

- (a) all Customer Data and all business logic, methods, algorithms, concepts and ideas of the Customer or its Affiliates which are disclosed to or received by WeShape, all of which is the Confidential Information of the Customer; and
- (b) these Terms and Conditions

but excluding any information that:

- (a) is or becomes generally available to the public other than as a result of its disclosure by the Receiving Party or its agents, officers or employees in breach of these Terms and Conditions (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);
- (b) was lawfully in the possession of the Receiving Party before the information was disclosed to it by the Disclosing Party;
- (c) the parties agree in writing is not confidential or may be disclosed; or
- (d) is developed by or for the Receiving Party independently of the information disclosed by the Disclosing Party;

**"Consultant Company"** means a limited company engaged via WeShape to provide services to the Customer;

**"Customer Data"** means all information in any form which WeShape receives from the Customer or a Customer Affiliate in connection with an Assignment, including any information it accesses on the Customer's or its Affiliates' IT systems in the course of the relevant Assignment;

**"Customer Materials"** any inputs, software or other materials provided to WeShape by the Customer for the purposes of performing an Assignment;

**"Customer IT"** means every layer of the Customer's technology stack, including:

- (a) the Customer's private network;
- (b) any hardware provided by the Customer (whether or not it owns it), including the operating system;
- (c) any software licensed or installed by the Customer, including local APIs used to interact with it and shared libraries; and
- (d) any service procured by or provided by the Customer, including software as a service, platforms as service, or infrastructure as a service, or APIs that interact with them, but excluding any software or database schema provided by WeShape under an Assignment;

**"Data Protection Legislation"** means the General Data Protection Regulation, Regulation (EU) 2016/679 (GDPR); the UK Data Protection Act 2018; the Directive 2002/58/EC (ePrivacy Directive) and/or the Privacy and Electronic Communications (EC Directive) Regulations 2003, any other applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either party in connection with these Terms and Conditions and any laws that replace, extend, re enact, consolidate or amend any of the foregoing or laws that are analogous to any of them;

**"Deliverables"** means a particular work product specified for delivery in a Schedule and which may be expressed to be subject to Acceptance Testing in the relevant Schedule;

**"Disclosing Party"** means a party to these Terms and Conditions which (or whose Affiliate) discloses or makes available, directly or indirectly, Confidential Information;

**"Fees"** means the amounts payable by the Customer to WeShape under an Assignment;

**"Force Majeure Event"** means an event occurring or a set of circumstances arising after the date of entering into these Terms and Conditions which is beyond the reasonable control of the Affected Party; and include but are not limited to government intervention, pandemic, epidemic, strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of service providers or subcontractors.

**"Good Industry Practice"** means using standards, practices, methods and procedures conforming to Applicable Law, offering the level of assistance, and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a similar sized practice engaged in a similar type of undertaking under the same or similar circumstances in the United Kingdom;

**"Index"** means the percentage increase in average gross weekly earnings in the Information and Communication industry over an annual period published by the Office for National Statistics (for the time being available at <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/grossweeklyearningsbyindustryearn07>), or if that index ceases to be measure then the closest analogous index published by ONS (or a successor body to it).

**"Intellectual Property"** means patents, trade marks, rights in respect of logos and get up, trade names, designs, domain names, copyright, database rights, semiconductor topography rights, utility models, other intellectual or industrial property rights and any rights therein, in each case whether registered or unregistered and including applications or rights to apply for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world including any such rights which may now or in the future subsist and "Intellectual Property Rights or IPR" shall be interpreted accordingly;

**"IR35"** means Part 2 Chapter 10 of ITEPA 2003 and Section 4a of Social Security Contributions and Benefits Act 1992.

**"ITEPA 2003"** means Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

**"Milestone"** means an activity, process or outcome as set out in the Schedule which is to be delivered by the date specified in the relevant Schedule and which may be acceptance tested using the Acceptance Criteria;

**"Open Source Software"** means publicly available software whose source code is available for modification or enhancement by anyone;

**"Personal Data"** means any personal data contained in the Customer Data available to WeShape under an Assignment;

**"Pre-Existing IPR"** means any Intellectual Property Rights in: (i) any materials in existence on or prior to the date of these Terms and Conditions (ii) any materials that have been developed independently of these Terms and Conditions; and (iii) frameworks, tools, object libraries, templates, methodologies, source code and any other existing code, and includes all releases, updates and modifications to such materials.

**"Professional Advisers"** means, in respect of the Receiving Party, its lawyers, accountants, bankers, auditors and any other professional advisers who are subject to fiduciary duties of confidence and loyalty;

**"Receiving Party"** means any party to these Terms and Conditions which (or whose Affiliate) receives or obtains, directly or indirectly, Confidential Information;

**"Schedule"** means any order for Services or any other document (which may be in the form as set out in Schedule 1) which outlines the detailed activities, timetable, dependencies and sequence of events which WeShape shall perform, or procure the performance of, when delivering the Services.

