



codiance
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Service Agreement Terms

G-Cloud 14



G-CLOUD SERVICES AGREEMENT TERMS

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this agreement:

Applicable Laws	means all applicable laws, statutes, regulation from time to time in force.
Available Services	means the services as set out in schedule 1
Bespoke Software	means software programs developed by the Supplier specifically for the Customer as part of the Software Solution.
Business Day	means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Business Hours	means the period from 9.00 am to 5.00 pm on any Business Day.
Change Order	has the meaning given in clause 7.1, and as set out in Schedule 2.
Control	means shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
Customer's Equipment	means any equipment, including tools, software, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the delivery of a Project.
Customer Materials	means all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with a

	Project, including the items provided pursuant to clause 5.1.4.
Data Controller	has the meaning set out in the Data Protection Legislation.
Data Protection Legislation	means (i) the Data Protection Act 1998 while it remains in effect until it is replaced by the General Data Protection Regulation ((EU) 2016/679) on 25 May 2018; or (ii) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; or (iii) any successor legislation to the General Data Protection Regulation ((EU) 2016/679) or the Data Protection Act 1998.
Data Subject	means an individual who is the subject of Personal Data.
Deliverables	means any output of a Project to be provided by the Supplier to the Customer and any other documents, products and materials provided by the Supplier to the Customer in relation to a Project (excluding the Supplier's Equipment).
Effective Date	means the date that the agreement is signed by the parties.
Intellectual Property Rights	or IPRs, means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or

	forms of protection which subsist or will subsist now or in the future in any part of the world.
Milestone	means a date by which a part or all of a Project is to be completed.
Personal Data	has the meaning set out in the Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which the Supplier is providing services under this agreement.
Processing and Process	have the meaning set out in the Data Protection Legislation.
Project	means the Available Services which are provided by the Supplier, including services which are incidental or ancillary to a Project
Project Phases	means the consecutive phases into which a Project may be divided as appropriate.
Reference Charges	means the standard charges for the Available Services for calculating them as set out the rate card.
Software Solution	means any software system produced as part of a Project.
Statement of Work	means the document describing a Project and Available Services that shall be employed as part of the Project as agreed in accordance with clause 3, setting out the estimated timetable including Milestones, Project Phases, and responsibilities for the delivery of that Project, and the related matters listed in the template statement of work set out in Schedule 3.
SoW Charges	means the sums payable for a Project
Supplier's Equipment	means any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the delivery of a Project, but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

VAT means value added tax chargeable under the Value Added Tax Act 1994.

Warranty Certificate means a certificate setting out specific warranties given by the Supplier to the Customer in connection with a Project.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural, and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.8 This agreement shall be binding on, and endure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** includes email unless otherwise expressly stated.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.14 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

- 1.15 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. COMMENCEMENT AND DURATION

- 2.1 This agreement shall commence on the Effective Date and the Supplier shall deliver the Projects for the Customer on the terms and conditions herein.
- 2.2 The Customer may procure any of the Available Services with the Supplier.
- 2.3 The Supplier shall commence a Project from the date specified.

3. STATEMENTS OF WORK

- 3.1 Each Statement of Work shall be agreed in the following manner:
- 3.1.1 the Customer shall ask the Supplier to provide any or all of the Available Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Statement of Work for the Available Services requested;
 - 3.1.2 following receipt of the information requested from the Customer the Supplier shall, as soon as reasonably practicable either:
 - 3.1.2.1 inform the Customer that it declines to provide the requested Available Services; or
 - 3.1.2.2 provide the Customer with a draft Statement of Work based on the information provided in accordance with clause 3.1.1.
 - 3.1.3 if the Supplier provides the Customer with a draft Statement of Work pursuant to clause 3.1.2.2, the Supplier and the Customer shall discuss and agree that draft Statement of Work. The Supplier shall not hold any liability for incorrect Statements of Work which are based on inaccurate information provided by the Customer.
- 3.2 Unless otherwise agreed, the SoW Charges shall be calculated in accordance with the Reference Charges.
- 3.3 The Supplier may charge for the preparation of Statements of Work on a time and materials basis in accordance with the Supplier's daily fee rates.
- 3.4 Once a Statement of Work has been agreed and signed, no amendment shall be made to it except in accordance with clause 7 (Change control) or clause 17 (Variation).
- 3.5 Each Statement of Work may only be cancelled in accordance with any terms relating to cancellation contained within that Statement of Work, or with the Supplier's prior written consent. Cancellation charges may be charged in the event of cancellation of a Statement of Work which shall

correspond to the value of the Reference Charges due to cover the amount of work carried until the date of cancellation, plus any reasonable expenses incurred.