**"Services"** means the services supplied to the Customer by WeShape as set out in the Schedule;

**"Status Determination Statement"** has the meaning given in Section 61NA Chapter 10 of Part 2 of ITEPA 2003 (application of provisions to Contractor's under arrangements made by intermediaries) including any amendments from time to time;

**"Terms and Conditions"** means the terms agreed between WeShape and the Customer for the provision of Services incorporating these Terms and Conditions and the Schedule;

**"WeShape Personnel"** means any employees, officers, staff, other workers, contractors, agents and consultants of WeShape, its Affiliates and any of their subcontractors who are engaged in the performance of any Assignment from time to time;

## 2. INTERPRETATION

### 2.1 In these Terms and Conditions:

- (a) a reference to these Terms and Conditions includes its Schedules, appendices and annexes (if any);
- (b) reference to a party includes that party's personal representatives, successors and permitted assigns;
- (c) a reference to a '**person**' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- (d) a reference to a gender includes each other gender;
- (e) words in the singular include the plural and vice versa;
- (f) a reference to writing or written includes email; and
- (g) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms

2.2 A reference to an enacted law, a statute or a statutory instrument is a reference to it as it is in force at the relevant time, taking account of any amendment, extension, re enactment or replacement of it, and includes any subordinate legislation made under it and any binding decisions by a court of competent jurisdiction as to its or their correct interpretation.

2.3 Any obligation on a person not to do something includes an obligation not to agree, allow or encourage that thing to be done.

2.4 Any remedy given to a party, unless expressly stated otherwise, is without prejudice to any other remedy that party may have, whether under these Terms and Conditions or at law.

## 3. BASIS OF CONTRACT, COMMENCEMENT AND TERM

3.1 The Terms and Conditions constitutes an offer by the Customer to purchase Services in accordance with these Terms and Conditions.

3.2 The Terms and Conditions shall only be deemed to be accepted when it is signed by all parties to it at which point and on which date it shall come into existence (**Commencement Date**) and it shall continue unless terminated earlier by the parties pursuant to clause 17.

3.3 An Assignment agreed under pursuant to these Terms and Conditions commences on the Project Start Date set out in the Schedule and shall continue unless terminated earlier:

- (a) by the parties pursuant to clause 17;
- (b) by either party giving to the other not less than the written Notice Period set out in the Schedule; or
- (c) by WeShape finishing the Services under the Assignment, whether or not this occurs on the Project Completion Date as set out in the Schedule.

#### **4. CUSTOMER WARRANTIES**

4.1 The Customer represents and warrants as at the date of signing of these Terms and Conditions and each time it enters into an Assignment that:

4.1.1 it has the necessary capacity, powers and authorities to enter into and perform its obligations under these Terms and Conditions;

4.1.2 the person or persons who sign these Terms and Conditions on its behalf are duly authorised to do so;

4.1.3 it is the owner of all the Intellectual Property in the Customer Materials or has procured consent from its licensor(s) so as to enable WeShape to perform its obligations without infringing any third party IPR;

4.1.4 the execution, delivery and performance of each Assignment does not and will not violate any judgment, order, or decree and does not and will not constitute a material default or breach under any of its existing or future obligations whether at law or under contract; and

4.1.5 it is not insolvent or trading wrongfully.

4.2 The Customer will comply with all Applicable Laws in relation to each Assignment and under these Terms and Conditions.

#### **5. PERFORMANCE OF THE SERVICES**

5.1 WeShape shall:

5.1.1 ensure any of its work and any Deliverable will in all material respects meet its relevant specification set out in the relevant Schedule (if any); and

5.1.2 perform the Services in accordance with Good Industry Practice.

5.2 Except as set out in this clause 5, WeShape gives no warranties or representations, whether express or implied, and all warranties and conditions implied by law or trade custom are excluded to the fullest extent permitted by Applicable Law.

5.3 WeShape shall use its reasonable efforts to perform each Assignment in accordance with any Milestones, delivery dates, commencement dates or end dates specified in the corresponding Schedule. Schedules which do not have any Milestones, delivery dates, commencement dates, or end dates shall be performed by WeShape within a reasonable period of time.

## 6. CUSTOMER OBLIGATIONS

6.1 The Customer, at no cost to WeShape, must:

6.1.1 provides all information, assistance and access to WeShape Personnel to enable them to perform his or her role, including access to any relevant systems, locations and provide all relevant IT; This includes delivery and collection of any relevant IT equipment.

6.1.2 perform each of its responsibilities set out in these Terms and Conditions in accordance with the timescales set out in the Schedule or as otherwise specified;

6.1.3 ensure that all written information given by it to WeShape is accurate and comprehensive when given (and remains so) in all material respects; and

6.1.4 obtain and maintain in full force all necessary consents, approvals, authorisations, licences and permissions which are required to enable WeShape to perform its obligations under this Assignment, these Terms and Conditions and under Applicable Law, (each is a "**Customer Obligation**").

6.2 Each of the following events shall be treated as a ("**Default Event**") for the purposes of clause 6.3:

6.2.1 failure by the Customer to meet a Customer Obligation;

6.2.2 poor performance of the Customer IT;

6.2.3 failure of the Customer IT (or a component of it) to respond or perform as expected, including a response that does not conform to its, or a component of its, documentation;

6.2.4 any change to the Customer IT (including any configuration changes, new or replacement components, patches, updates, upgrades or planned unavailability),

whether made by the Customer, its Affiliates or its third party suppliers, without the Customer providing reasonable notice of such change to WeShape.

### 6.3 If a Default Event occurs:

6.3.1 WeShape shall not be liable for any delay or additional work required in order to meet its obligations under an Assignment and shall be entitled to require additional fees in order to resolve the Customer Default if it is within its capability to do so;

6.3.2 WeShape shall not be in breach of these Terms and Conditions if, and to the extent that, WeShape's failure is caused by a relevant Relief Event; and/or

6.3.3 which requires or causes WeShape to delay performance of any relevant Service, any Milestone or a particular Deliverable, WeShape may suspend performance of that Service, any relevant Milestone or provision of that Deliverable without incurring any liability.