3.6 Where the Available Services performed in connection with a Project contain support, maintenance and ongoing development services, these shall be agreed under a separate Statement of Work.

3.7 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

4. SUPPLIER'S RESPONSIBILITIES

4.1 The Supplier shall use reasonable endeavours to deliver a Project, and deliver the Deliverables to the Customer.

4.2 The Supplier shall appoint a manager in respect of a Project to be delivered. That person shall have authority to contractually bind the Supplier on all matters relating to the relevant Project (including by signing Change Orders). The Supplier shall use all reasonable endeavours to ensure that the same person acts as the Supplier's manager throughout the term of the project, but may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.

4.3 The Supplier shall ensure that all of its personnel engaged in a Project:

4.3.1 have the necessary skills, expertise and diligence to undertake such work and will conform to the professional standards generally observed in the computer industry for similar services;

4.3.2 comply with the provisions in this Agreement relating to Confidential Information.

4.4 The Supplier shall use reasonable endeavours to test Software Solution in a pre-production environment to verify that it is in operable condition and capable of meeting the requirements upon installation in the production environment.

4.5 The Supplier shall comply with all the provisions of any Warranty Certificate.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

5.1.1 co-operate with the Supplier in all matters relating to a Project;

5.1.2 appoint a manager in respect of a Project to be delivered. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Project (including by signing Change Orders);

5.1.3 provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier including any such access as is specified in a Statement of Work;

- 5.1.4 provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) or otherwise reasonably required by the Supplier in connection with a Project and ensure that they are accurate and complete in all material respects;
 - 5.1.5 inform the Supplier of all health and safety and security requirements that apply at any of the Customer's premises;
 - 5.1.6 ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to a Project and conforms to all relevant United Kingdom standards or requirements;
 - 5.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to deliver a Project, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which a Project is to start.
- 5.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.
- 5.3 The Customer shall be deemed to have accepted any Software Solution installed by the Supplier as part of a Project:
- 5.3.1 if the Customer has completed appropriate user acceptance testing; or
 - 5.3.2 within 20 days of the date that the installation is completed; or
 - 5.3.3 the Customer, commences operational use of the Software

6. NON-SOLICITATION

- 6.1 The Customer shall not, without the prior written consent of the Supplier, at any time from the date on which any Project shall commence to the expiry of three years after the completion of a Project, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of a Project.

7. CHANGE CONTROL

- 7.1 Either party may propose changes to the scope or execution of a Project but no proposed changes shall come into effect until a relevant **Change Order**, as set out in Schedule 2, has been signed by both parties. A Change Order

shall be a document setting out the proposed changes and the effect that those changes will have on:

- 7.1.1 the Project;
 - 7.1.2 the SoW Charges;
 - 7.1.3 the timetable for the Project; and
 - 7.1.4 any of the other terms of the relevant Statement of Work.
- 7.2 If the Supplier wishes to make a change to a Project it shall provide a draft Change Order to the Customer.
- 7.3 If the Customer wishes to make a change to a Project:
- 7.3.1 it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and
 - 7.3.2 the Supplier shall, as soon as reasonably practicable after receiving the information at clause 7.3.1, provide a draft Change Order to the Customer.
- 7.4 If the parties:
- 7.4.1 agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Statement of Work; or
 - 7.4.2 are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 27 (Multi-tiered dispute resolution procedure).
- 7.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 7.3 on a time and materials basis at the Supplier's daily rates.