6.4 Where the provision of a Service is suspended pursuant to clause 6.3.3, WeShape may in its sole discretion terminate the Assignment where the performance of an Assignment has in its reasonable belief becomes onerous resume provision of such Service within a reasonable time of Default Event ending, in particular taking into account the availability of WeShape Personnel.

## **7. DELIVERY AND ACCEPTANCE**

### **Delivery**

7.1 Unless expressed to be subject to Acceptance Tests in the relevant Schedule, each Deliverable and Milestone shall be deemed complete and delivered upon delivery, in each case subject to clause 7.3.

7.2 The Customer shall have no right to, nor shall seek to, exercise any direction, control, or supervision over WeShape or the Consultant Company in the provision of the Services. WeShape shall endeavour to co-operate with the Customer's reasonable requests within the scope of the Services, however it is acknowledged that WeShape and the Consultant Company shall have autonomy over their working methods.

### **Acceptance Testing**

7.3 The Acceptance Testing process set out in this clause applies only to any Deliverable or Milestone that is expressed in an Schedule to be subject to Acceptance Testing but for which a specific acceptance test plan has not been detailed in that Schedule, unless the relevant Deliverable or Milestone is to be delivered under an agile delivery methodology in which case that methodology shall apply :



7.3.1 When WeShape considers that a Deliverable ("**Testable Work**") is ready for Acceptance Testing, it shall submit the relevant Testable Work to the Customer together with a notice containing details of the Assignment under which the Testable Work is to be delivered (including Schedule number and date) along with details of the relevant Testable Work as well as any ancillary documentation (the "**Test Material**").

7.3.2 WeShape will inform the Customer of any dependencies capable of impacting Acceptance Testing of particular Test Material, including any dependencies on the Customer or third parties and the Customer shall comply with WeShape's requests in this regard.

7.3.3 The Customer shall, within ten (10) Business Days following receipt of the Test Material, carry out Acceptance Testing on it to determine whether it meets in all material respects the relevant Acceptance Criteria. If the Testable Work meets the Acceptance Criteria in all material respects then the Customer shall issue WeShape with a notice of acceptance. If the Customer does not carry out Acceptance Testing within ten (10) Business Days of receiving the Test Material then the relevant Testable Work shall be deemed accepted and complete at the end of that ten (10) Business Day period.

7.3.4 If the Customer determines that the relevant Testable Work, or part of it, does not meet the relevant Acceptance Criteria in all material respects, and subject to clause 6, then the Customer shall provide WeShape details of the results of the Acceptance Tests and the parties shall acting reasonably formulate a rectification plan under which WeShape shall perform in order to ensure that the relevant failures are rectified within a reasonable time.

## **8. WESHAPe PERSONNEL**

8.1 Whenever any WeShape Personnel work on a Customer site in connection with any Assignment:

8.1.1 the Customer shall ensure a safe working environment for all such WeShape Personnel and shall ensure that it carries comprehensive insurance for any such sit;

8.1.2 The Customer shall provide copies of all policies that it requires WeShape's Personnel to comply with, insofar that it is applicable to WeShape Personnel, in advance of the commencement of an Assignment and WeShape shall not be liable for any non-compliance with the Customer's policies if the Customer fails to do so. The Customer may (acting reasonably) amend such policies by giving at least 10 Business Days' written notice, provided that such amendments do not (a) require WeShape to incur additional cost; or (b) change the allocation of risk as between the parties; and/or (c) amends the scope of any Assignment.

8.2 If for any reason WeShape Personnel are unable to continue working until the Project Completion Date then WeShape will use reasonable endeavours to find suitable replacement(s) of WeShape Personnel to deliver the Services as soon as possible. WeShape reserve the right to substitute any WeShape Personnel, provided the customer is reasonably satisfied that the substitute possesses the necessary skills and qualifications for the satisfactory completion of the services.

## **9. CHANGE REQUEST**

9.1 Subject to clause 9.6, if the Customer requires a change to an Assignment, it may submit a **"Change Request"** to the other in accordance with clause 9.2.

9.2 Change Requests must be in writing and include the following:

9.2.1 a description of any additional services to be performed or removed and/or any other changes to the relevant Schedule;

9.2.2 a proposed timetable for completion of the change;

9.2.3 any specific roles and responsibilities affected by the change;

9.2.4 the documentation or other Deliverable(s), Milestone(s), to be modified or supplied as part of the change;

9.2.5 WeShape initiated Change Requests shall also include details of any impacts on the work under all impacted Assignments and an estimate of any changes to the Fees. If we perform additional Services at Customers request, we may charge the Customer our standard rate(s) for such Services in accordance with the Billing Guide. We will endeavour to agree any change or costs with the Customer in accordance with the Change Control Procedure. If these are not agreed in advance for any reason (including emergency), then the additional Services will be delivered based on a commercially reasonable efforts basis and will be charged at our standard rates.

9.3 WeShape will process Change Requests as soon as is commercially reasonable. The change will be evaluated by WeShape to identify any impact to all current Assignments and to provide the Customer with a fee estimate. WeShape will then submit a revised Change Request to the Customer.

9.4 A Change Request shall only take effect once it is executed by both parties, at which time it shall be a "Change". Thereafter, the relevant Assignment shall be performed according to the Change and any revised fees shall be payable in accordance with clause 11.

9.5 WeShape reserves the right to make reasonable alterations or modifications to the original Assignment without the need to provide a revision of the relevant Schedule in pursuance of the

continued and smooth administration of the works, provided that any such modification and alterations:

- (a) Do not constitute a change that extends the scope of the Assignment considerably; and
- (b) Would improve the overall quality of Assignment.

9.6 If the Customer notifies WeShape of a required modification without formally identifying the same as a "Change Request", WeShape shall at its sole discretion accept the request in variance of the Assignment or require the Customer to submit a formal Change Request whereupon clauses 9.2 – 9.4 inclusive shall apply.

## **10. NON-SOLICITATION**

10.1 In order to protect the legitimate business interests of WeShape, the Customer shall not, and for the period of 12 months following termination of these Terms and Conditions howsoever brought about, either directly or indirectly, by or through itself, its Affiliate, its agent or otherwise, or in conjunction with its Affiliate, its agent or otherwise, whether for its own benefit or for the benefit of any other person:

10.1.1 solicit, entice or induce, or endeavour to solicit, entice or induce, any WeShape Personnel with a view to employing or engaging WeShape Personnel; or

10.1.2 employ or engage, or offer to employ or engage any of WeShape Personnel without the prior written consent of WeShape, regardless of whether such engagement is as an employee, worker, consultant or contractor.

10.2 Where the Customer breaches clause 10.1, and without prejudice to any other right or remedy WeShape may have at law or under these Terms and Conditions, the Customer will pay WeShape 30% of the relevant WeShape Personnel's first year's remuneration with the Customer or Customer Affiliate.

10.3 The Customer shall pay any amount due to WeShape under this clause 10 within 14 days or receipt of demand from WeShape for such payment, to an account, or by such other method, nominated by WeShape.

## **11. FEES AND PAYMENT**

11.1 Unless otherwise stated in a Schedule, WeShape will invoice the Customer for the Fees monthly in arrears in the amounts specified in, and subject to any conditions specified in, the relevant Schedule.

11.2 All Fees are exclusive of VAT. Where VAT is payable on Fees, WeShape will add VAT to its invoice for those Fees at the appropriate rate, and the Customer will pay such VAT with the relevant Fees.

11.3 The Customer will pay the amount of any invoice issued to it by WeShape in accordance with these Terms and Conditions to WeShape's nominated UK bank account within 14 days of receipt.

11.4 WeShape may increase any fixed Fee or charges in a Schedule by the Index provided that WeShape shall not be entitled to increase the Fees under this clause more than once in any twelve (12) month period and must give the Customer thirty (30) days' advanced notice the price increase.

11.5 WeShape will be entitled to be reimbursed by the Customer for the reasonable travel, accommodation, subsistence and other incidental out of pocket expenses reasonably incurred by WeShape or relevant WeShape Personnel in connection with WeShape's performance of an Assignment. Unless otherwise specified in a Schedule, WeShape shall not charge Customer for travel to and from the primary work location specified in a Schedule.

11.6 Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date WeShape may, without prejudice to any other right or remedy it has under Applicable Law or under these Terms and Conditions:

11.6.1 charge interest on such sums at 4% a year above the base rate of the Bank of England from time to time in force, and such interest shall accrue on a daily basis and apply from the due date for payment until such amount has been paid in full, whether before or after judgment; and

11.6.2 suspend provision of any or all Assignment(s) until such sums have been paid in full.

11.7 The Customer shall pay all sums that it owes to the other party under these Terms and Conditions without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## **12. APPLICATION OF IR35**

12.1 If the Customer engages a Consultant Company and Part 2, Chapter 10 ITEPA 2003 applies, the Customer will produce a Status Determination Statement in respect of the provision of the Services from the Consultant Company under these Terms and Conditions. The Customer will use reasonable care when determining the employment status of the Consultant Company and in the production of the Status Determination Statement.

12.2 Where the Customer has provided WeShape with a Status Determination Statement as to whether an Assignment falls within the scope of Part 2 Chapter 10 ITEPA 2003, the Customer is responsible for ensuring that this Status Determination Statement is provided to all the relevant parties including the Consultant Company and WeShape. In

the event the Customer fails to comply with the requirements set out within this clause, the Customer accepts all liability for any charges or penalties incurred and shall indemnify WeShape for any losses, payments, fees, penalties, interest it incurs as directly or indirectly as a result of the Customer's acts or omissions.

12.3 In the event that the Customer has not provided WeShape with a Status Determination Statement relating to whether an Assignment falls within the scope of Part 2, Chapter 10 ITEPA 2003, WeShape is entitled to request this information from the Customer.

12.4 Where the Customer confirms that the Assignment falls within the scope of Part 2, Chapter 10 ITEPA 2003, nothing in this agreement should render any member of the Consultant Company an employee, contractor, agent or partner of the Customer.

12.5 Where the Customer has deemed the Assignment of the Consultant Company to be outside of the scope of Part 2, Chapter 10 ITEPA 2003 the Consultant Company is liable for accounting for all relevant tax in the United Kingdom and/or liable to pay NICs in respect of income paid to its employees, officers or directors.

12.6 For the purposes of the collection and management of revenue for which it is responsible, WeShape may supply any information which it receives in accordance with clause 12.1 to the Commissioners of Her Majesty's Revenue and Customs.

12.7 In the event that the Consultant Company or WeShape disagrees with the Customer's Status Determination Statement in relation to clause 12.1, the Customer shall have 45 days, beginning with the day it receives representations from the Consultant Company and/or WeShape in relation to the disagreement, to respond in accordance with Section 61T Chapter 10 of Part 2 of ITEPA 2003. Such response must either:

12.7.1 inform the Consultant Company or WeShape that it has considered the representations, but its Status Determination Statement is correct and their reasoning for this; or

12.7.2 upon consideration of the representations, issue a new Status Determination Statement which contains the new conclusion and states that the previous Status Determination Statement has been withdrawn.