8. CHARGES AND PAYMENT

- 8.1 In consideration of the delivery of a Project by the Supplier, the Customer shall pay the SoW Charges.
- 8.2 Where the SoW Charges are calculated on a time and materials basis:
- 8.2.1 the Supplier's daily fee rates for each individual person as set out in the rate card are calculated on the basis of an eight-hour day, worked during Business Hours.
 - 8.2.2 Actual fees shall be charged for the actual time spent by each individual on the project on a pro-rata basis;
 - 8.2.3 the Supplier shall be entitled to charge an overtime rate of 50% above the daily fee rate set out in the rate card on a pro-rata basis for any time worked by individuals whom it engages on a Project

- outside Business Hours as a result of request from or with a prior agreement of the Customer; and
- 8.2.4 the Supplier shall ensure that every individual whom it engages on a Project completes time sheets to record time spent on the Project, and the Supplier shall provide reports of the time spent per individual on Customer's request.
- 8.3 Where the SoW Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in a Statement of Work.
- 8.4 The SoW Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:
- 8.4.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with a Project; and
- 8.4.2 the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of a Project as such items and their cost are set out in the Statement of Work.
- 8.5 The Supplier may increase the Reference Charges and any SoW Charges not calculated in accordance with the Reference Charges on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the CPI in the preceding 12-month period or 5% whichever is greater.
- 8.5.1 The first such increase shall take effect on the first anniversary of the date of this agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 8.5.2 Such increase shall have no effect on any projects provided as Fixed Price unless a change is requested and approved by the Customer in accordance with Clause 7.
- 8.6 Any increase in the Reference Charges shall affect:
- 8.6.1 the SoW Charges (to the extent that they are calculated in accordance with the Reference Charges) in Statements of Work in force at the date the increase takes effect; and
- 8.6.2 the calculation of the SoW Charges for Statements of Work entered into after the date the increase takes effect.
- 8.7 The Supplier shall invoice the Customer for the SoW Charges at the intervals specified, on the achievement of the Milestones indicated, or in accordance with Payment Schedule indicated in the Statement of Work. If no intervals are so specified, the Supplier shall invoice the Customer at the end of each month for work in connection with a Project performed during that month.

- 8.8 The Customer shall pay each invoice duly raised by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time. Time for payment shall be of the essence.
- 8.9 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:
- 8.9.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 8% a year above the Bank of England's base rate; and
 - 8.9.2 the Supplier may suspend part or all of a Project until payment has been made in full.
- 8.10 All sums payable to the Supplier under this agreement:
- 8.10.1 are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - 8.10.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 Unless stated differently in a specific Statement of Work the IPRs in the Bespoke Software shall, at the completion of a Project, or at creation when fully paid up by the Customer, automatically vest in the Customer. The Supplier assigns (by way of present and, where appropriate, future assignment) all such IPRs with full title guarantee to the Customer.
- 9.2 The Supplier shall do and execute, or arrange for the doing and executing of, each necessary 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 IPRs in the Bespoke Software.
- 9.3 The Supplier shall:
- 9.3.1 obtain all the necessary licences to any third-party frameworks, libraries, modules and APIs used in the development of Bespoke Software, and ensure that the licences of any open-source components utilised permit commercial use by the Customer; and
 - 9.3.2 ensure that records are maintained that are sufficient to provide evidence of the process of independent creation of the Bespoke Software; and
 - 9.3.3 be responsible for ensuring that written agreements are entered into with, and adhered to by, subcontractors engaged in the performance of this agreement and that, unless otherwise agreed with the Customer in writing in advance, the terms of engagement

of such subcontractors are consistent with, and enable the Supplier fully to comply with, the provisions as to the Bespoke Software in this clause 9.

- 9.4 The Customer grants the Supplier an unlimited, paid up, non-exclusive licence, inclusive of sub-licensing rights, to use the Bespoke Software for the purpose of carrying out its obligations under this agreement.
- 9.5 In relation to the Customer Materials, the Customer:
 - 9.5.1 and its licensors shall retain ownership of all IPRs in the Customer Materials; and
 - 9.5.2 grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of delivering a Project to the Customer.

10. DATA PROTECTION AND DATA PROCESSING

- 10.1 The Customer and the Supplier acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the data processor in respect of any Personal Data.
- 10.2 The Supplier shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer.
- 10.3 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 10.4 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 10.5 The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
 - 10.5.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
 - 10.5.1.1 the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - 10.5.1.2 the nature of the data to be protected; and
 - 10.5.2 take reasonable steps to ensure compliance with those measures.
- 10.6 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable

due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 10.