### **13. INTELLECTUAL PROPERTY**

13.1 Subject to the remainder of this clause 13:

(a) each party retains ownership of its Pre-Existing IPR; and

(b) it is agreed by the parties that, except in relation to any WeShape Pre-Existing IPR, ownership of all Intellectual Property Rights in the Deliverables produced by WeShape for the Customer during an Assignment will pass to the Customer on delivery and/or acceptance of the same.

13.2 If and to the extent that it is not reasonably practicable for WeShape to perform its obligations under these Terms and Conditions without the use of any of the Intellectual Property Rights of the Customer or its Affiliates, the Customer hereby grants and will procure that its Affiliates grant to WeShape a licence to use such Intellectual Property Rights, which are owned by or licensed to the Customer or its Affiliates, as WeShape may reasonably require for such purpose for the duration of the relevant Assignment.

13.3 Unless otherwise set out in the relevant Schedule, and to the extent that any such ownership does not vest automatically in accordance with clause 13.1, WeShape assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property (excluding any Intellectual Property Rights in its Pre-Existing IPR) to the Customer and agrees to execute, or arrange for the doing and executing of, each act, document and thing that the Customer may consider necessary or desirable to perfect the right, title and interest of the Customer in and to the Intellectual Property in the Deliverables.

13.4 WeShape gives the Customer a royalty-free, world-wide, non-exclusive, non-transferable, revocable, non-sub-licensable licence to use and reproduce any of WeShape's Pre-Existing IPR incorporated in the Deliverable(s) for the performance of the Services and any related incidental internal purposes in accordance with these Terms and Conditions.

13.5 The Customer gives WeShape a royalty-free, world-wide, non-exclusive, non-transferable, revocable, non-sub-licensable licence to use and reproduce any of the Customer's Pre-Existing IPR incorporated in the Deliverable(s) for the performance of the Services and any related incidental internal purposes in accordance with these Terms and Conditions.

13.6 WeShape shall be entitled to use in any way it deems fit any skills, techniques or know-how acquired, developed or used in connection with the Assignment provided always that it does not breach the Customer's Confidential Information.

13.7 The rights and interest in, and title to, the Intellectual Property in any third-party material (including Open Source Software) or modifications or enhancements to any such material will vest in accordance with the relevant third-party terms.

## **14. IP INDEMNITY**

14.1 The Customer shall indemnify WeShape against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by WeShape arising out of or in connection with any breach of the warranty contained in clause 4.1.3 ("**Third Party IP Claim**").

14.2 In the event that WeShape receives notices of a Third Party IP Claim, the WeShape will:

14.2.1 notify the Customer in writing as soon as reasonably practicable; and

14.2.2 take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the Third Party IP Claim;

14.3 If any Third Party IP Claim is made or is reasonably likely to be made against the Customer, WeShape may at its option:

14.3.1 procure for the Customer the right to continue to receive the relevant Service or use the relevant Deliverable(s) in accordance with these Terms and Conditions; or

14.3.2 modify or replace the part of the relevant Service or Deliverable(s) which is the subject of the Third Party IP Claim so as to avoid the claimed or alleged infringement, without materially reducing its functionality or utility (unless the Customer agrees otherwise).

## **15. LIABILITY**

15.1 Nothing in these Terms and Conditions will limit or exclude either party's liability:

15.1.1 for wilful breach;

15.1.2 for death or personal injury caused by its negligence;

15.1.3 for fraud or fraudulent misrepresentation; or

15.1.4 for any other matter for which it is unlawful to limit or exclude liability (as the case may be).

15.2 WeShape shall not be liable where directly or indirectly and whether in whole or in part as a result of:

15.2.1 a Default Event;

15.2.2 a breach by the Customer of any of its obligations under these Terms and Conditions;

15.2.3 a Force Majeure Event;

15.2.4 any instruction, design, specification or requirement of the Customer;

15.2.5 use of Customer Materials; or

15.2.6 any instruction or reasonable request given to WeShape Personnel by the Customer or its Affiliates.

15.3 Subject to clause 15.1, WeShape will have no liability to the Customer arising under or in connection with these Terms and Conditions (regardless of the cause of action or legal theory of liability) for:

- A. any loss of profit;
- B. any loss of opportunity, anticipated saving, management time, use, production or contract;
- C. loss of revenue;
- D. loss of use of data;
- E. loss of use;
- F. loss of production;
- G. loss of contract;
- H. loss of commercial opportunity;
- I. loss of savings, discount or rebate (whether actual or anticipated);
- J. harm to reputation or loss of goodwill;
- K. loss of business;
- L. wasted expenditure; and
- M. any consequential, indirect or special loss.

15.4 Subject to clauses 15.1, 15.2 and 15.3, WeShape's total aggregate liability to the Customer arising under or in connection with these Terms and Conditions (regardless of the cause of action or legal theory of liability) shall be limited to an amount equal to the Fees paid or payable by the Customer to WeShape under the relevant Schedule within 1 month immediately preceding the event (or the last event in a series of events) giving rise to the claim and/or liability.

15.5 Neither party shall have any liability in respect of the Terms and Conditions independently to or outside of an Assignment, if for any reason it is held that a party does have a liability (regardless of the cause of action or legal theory of liability) in respect of the Terms and Conditions then that liability shall be limited to an amount equal to the mean of Fees paid or payable by the Customer to WeShape under all Assignments in the 12 months immediately preceding the event (or the last event in a series of events) giving rise to the claims and/or liability, subject in each case to clauses 15.1, 15.2 and 15.3.