- 10.7 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Customer's instructions.
- 10.8 The Supplier may authorise a third party (**sub-contractor**) to process the Personal Data provided that the sub-contractor's contract:
 - 10.8.1 is on terms which are substantially the same as those set out in this agreement; and
 - 10.8.2 terminates automatically on termination of this agreement for any reason.

11. CONFIDENTIALITY

- 11.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.1.
- 11.2 Each party may disclose the other party's confidential information:
 - 11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
 - 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12. LIMITATION OF LIABILITY

- 12.1 Nothing in this agreement shall limit or exclude the Supplier's liability for:
 - 12.1.1 death or personal injury caused by its negligence;
 - 12.1.2 fraud or fraudulent misrepresentation; or
 - 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

- 12.2 Subject to clause 12.1, the Supplier shall not be liable to the Customer, whether in contract, tort, for breach of statutory duty, or otherwise, arising under or in connection with this agreement for any:
- 12.2.1 loss of profits;
 - 12.2.2 loss of sales or business;
 - 12.2.3 loss of agreements or contracts;
 - 12.2.4 loss of anticipated savings;
 - 12.2.5 loss of or damage to goodwill;
 - 12.2.6 loss of use or corruption of software, data or information; or
 - 12.2.7 indirect or consequential loss.
- 12.3 Subject to clause 12.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to a sum equal to the SoW Charges paid by the Customer under the Statement of Work which gives rise to the claim.
- 12.4 The Supplier makes no guarantee that any Software Solution delivered in connection with a Project will be continually available and uninterrupted for 365 days of the year and 24 hours a day, or free from errors, viruses or malware.

13. TERMINATION

- 13.1 Without affecting any other right or remedy available to it, either Party may terminate this agreement by giving 30 days written notice to the other Party.
- 13.1.1 Termination of this agreement does not change the obligations of both Parties with regard to any ongoing SoW projects, which have to be completed or terminated on their respective terms.
- 13.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 13.2.1 the other party commits a material breach of any term of this agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 13.2.2 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 13.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership)

is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- 13.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 13.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 13.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - 13.2.7 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 13.2.8 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - 13.2.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - 13.2.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.3 to clause 13.2.9 (inclusive); or
 - 13.2.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 13.3 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement and all ongoing SoW projects with immediate effect by giving written notice to the Customer if:
- 13.3.1 the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.

14. CONSEQUENCES OF TERMINATION

14.1 On termination or expiry of this agreement:

- 14.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect ongoing Projects but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- 14.1.2 the Customer shall, within a reasonable time, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until the Supplier's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping;
- 14.1.3 the Supplier shall on request return any of the Customer Materials not used up in the delivery of Projects; and
- 14.1.4 the following clauses shall continue in force: clause 1 (Interpretation), clause 6 (Non-solicitation), clause 9 (Intellectual property rights), clause 11 (Confidentiality), clause 12 (Limitation of liability), clause 14 (Consequences of termination), clause 18 (Waiver), clause 20 (Severance), clause 22 (Conflict), clause 27 (Multi-tiered dispute resolution procedure), clause 28 (Governing law) and clause 29 (Jurisdiction).

14.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

15. FORCE MAJEURE

15.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

- 15.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 15.1.2 epidemic or pandemic;
- 15.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 15.1.4 nuclear, chemical or biological contamination or sonic boom;
- 15.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- 15.1.6 collapse of buildings, fire, explosion or accident;

- 15.1.7 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - 15.1.8 interruption or failure of utility service.
- 15.2 Provided it has complied with clause 15.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 15.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 15.4 The Affected Party shall:
 - 15.4.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
 - 15.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 15.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving four weeks' written notice to the Affected Party.

16. ASSIGNMENT AND OTHER DEALINGS

- 16.1 Both Parties may at any time assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

17. VARIATION

Subject to clause 7 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives). Email shall not suffice as writing for the purposes of this clause.

18. WAIVER

- 18.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 18.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or

remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 18.3 A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

19. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. SEVERANCE

- 20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

- 20.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. ENTIRE AGREEMENT

- 21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

22. CONFLICT

If there is an inconsistency between any of the provisions of this agreement and the provisions of the Statement of Work, the provisions of the Statement of Work shall prevail.

23. NO PARTNERSHIP OR AGENCY

- 23.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

- 23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24. THIRD PARTY RIGHTS

Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

25. NOTICES

- 25.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
- 25.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 25.1.2 sent by email to the address provided by the parties from time to time.
- 25.2 Any notice or communication shall be deemed to have been received:
- 25.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - 25.2.2 if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - 25.2.3 if sent by email, at 9.00 am on the next Business Day after transmission.
- 25.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26. COUNTERPARTS

- 26.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

27. DISPUTE RESOLUTION PROCEDURE

- 27.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:
- 27.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Managing Director of the Customer and the Managing Director of the Supplier shall attempt in good faith to resolve the Dispute;

- 27.1.2 if the representatives of both parties identified in clause 27.1.1 are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.
- 27.2 No party may commence any court proceedings under clause 29 in relation to the whole or part of the Dispute until 90 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 27.3 If the Dispute is not resolved within 90 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 90 days, or the mediation terminates before the expiration of the said period of 90 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 29.

28. GOVERNING LAW

This agreement 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.

29. JURISDICTION

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 this agreement or its subject matter or formation.

SCHEDULE 1

Available Services

Cloud Application, Legacy Transformation and Continual Improvement Services

.NET Development

PHP Development

Codiance Discovery

Code Review Support Service

Umbraco CMS Support and Upgrades

Umbraco CMS Development and Upgrades

Cloud Data Architecture

Cloud Migration

Cloud Optimisation

Housing Digital Solutions

Digital Solutions in Education

Council Digital Solutions

Digital Transformation

Data and AI Services

SCHEDULE 2
Change Order

Please insert the changes that affect the following:

SoW Charges

The timetable for the Statement of Work

Any of the other amendments to the terms of the Statement of Work

The above changes are effective only once both parties have signed this Change Order, following which the Statement of Work shall be amended.

Signed by [NAME]
for and on behalf of Smartlist Ltd	Position:

Signed by [NAME]
for and on behalf of CLIENT	Position:

Schedule 3 Statement of Work Template

TEMPLATE

Smartlist Ltd - Statement of Work

Supplier	Name	
	Address	
Customer	Name	
	Address	

Project Title	
Statement of Work Number	

Terms used in the agreement shall have the same meaning as in the framework agreement entered into between the parties on [DATE].

[INCLUDE REFERENCES TO THE RELEVANT PROJECT DOCUMENTS IN THE POINTS BELOW]

1. Project:

[DETAILS OF THE AVAILABLE SERVICES REQUESTED BY THE CUSTOMER].

[DETAILS OF ANY SUPPORT OR HOSTING].

2. Customer's manager and Supplier's manager:

[LIST OUT THE RELEVANT INDIVIDUALS].

3. Start date and term:

[DATE].

4. [Project Management Plan/Communication Plan/Stages]:

[BREAKDOWN OF ANY RELEVANT STAGES INTO WHICH THE PROJECT SHALL BE DIVIDED]
[DATE OF ANY SCHEDULED PROJECT REVIEW MEETINGS].

5. [Project Review/Break Option]

[DATE AT WHICH THE PROJECT WILL BE REVIEWED].

6. Customer Materials:

[LIST OUT THE CUSTOMER MATERIALS].

7. Customer's Equipment:

[LIST OUT THE CUSTOMER'S EQUIPMENT].

8. Supplier's Equipment:

[LIST OUT THE SUPPLIER'S EQUIPMENT].

9. Timetable:

[SET OUT THE TIMETABLE FOR DELIVERING THE PROJECT].

10. Cancellation of a Project:

[DETAILS OF WHETHER A PROJECT CAN BE CANCELLED FOLLOWING A REVIEW MEETING].

11. Milestones:

[SET OUT ANY MILESTONES FOR THE PROJECT].

12. Deliverables:

[SET OUT ANY DELIVERABLES FOR THE PROJECT].

13. SoW Charges:

[FIXED COSTS / TIME AND MATERIALS RATES – if different from Reference Charges]

These prices are exclusive of VAT.

14. Special Conditions:

[ANY SPECIAL CONDITIONS OR VARIATION TO THE FRAMEWORK AGREEMENT MADE HERE INCLUDING IP ASSIGNMENT AND ACCEPTANCE AND TESTING]