## **16. CONFIDENTIALITY**

16.1 The Receiving Party shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party or where authorised in a particular Schedule, shall:

16.1.1 not use or exploit the Confidential Information in any way except for the purpose of exercising its rights and performing its obligations under an Assignment;



16.1.2 not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by these Terms and Conditions; and

16.1.3 apply the same security measures and degree of care to the Confidential Information as the Receiving Party applies to its own confidential information (and which will in any event be no less stringent than the measures and care which it is reasonable to expect of a person operating in the same sector in the same circumstances).

16.2 The Receiving Party may disclose the Disclosing Party's Confidential Information to those of its agents, sub-contractors, officers, employees, (in the case of WeShape) the WeShape Personnel and Professional Advisers who need to know it in connection with these Terms and Conditions, provided that:

16.2.1 it informs each such person of the confidential nature of the Confidential Information before disclosure; and

16.2.2 it procures that each such person will be bound by obligations of confidence no less restrictive than this clause, and it will be liable for the failure of any such person to comply with this clause.

16.3 The Receiving Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any regulator or any other governmental or other regulatory authority with jurisdiction over the Receiving Party, or by a court of competent jurisdiction, or under the rules of a relevant securities exchange, provided in each case that, to the extent it is legally permitted to do so, it gives the Disclosing Party as much notice of such disclosure as possible and it takes into account the reasonable requests of the Disclosing Party in relation to the content of that disclosure.

## **17. TERMINATION AND CANCELLATION**

17.1 Either party may terminate these Terms and Conditions without incurring any additional liability by giving the other party not less than 6 week's written notice.

17.2 Where, upon expiry of a notice given under clause 17.1, one or more Assignment(s) remain in effect, these Terms and Conditions shall continue until the Assignment is terminated.

17.3 Either party may terminate an Assignment by giving written notice to the other if the other party commits:

17.3.1 material breach of that Assignment which is capable of remedy and it fails to remedy the breach within 6 weeks of receiving written notice of such breach; or

17.3.2 a material breach of that Assignment which is not capable of being remedied,

and a breach of these Terms and Conditions in relation to an Assignment will be deemed a breach of that Assignment.

17.4 Any breach of these Terms and Conditions will be deemed to be a material breach for the purpose of this clause 17.

17.5 WeShape may terminate these Terms and Conditions immediately by giving the Customer notice if:

17.5.1 the Customer passes a resolution for its winding up or a court makes an order for its winding up or dissolution (other than for the purpose of any bona fide amalgamation, merger or reconstruction);

17.5.2 an application for an administration order is made in relation to the Customer that has not been set aside within seven days after the order has been made, or if a receiver is appointed over, or an encumbrancer takes possession of or sells, any material part of the assets or undertaking of the other party;

17.5.3 the Customer makes an arrangement or composition with its creditors generally or makes an application to a court for protection from its creditors generally;

17.5.4 the Customer disposes of all its assets or a substantial part of its assets (other than for the purpose of any bona fide amalgamation, reconstruction or merger);

17.5.5 the Customer commences or has commenced against it any insolvency, reorganisation, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceedings, and, if such case or proceeding is commenced against it, such case or proceeding is not dismissed within seven days thereafter;

17.5.6 the Customer becomes insolvent or generally fails to pay or admits in writing its inability to pay, its debts as they become due; or

17.5.7 the Customer is subject to any equivalent process or proceedings in any jurisdiction anywhere in the world.

## **18. CONSEQUENCES OF TERMINATION**

18.1 Subject to clause 18.2, on termination of these Terms and Conditions or any Assignment(s) for any reason:

18.1.1 WeShape shall immediately stop the performance of all relevant Services under these Terms and Conditions or that Assignment (as the case may be);

18.1.2 WeShape shall promptly invoice the Customer for all Services performed but not yet invoiced and for any other amounts it may be entitled to invoice in respect of any relevant Assignment.

18.2 Any provision of these Terms and Conditions that expressly, by implication or by its nature is intended to come into or continue in force on or after termination (including clause 16 (Confidentiality)), will do so.

18.3 Termination of these Terms and Conditions or any Assignment will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination.

18.4 Promptly following termination, each Receiving Party will:

18.4.1 if one or more Assignments are terminated but these Terms and Conditions otherwise remain in force, return to the Disclosing Party or (at the Disclosing Party's election) use reasonable efforts to destroy all copies of the Disclosing Party's Confidential Information pertaining to the terminated Assignment(s) and which the Receiving Party no longer reasonably needs to retain in connection with other Assignments not so terminated and/or these Terms and Conditions generally;

18.4.2 if these Terms and Conditions and all Assignments under it are terminated, return to the Disclosing Party or (at the Disclosing Party's election) use reasonable efforts to destroy all copies of the Disclosing Party's Confidential Information; and

18.4.3 in either case, upon request by the Disclosing Party, give to the Disclosing Party a certificate signed by an officer of the Receiving Party that it has done so.

18.5 Any Confidential Information not actually destroyed pursuant to clause 18.4 will continue to be Confidential Information and clause 16 (Confidentiality) will continue to apply to it.

18.6 The Customer is under no obligation to offer further contracts or Services to WeShape nor is WeShape under obligation to accept such contracts or Services if offered. WeShape is not obliged to make its Services available except for the performance of its obligations under these Terms and Conditions. Both Parties agree and intend that there shall be no mutuality of obligations either during or following these Terms and Conditions, whatsoever.

## **19. SECURITY**

19.1 In connection with its interactions with Customer Data, WeShape shall maintain and enforce physical and information security procedures sufficient to ensure compliance with clause 19.2 and WeShape's information security policy, as updated from time to time provided that such amendment does not degrade the level of security over Customer Data.

19.2 WeShape shall under each Assignment:

19.2.1 not access any Customer Data except as reasonably necessary to perform its obligations under the particular Assignment;

19.2.2 to the extent that any Customer Data is stored or accessed from WeShape's own systems take suitable technical and operational measures to restrict access to Customer Data in its possession or control to those WeShape Personnel with a need to access it in connection with WeShape's obligations under a relevant Assignment;

19.2.3 ensure that neither it nor anyone acting on its behalf will deliberately or negligently corrupt or erase any Customer Data from Customer IT; and

19.2.4 ensure that all of the Customer Data which may come into its possession or control is at all times fully segregated from its own data and from that of third parties.

19.3 Clauses 19.1 and 19.2 shall not apply:

19.3.1 where WeShape or any WeShape Personnel are acting under the reasonable requests of the Customer, otherwise WeShape shall only be liable under clauses 19.1 and/or 19.2 in respect of the acts and/or omissions of any WeShape Personnel working under the reasonable requests of the Customer if it does not use reasonable endeavours to require that such WeShape Personnel comply with those clauses; and/or

19.3.2 to any Customer Data provided to WeShape under an Assignment by the Customer and which the Customer has erroneously described to WeShape as consisting only of anonymised or dummy test data, unless and until the Customer has informed WeShape of such error.

## **20. FORCE MAJEURE**

20.1 WeShape shall not be liable if delayed in, or prevented from, performing its obligations under an Assignment due to a Force Majeure Event, provided that it promptly notifies the Customer of the Force Majeure Event and its expected duration; and uses reasonable efforts to minimise the effects of that event.

20.2 If, due to Force Majeure Event, WeShape is unable to perform its obligation or is delayed in or prevented from performing its obligations for a continuous period of more than three months, the Customer may terminate any Assignment on not less than four weeks' written notice.

## **21. WESHAPES NOTICES**

21.1 A notice under or in connection with these Terms and Conditions must be in writing and must be sent by first class post pre paid recorded delivery (and airmail if overseas) to the party

due to receive the Notice at the relevant address specified in clause 21.3 below; and if served via email, must be sent from the sending party's designated email address in clause 21.3 to the other party's designated email address in clause 21.3. **(a "Notice")**

21.2 A Notice will be deemed to be given if delivered personally, when left at the relevant address, if sent by post (other than air mail), two Business Days after posting it; if sent by air mail, six Business Days after posting it; if sent to the relevant email address specified in clause 21.3, at the time of receipt, unless received after 5.00pm on any day when it shall be deemed to have been served on the next Business Day; and/or if received by email from the relevant email address specified in 21.3 at the time of receipt, unless received after 5.00pm on any day when it shall be deemed to have been served on the next Business Day.

21.3 The address for Notices is:

21.3.1 in respect of the Customer:

**Post:** Addressed to: [person]

**Address:** [address]

**Email:** [email]; and

21.3.2 in respect of WeShape:

**Post:** Addressed to: The Managing Director

**Address:** 20 St Dunstan's Hill, EC3R 8HL

**Email:** accounts@weshape.io

21.4 Either party may change its address for Notices by Notice to the other.

21.5 The provision of this clause shall not apply to service of any legal proceedings.

## **22. GENERAL**

22.1 Except where these Terms and Conditions provide otherwise, each party will pay its own costs relating to the negotiation, preparation and execution of these Terms and Conditions; and its own performance of these Terms and Conditions.

22.2 The parties are independent and the provisions of these Terms and Conditions shall not under any circumstances be interpreted as creating any association, relationship of agency or partnership between the parties. Neither party may bind the other in any manner whatsoever or in favour of anyone whomsoever, other than as set out in these Terms and Conditions in respect of a given Assignment.

22.3 These Terms and Conditions contain the whole agreement between the parties, and supersedes all prior agreements, arrangements and understandings between the parties,

relating to its subject matter. Each party acknowledges that, in entering into these Terms and Conditions, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to these Terms and Conditions or not) (each, a **"Representation"**) other than as expressly set out in these Terms and Conditions. Nothing in this clause 22.3 will limit or exclude any liability for any fraudulent Representation.

22.4 Except to the extent that these Terms and Conditions expressly provides otherwise, a person who is not a party to these Terms and Conditions will have no right whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of it. The consent of a third party having rights under these Terms and Conditions will not be required in order to amend it.

22.5 If any provision of these Terms and Conditions is held to be invalid or unenforceable for any reason, that provision will, if possible, be adjusted rather than voided, in order to achieve a result which corresponds to the fullest possible extent to the intention of the parties. The nullity or adjustment of any provision will not affect the validity and enforceability of any other provision.

22.6 The failure of a party to enforce a provision of these Terms and Conditions, or any rights with respect thereto (or any delay in so doing) will not be a waiver of that provision or right, or in any way affect the validity of these Terms and Conditions. A waiver of any claim for a breach of these Terms and Conditions will not operate to waive any claims in respect of any other breach or affirm these Terms and Conditions following any other breach.

22.7 Amendments:

22.7.1 Subject to clause 9.6, any amendment of these Terms and Conditions will only be valid if it is made in writing and signed by both parties. If these Terms and Conditions are agreed to be varied by the parties, then the terms as varied shall not apply to any the current Assignment(s) unless the parties explicitly provide for the same.

22.7.2 WeShape may vary any of its relevant policies by notice in writing to the Customer setting out the variation and, unless the Customer objects in writing to the variation within fifteen (15) Business Days of receipt of the variation, the new policy shall take effect fifteen (15) Business Days after the Notice.

## **23. DATA PROTECTION**

23.1 This clause 23 shall be read together with our Privacy Policy which is available on our website.

23.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 23 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

23.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and WeShape is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). The parties further acknowledge that there are exceptions where WeShape are the data controller and will not act on Customer instructions but in accordance with WeShape's own legal and professional obligations. This usually applies to data WeShape hold and process about the Customer in relation to AML, Terrorist Financing, Transfer of Fund (Information on the Payer) Regulations 2017 and our obligation to report malpractice to the authorities.

23.4 Without prejudice to the generality of clause 23.1, the Customer will ensure that all necessary appropriate consents and notices are in place to enable lawful transfer of the Personal Data to us for the duration and purposes of the contract.

23.5 Without prejudice to the generality of clause 23.1, WeShape shall, in relation to any Personal Data processed in connection with WeShape's performance of our obligations under the contract:

23.5.1 ensure that WeShape have in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymisation and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of WeShape systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by WeShape);

23.5.2 ensure that all WeShape Personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

23.5.3 not transfer any Personal Data outside of the European Economic Area unless the Customer's prior written consent has been obtained and the following conditions are fulfilled:

23.5.3.1 WeShape have provided appropriate safeguards in relation to the transfer;

23.5.3.2 the data subject has enforceable rights and effective legal remedies;

23.5.3.3 WeShape comply with WeShape's obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

23.5.3.4 WeShape comply with reasonable instructions notified to us by the Customer in advance with respect to the processing of the Personal Data; and

23.5.3.5 for the avoidance of doubt, signing and returning these Terms and Conditions constitutes the provision of prior written consent in relation to such transfers.

23.5.4 assist the Customer at the Customer cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

23.5.5 notify the Customer without undue delay on becoming aware of a Personal Data breach; and at the Customer's written request, delete or return Personal Data and copies thereof to the Customer on termination of the Terms and Conditions unless required by Applicable Data Processing Law to store the Personal Data.

## **24. DISPUTE RESOLUTION**

24.1 The parties shall attempt in good faith to resolve any dispute, difference and question between them arising out or in connection with these Terms and Conditions.

24.2 If a dispute, difference or question cannot be resolved between the parties, the parties agree to endeavour to resolve this matter in accordance with this clause 24.

24.3 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party notifying that a dispute has arisen. The notice must include reasonable information as to the nature of the dispute.

24.4 The parties shall use all reasonable efforts to reach a negotiated resolution through the following procedures:

24.4.1) Within seven (7) Business Days of service of the notice, parties shall meet to discuss the dispute and attempt to resolve it.

24.4.2) If the dispute has not been resolved within seven (7) Business Days of the meeting, then the matter shall be referred to a member of the board or senior management of each party,



who shall co-operate in good faith to resolve this dispute as amicably as possible within seven (7) Business Days of the dispute being referred to them.

24.4.3) If the dispute has not been resolved within fourteen (14) Business Days of the first meeting, the dispute shall be referred to an independent expert in the applicable field ("**Independent Expert**") for determination (at the cost of the party raising the dispute). The decision of the Independent Expert shall be final and binding on the parties. For the avoidance of doubt, the Independent Expert shall not act as an arbitrator.

24.5 The specific format for the resolution of the dispute under 24.4 will be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.

## **25. GOVERNING LAW AND JURISDICTION**

25.1 These Terms and Conditions, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

25.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms and Conditions or its subject matter or formation and any dispute or claim.

## **26. Testimonials & Marketing**

26.1 The Supplier and the Client may request a testimonial at the end of each project.

26.2 Each party may use material such as project testimonials and collaborate on relevant announcements which may be published on social media platforms such as LinkedIn subject always to the other party's prior written permission (such permission not to be unreasonably withheld or delayed).

26.3 Nothing in this agreement is intended to restrict either party's activities in marketing or promoting any of their respective products or services which are unrelated to this agreement.

# SCHEDULE 1

The Assignment shall be subject to the Terms and Conditions agreed between WeShape and the Customer on [REDACTED].

## 1. PROJECT SUMMARY

### 1.1 Overview

[REDACTED]

## 2. SERVICE DESCRIPTION

[REDACTED]

## 3. ENGAGEMENT DETAILS

Description of Services	[REDACTED]
Fee (Ex-VAT)	[REDACTED]
Project Start Date	[REDACTED]
Project Completion Date	[REDACTED]
Notice Period	[REDACTED]

### 3.1 Tasks/Activities & Schedule Deliverables

Task Number	Task Name	Task Description	Activity	Indicative Delivery Time
-------------	-----------	------------------	----------	--------------------------

[ ]	[ ]	[ ]	[ ]	[ ]

#### 4. PERSONNEL SCHEDULE

Personnel Level	Role	Engagement Start Date	Indicative End Date	Working Pattern	Daily Rate
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

#### 5. ASSUMPTIONS/DEPENDENCIES

The following assumptions and expectations are made. Customer will be required to ensure the following from commencement of the Project:

- A. WeShape will be operating under a flexible working pattern (Any changes to be discussed according to Schedule).
- B. WeShape will have access to relevant internal systems, teams throughout the engagement.
- C. WeShape will have access to engineering and operational teams to capture requirements, audit reviews.
- D. [ ]

**AGREED as of [REDACTED]**

For and on behalf of the Customer

Signature:

Name:

Title:

For and on behalf of WeShape

Signature:

Name:

Title: