BIT ZESTY LIMITED

GENERAL TERMS AND CONDITIONS

1.   **INTERPRETATION**

1.1   In these general terms and conditions ("**Conditions**"), the following definitions apply:

Advance: the advance payment of the Charges set out in the Proposal;

Agile Process: defined in the Proposal which sets out Bit Zesty's version of the Agile development processes and methodology to be followed by Bit Zesty and the Customer in relation to Development Services;

Applicable Data Protection Laws: (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer is subject which relates to the protection of personal data;

Applicable Laws: (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom; and (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer is subject;

Bit Zesty: Bit Zesty Limited (Company No: 6883289) whose registered office is at 5 Technology Park Colindeep Lane, Colindale, London, England, NW9 6BX;

Bit Zesty Materials: all and any materials, data or information of any kind (including software) used by Bit Zesty in performing the Services (excluding the Work Product);

Business Day: a day (other than a Saturday, Sunday or public holiday in England);

Charges: the charges for the Services set out in or calculated in accordance with the Proposal (or as otherwise agreed in writing by the parties) payable by the Customer in accordance with clause7;

Commencement Date: as set out in the Proposal;

Commissioner, **controller**, **data subject**, **personal data**, **personal data breach**, **processor** and **processing**, shall have the meaning given to them in the UK GDPR, and **supervisory authority** shall have the meaning given to it in the EU GDPR;

Contract: the contract between Bit Zesty and the Customer for the supply of Services formed in accordance with these Conditions, which shall consist of the Proposal and these Conditions (together with any other documents referred to in these Conditions);

Customer: the person or firm named in the Proposal who purchases Services from Bit Zesty;

Customer Materials: any materials, data or information of any kind (including software) provided by the Customer to Bit Zesty for the purposes of this Contract;

Customer Personal Data: any personal data which Bit Zesty processes in connection with the Contract as a processor on behalf of the Customer;

Development Services: any Services which consist of software development where the Work Product consists of one or more software or web applications;

DPA 2018: the Data Protection Act 2018 (and regulations made thereunder);

End Date: as set out in, or calculated in accordance with the Proposal;

EU GDPR: the General Data Protection Regulation (*(EU) 2016/679*);

Features: as defined in the Agile Process;

Intellectual Property Rights: all patents, rights to inventions, copyright and related rights, trademarks, rights in designs, rights in computer software, database right, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Iteration: as defined in the Agile Process;

Monthly Allocation: as set out in the Proposal;

Other Services: any Services other than Development Services or Support Services;

Proposal: Bit Zesty's written proposal to the Customer for the Charges and scope of the Services to be provided under this Contract;

Representative: the person named in the Proposal (or as otherwise notified to the other party in accordance

with Clause 3);

Scheduled Start Date: means the date on which Development Services are scheduled to commence, as set out in the Proposal;

Services: the services to be supplied to the Customer by Bit Zesty as specified in a Proposal;

Supported Software: the software which is to be supported as part of the Support Services, which is specified in the Proposal (or otherwise agreed in writing by the parties);

Support Hours: as defined in the Proposal;

Support Services: any Services which consist of the support of the Supported Software;

Third Party Materials: Any code, software, materials or assets not created by Bit Zesty

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(a)) of the DPA 2018;

User Stories: as defined in the Agile Process;

Work Product: means (i) in relation to the Development Services, the Features produced through the Iterations and released by Bit Zesty to the Customer (ii) in relation to any other Services, the materials, software or other deliverables produced by Bit Zesty for, and released by Bit Zesty to, the Customer as part of the Services.

1.2   In these Conditions, the following rules apply:

(a)   a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b)   a reference to a party includes its successors or permitted assigns;

(c)   any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(d)   a reference to **writing** or **written** includes faxes and e-mails.

2.   BASIS OF CONTRACT

2.1   By signing and dating a Proposal the Customer offers to purchase the Services from Bit Zesty in accordance with the Contract. Bit Zesty shall only be deemed to have accepted such offer by countersigning and dating the Proposal at which point and on which date the Contract shall come into existence. Each separate Proposal signed and dated by both parties shall constitute a separate Contract.

2.2   The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Bit Zesty which is not set out in the Contract. Nothing in this clause shall exclude or limit any liability for fraud or fraudulent misstatement.

2.3   These Conditions (and the documents referred to in these Conditions) apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4   Any Proposal issued or given by Bit Zesty shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue, after which date it shall lapse (unless otherwise agreed with Bit Zesty).

3.   Representatives

3.1   Each party shall nominate a Representative who shall have responsibility for managing the relationship with the other party under this Contract. Each party shall notify the other party in writing of any change in the identity or contact details of their Representative. All formal dealings in relation to the Services will be primarily between the Representatives. The Customer shall ensure that its Representative is available on a full time basis at all times during the Contract and, if they are absent for more than two working days at any one time during the Contract, the Customer must notify Bit Zesty of their temporary replacement. The Representatives shall attend such meetings (including by telephone) as are necessary for the proper performance of the Contract.

4.   Supply of Services

4.1   Bit Zesty shall supply the Services to the Customer in accordance with the Contract.

4.2 Bit Zesty shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3 Bit Zesty shall have the right to make any changes to the Services which do not materially affect the nature or quality of the Services.

4.4 Bit Zesty warrants to the Customer that the Services will be provided using reasonable care and skill. Bit Zesty is relying on information from the Customer for the delivery of the Services and does not warrant that the Work Product will fulfil the Customer's requirements whether discussed with Bit Zesty or not. Customer is responsible and liable for its use of the Work Product. The Customer acknowledges that the Work Product actually produced and released by Bit Zesty to the Customer as part of the Development Services is dependent on the Agile Process and cannot be identified in the Contract, Proposal or any other document or materials produced by Bit Zesty.

4.5 Without prejudice to the generality of this clause 4 where the Services consist of Development Services:

(a) the Development Services shall be supplied in accordance with the Agile Process and the parties shall follow the procedures set out in the Agile Process;

(b) it is a condition of the Contract that the Customer undertakes the testing, attends the Iteration meetings, provides the feedback and performs such other obligations required by Bit Zesty in accordance with and as set out in the Agile Process. Any failure or delay in doing so may, without limitation, result in delays in the provision of the Services and, where such delay is significant (in the reasonable opinion of Bit Zesty) may lead to a suspension of the Services due to a reallocation of resources by Bit Zesty;

(c) any timetable for the provision of the Development Services by Bit Zesty set out in the Proposal is an estimate only and is not binding on Bit Zesty;

(d) if the Customer wishes Bit Zesty to specifically reserve resources for the Development Services it may do so if set out in the Proposal, subject to payment of the Advance. No resources will be specifically reserved by Bit Zesty for the Services unless and until an Advance is paid;

(e) software Work Product produced as part of the Development Services will not be supported by Bit Zesty unless the Customer has entered into a Contract for Support Services.

4.6 Without prejudice to the generality of this clause 4, where the Services consist of Support Services:

(a) the Support Services shall be supplied in relation to the Supported Software;

(b) the Support Services shall be subject to a Monthly Allocation. If in any month, the Customer does not use all its Monthly Allocation, the Customer may roll over the unused hours into the next month (but no further) up to a maximum of 50% of the Monthly Allocation. No refunds of Charges shall be made for unused hours from the Monthly Allocation. Bit Zesty shall not be required to provide Support Services in excess of the Monthly Allocation unless the parties agree in writing (in which case, additional Charges shall apply as agreed with Bit Zesty in writing);

(c) support for the Supported Software consists of technical support for the Supported Software and remote diagnosis of faults within the Support Hours. Bit Zesty shall use its reasonable endeavours to comply with the response times set out in the Proposal within Support Hours and will use reasonable endeavours to fix faults and errors in the Supported Software. No representation or warranty is given by Bit Zesty that faults or errors will be fixed or will be fixed within a specified period of time;

(d) no Support Services will be provided outside of Support Hours. Bit Zesty is not required to provide any Support Services at the Customer's premises. All notifications of faults and errors in the Supported Software must be made by the Customer to the Bit Zesty email address;

(e) the Customer shall provide Bit Zesty and its support staff and all other persons duly authorised by Bit Zesty with full, safe and uninterrupted access including remote access to the Supported Software as may reasonably be required for the purpose of performing the Support Services, such access to be within the Support Hours;

(f) Bit Zesty shall have no obligation to provide the Support Services where faults arise from:

(i) misuse, incorrect use of or damage to the Supported Software; or

(ii) failure to maintain the necessary environmental conditions for use of the Supported Software; or

(iii) any modifications or amendments to the Supported Software made by any person other than Bit Zesty;

(iv)   use of the Supported Software in combination with any equipment or software not recommended by Bit Zesty, or any fault in any such equipment or software; or

(v)   any failure by the Customer to implement any patch, fix or upgrade to the Supported Software recommended by Bit Zesty (including any upgrade to Ruby on Rails or similar);

(vi)   any breach of the Customer's obligations under this Contract.

(g)   if the Supported Software has not been developed by Bit Zesty:

(i)   Bit Zesty may require a period prior to the provision of the Support Services to familiarise itself with the Supported Software and Charges shall be payable for such period in addition to Charges for the Support Services. Such period and Charges shall be set out in the Proposal;

(ii)   Customer shall ensure that Bit Zesty has all necessary rights to enable it to perform the Support Services without infringing any third party Intellectual Property Rights, any confidentiality obligations or any contractual obligations or restrictions (including those contained in the licences governing the use of the Supported Software).

4.7   Without prejudice to the generality of this clause 4, where the Services consist of Other Services:

(a)   the Customer shall provide such additional information, assistance and access to Customer Materials as set out in the Proposal (or as otherwise agreed between the parties in writing);

(b)   if the Proposal includes hosting services, the provision of such hosting services shall be subject to the terms and conditions of the hosting provider (in particular, in relation to availability, downtime and maintenance) and Bit Zesty shall not be liable for any act or default of the hosting provider;

(c)   if the Proposal includes system administration services the Customer shall give Bit Zesty all necessary access rights (including passwords) necessary for Bit Zesty to provide such Services.

5.   Customer's obligations

5.1   The Customer shall:

(a)   ensure that the information set out in the Proposal relating to the Services required by the Customer is complete and accurate;

(b)   co-operate with Bit Zesty in all matters relating to the Services;

(c)   provide Bit Zesty with such cooperation, assistance, complete and accurate information, access to premises and personnel, facilities and materials, including Customer Materials, as Bit Zesty shall reasonably require in order to supply the Services (including as set out in the Proposal).

5.2   Bit Zesty shall have no liability or responsibility for any failure to perform or delay in performing its obligations under this Contract if and to the extent caused by any act or omission by the Customer or failure by the Customer to perform any relevant obligation and Bit Zesty shall notify the Customer in writing in such instances.

6.   Warranties

6.1   Bit Zesty warrants that to the best of its knowledge and belief that the Work Product as at the date that it is first delivered to the Customer by Bit Zesty (excluding the Customer Materials and Third Party Materials) will not infringe the Intellectual Property Rights of any third party. Bit Zesty gives no warranty of any type in relation to the Customer Materials.

6.2   The Customer warrants that all Customer Materials (and, where the Services include hosting services, all and any content or data hosted as part of those Services) will not infringe any Intellectual Property Rights of third parties, constitute unlawful or illegal activity, consist of or include illegal, offensive, discriminatory, abusive, indecent, defamatory, obscene or menacing material or any material which is in breach of duties of confidence, privacy or any other right or is otherwise damaging to third parties. The Customer indemnifies Bit Zesty and shall keep Bit Zesty indemnified against all and any claims, actions, liabilities, losses or damages that Bit Zesty may suffer as a result of a breach of these warranties including reasonable legal fees and any sum paid out as a result of these alleged circumstances. Bit Zesty advises the Customer to carry out a full audit of such Customer Materials, content or data before publishing, using, distributing, broadcasting or making it or them available.

6.3   In relation to Development Services, Bit Zesty warrants that the Features shall materially provide the functionality required by their applicable User Stories. Bit Zesty does not warrant, undertake or guarantee in any way that the Work Product or Features will be bug or error-free, only that the Features developed during any Iteration have been developed and tested in accordance with the Agile Process once released to the Customer. If any bugs or errors are found in any Feature at or following the end of an Iteration, the Customer must track those bugs and errors in accordance with the Agile Process and work to remedy such bugs and errors will be the subject of a separate Iteration

and is fully chargeable by Bit Zesty in accordance with the Contract and the rates set out in the Proposal.

6.4 Where the Work Product incorporates Customer Materials, Bit Zesty has no liability or responsibility for any defects (including any bugs or errors) in such Customer Materials.

7. Charges and payment

7.1 The Charges for the Services shall be as set out in the Proposal (or as otherwise agreed in writing by the parties). The Charges may be a fixed fee or calculated on a time and materials basis in accordance with Bit Zesty's fee rates, as set out in the Proposal (or as otherwise supplied in writing by Bit Zesty). Where Charges are calculated on a time and materials basis, any estimates given in the Proposal are not binding on Bit Zesty and Bit Zesty may charge in full for the time taken to provide the Services.

7.2 Bit Zesty shall be entitled to charge the Customer for any travel or subsistence expenses reasonably incurred by the individuals whom Bit Zesty engages in connection with the Services and for the cost of services provided by third parties and required by Bit Zesty for the performance of the Services, and for the cost of any materials (including Third Party Materials). Bit Zesty may invoice the Customer for such expenses or costs at any time.

7.3 Where Charges are on a time and materials basis in relation to Development Services, Bit Zesty shall invoice the Customer in advance on the basis of the schedule and any estimate provided by Bit Zesty in the Proposal (or as otherwise agreed by the parties in writing). Amounts invoiced in advance shall be reconciled against actual time taken by Bit Zesty from time to time and Bit Zesty shall adjust future invoices, issue credit notes or further invoices as applicable in relation to such Charges.

7.4 Where the Proposal includes an Advance to be payable by the Customer, the Advance shall be invoiced on the Commencement Date in addition to the Charges and shall be credited against the Charges to be invoiced by Bit Zesty after the Cancellation Period has expired (subject to clause 7.7). Specific resources shall not be reserved for the Services by Bit Zesty unless and until the Advance is paid.

7.5 Where any Charges are on a fixed fee basis, Bit Zesty shall invoice such Charges in advance on the basis of the schedule set out in the Proposal (or as otherwise agreed by the parties in writing). Any changes to the scope of the Services shall result in additional Charges as specified by Bit Zesty.

7.6 Charges in relation to Support Services shall be invoiced monthly. Bit Zesty may increase the Charges for Support Services annually (to take effect on the anniversary of the Commencement Date) on giving the Customer at least 30 days' prior notice in writing.

7.7 If the Customer cancels the Services or terminates a Contract in accordance with Clause 11.4, no refunds shall be given by Bit Zesty in relation to any Charges paid. In addition, Bit Zesty may retain all or part of any Advance paid by the Customer in accordance with clause 7.4 and/or may invoice the Customer for any costs or fees incurred by Bit Zesty in performing the Services which have not already been invoiced by Bit Zesty.

7.8 The Customer shall pay each invoice submitted by Bit Zesty in full and in cleared funds to a bank account nominated in writing by Bit Zesty within 14 days of the date of the invoice. Invoices may not be disputed more than 14 days after they are issued. No Services shall be provided unless and until payment of the Charges has been received by the due date for payment. Time is of the essence for payment of any sum under this Agreement.

7.9 All amounts payable by the Customer under the Contract are exclusive of VAT.

7.10 Without limiting any other right or remedy of Bit Zesty if the Customer fails to make any payment due to Bit Zesty under the Contract by the due date for payment:

(a) Bit Zesty may immediately suspend provision of the Services; and/or

(b) If Bit Zesty has reallocated its resources, any timetable for provision of Services set out in the Proposal shall no longer apply and the parties shall meet to agree a separate timetable; and/or

(c) Bit Zesty shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current base rate of the Bank of England accruing on a daily basis from the due date for payment until the date of actual payment of the overdue amount, whether before or after judgment.

7.11 All payments by the Customer shall be made in full without any deduction or withholding except as required by law. The Customer shall not be entitled to assert any credit, set-off or counterclaim against Bit Zesty.

8. Intellectual property rights

8.1   Save as expressly set out in this clause 8, all Intellectual Property Rights in or arising out of or in connection with the Services (including all Bit Zesty Materials and the Work Product) shall be owned by Bit Zesty (or its third party licensors):

8.2   Subject to and with effect from the date of receipt in full by Bit Zesty of the Charges and any other payments due under this Agreement in respect of the Work Product and subject to the other provisions of this Clause 8, Bit Zesty assigns to the Customer all copyright and database right in the Work Product. The Customer hereby grants to Bit Zesty a royalty-free, perpetual, irrevocable non-exclusive right to use and reuse elements of the Work Product for (or incorporate such elements into) software or deliverables for other customers, provided that Bit Zesty will not be able to use, reuse or incorporate any elements which include or consist of Customer Materials.

8.3   The assignment of copyright and database right in the Work Product set out in Clause 8.2 is given on the basis that the Customer will use the Work Product for the purpose of operating and maintaining the Work Product for the purposes of its own business.

8.4   Unless prohibited by any licence or other agreement governing the licence to or use of any Open Source Software or Third Party Materials and subject strictly to the provisions of clause 8.5, with effect from the date of the assignment set out in Clause 8.2:

(a)   the Customer may use the Work Product for any additional purpose it sees fit in the conduct of your its business including (but not limited to) modifying, developing, reverse engineering or re-writing the Work Product developed for the Customer or incorporating such Work Product in other derivative works or using it to create other derivative works;

(b)   the Customer may license the Work Product to a third party;

(c)   the Customer may assign the copyright and database rights in the Work Product to a third party;

8.5   In the event that the Customer exercises any of the rights set out in Clause 8.4:

(a)   The Customer is solely responsible for any breach of any licence for Open Source Software or Third Party Materials arising out of its exercise of these rights and the Customer hereby indemnifies and will keep Bit Zesty indemnified against any claims, losses, liabilities, damages, costs (including reasonable legal costs) arising out of any such breach;

(b)   Bit Zesty gives no warranty at all to the Customer or any third party in relation to the Customer's or any third party's use of the Work Product and all warranties and indemnities given by Bit Zesty in this Agreement shall cease to have effect and are hereby withdrawn immediately on the first exercise by the Customer of any of these rights;

(c)   Exercise of such rights is entirely at the Customer's own risk.

8.6   All Intellectual Property Rights in the Third Party Materials shall remain vested in the owners of the Intellectual Property Rights in the Third Party Materials. Clause 8.2 shall not operate as a licence or assignment of the Intellectual Property Rights in the Third Party Materials. Subject to and with effect from the date of receipt in full by Bit Zesty of the Charges and any other payments due under this Agreement in respect of the Work Product, Bit Zesty shall procure the grant to the Customer of a non-exclusive licence to use such Third Party Materials in accordance with the standard licence terms of the proprietor of such Third Party Materials. The Customer will be responsible for paying the applicable licence fee and for complying with the licence terms applicable to such Third Party Materials.

8.7   All Intellectual Property Rights in the Customer Materials shall remain vested in the Customer. The Customer hereby grant to Bit Zesty, or shall procure the grant to Bit Zesty by the relevant third party licensor of, a non-exclusive licence to use the Customer Materials for the purpose of the provision of the Services, including the development of the Work Product.

8.8   For the purposes of this Contract, where the Work Product consists of software, such Work Product refers to software in source code or object code form, as notified by Bit Zesty to the Customer.

8.9   The Customer grants to Bit Zesty the right to use the Customer's name and logo on the Bit Zesty website within showreels or other promotional materials for the purposes of promotion of Bit Zesty's services. The Customer further permits Bit Zesty the right to demonstrate any Work Product to prospective clients or customers of Bit Zesty, provided that such demonstration does not happen before first commercial launch of such Work Product by the Customer and provided that such demonstration does not disclose any confidential information of the Customer.

9.   **Confidentiality**

9.1   A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or

its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. Bit Zesty Materials and all original ideas, concepts and proposals provided to the Customer by Bit Zesty during a Contract are the confidential information of Bit Zesty. This clause 9 shall survive termination or expiry of the Contract.

10. Limitation of liability

10.1 Nothing in these Conditions shall limit or exclude Bit Zesty's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation; or

(c) any other matter, the liability for which cannot be excluded or limited as a matter of law.

10.2 Subject to clause 10.1:

(a) Bit Zesty shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(b) Bit Zesty's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed two times the Charges.

10.3 Except as expressly set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.4 This clause 10 shall survive termination or expiry of the Contract.

11. Term and Termination

11.1 Each Contract shall commence on the applicable Commencement Date and, subject to earlier termination in accordance with this clause 11, shall continue until the End Date.

11.2 The Customer may:

(a) except where the Contract is for Support Services, terminate the Contract on 7 days' prior written notice to Bit Zesty within one month of the date on which the Development Services or Other Services (as the case may be) have actually commenced; or

(b) where the Contract is for Development Services only, cancel the provision of the Development Services prior to the Scheduled Start Date and terminate the Contract immediately on notice in writing to Bit Zesty in which case:

(i) if the Contract is cancelled less than one month prior to the Scheduled Start Date, Bit Zesty shall be entitled to retain the Advance; or

(ii) if the Contract is cancelled between one and two months prior to the Scheduled Start Date, Bit Zesty shall be entitled to retain half the Advance, and shall return the other half to the Customer (subject to Clause 11.4); or

(iii) if the Contract is cancelled more than two months prior to the Scheduled Start Date, Bit Zesty shall return the Advance to the Customer,

provided that, in each case, it has paid in full all Charges up to the date of cancellation or termination (and any further costs and fees incurred by Bit Zesty in the provision of the Services which have not been invoiced at the date of cancellation or termination). Where an Advance has been paid and all or a proportion of such Advance is due to be returned to the Customer under this Clause, Bit Zesty may deduct any outstanding Charges or other costs and fees which have not been invoiced at the date of cancellation or termination from any amount of the Advance due to be returned to the Customer.

11.3 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach; or

(b) the other party has a receiver, administrator or administrative receiver appointed over all or a substantial part of its assets, or is the subject of any petition for winding up or issues any notice in connection with the passing of any resolution by its shareholders for its winding-up or is otherwise

the subject of proceedings for bankruptcy or enters into a voluntary arrangement or is otherwise unable to pay its debts as they fall due, or ceases trading or if any events or circumstances occur which are analogous to the foregoing in another jurisdiction.

11.4 Without limiting its other rights or remedies, Bit Zesty may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

12. Consequences of termination

12.1 On expiry or termination of a Contract for any reason:

(a) the Customer shall return all Bit Zesty Materials together with any Work Product which has not been fully paid for;

(b) Bit Zesty shall return all Customer Materials and the Work Product which has been fully paid for;

(c) the licence set out in clause 8.7 shall immediately terminate;

(d) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(e) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. Restrictions

13.1 Customer undertakes to Bit Zesty that it shall not during the term of the Contract and for the period of 6 months thereafter, entice or solicit the employment or engagement of, or engage or employ, any person who was an employee or consultant or otherwise engaged by Bit Zesty in connection with the Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of Bit Zesty's staff or independent contractors.. If the Customer breaches this clause 13.1 that Customer shall, without limitation, pay to Bit Zesty on demand a sum equal to six months' basic salary or the fee that was payable by Bit Zesty to that employee, worker or independent contractor for a six month period plus Bit Zesty's recruitment costs in replacing such person.

14. Data Protection

14.1 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This paragraph 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

14.2 The parties have determined that, for the purposes of Applicable Data Protection Laws Bit Zesty is the processor and the Customer is the controller, in respect of the Customer Personal Data Customer.

14.3 Should the determination in Clause 14.2 change, then each party shall work together in good faith to make any changes which are necessary to this Clause 14 and/or the related Schedule.

14.4 In relation to the Customer Personal Data, The Schedule to these Conditions sets out the scope, nature and purpose of processing by Bit Zesty, the duration of the processing and the types of personal data and categories of data subject.

14.5 Without prejudice to the generality of paragraph 14.1 Bit Zesty shall, in relation to Customer Personal Data:

(a) process that Customer Personal Data to the extent, and in such manner, as is necessary for the purposes of the provision of its Services under the Contract and on the documented instructions of the Customer unless Bit Zesty is required by Applicable Laws to otherwise process the Customer Personal Data. Where Bit Zesty is relying on Applicable Laws as the basis for processing Customer Personal Data, Bit Zesty shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Bit Zesty from so notifying the Customer on important grounds of public interest. Bit Zesty shall immediately inform the Customer if, in the opinion of Bit Zesty, the instructions of the Customer infringe Applicable Data Protection Laws;

(b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against its accidental loss, damage or destruction, including inter alia as appropriate:

(i)   the pseudonymisation and encryption of Customer Personal Data;

(ii)   the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

(iii)   the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and

(iv)   a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

In assessing the appropriate level of security Bit Zesty shall take into account the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Personal Data transmitted, stored or otherwise processed.

(c)   ensure, and procure, that any personnel engaged and authorised by Bit Zesty to process Customer Personal Data keeps the Customer Personal Data confidential;

(d)   reasonably assist the Customer with meeting the Customer's compliance obligations under the Applicable Data Protection Laws, taking into account the nature of Bit Zesty's processing and the information available to Bit Zesty, in relation to data subject rights, data protection impact assessments and reporting to and consulting with the commissioner and/or supervisory authorities (as appropriate) under the Applicable Data Protection Laws;

(e)   notify the Customer without undue delay (and no later than 24 hours) after becoming aware of a personal data breach;

(f)   at the written direction of the Customer, delete or return the Customer Personal Data on termination or expiry of the Contract or at such earlier date as the Customer may direct, unless Bit Zesty is required by Applicable Law to continue to process that Customer Personal Data, in which case Bit Zesty shall promptly notify the Customer, in writing, of what that Applicable Law is and shall only be permitted to process that Customer Personal Data for the specific purpose so-notified, and all other requirements set out in this Clause 14 shall continue to apply to such Customer Personal Data notwithstanding the termination or expiry of the Contract for as long as such Customer Personal Data is processed by Bit Zesty. For the purposes of this Clause 14.5(f), the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and

(g)   maintain accurate and up-to-date records regarding the processing of the Customer Personal Data carried out by Bit Zesty and, on the Customer's written request (having been given reasonable prior notice, not less than 30 days) make available such records to demonstrate its compliance with Applicable Data Protection laws and this paragraph 14.5;

(h)   permit the Customer and its authorised third party representatives to audit Bit Zesty's compliance with Applicable Data Protection Laws and this paragraph 14. Such audits shall be conducted no more than once per calendar year and on not less than 30 days' prior written notice, during regular business hours, and in a manner that does not unreasonably interfere with Bit Zesty's normal business operations. The Customer shall bear all costs and expenses incurred in connection with such audits, including any fees charged by auditors appointed by the Customer. To the extent that any audit reveals any material non-compliance by Bit Zesty, Bit Zesty shall promptly remedy such non-compliance at its own expense.

14.6   Bit Zesty is authorised by the Customer to appoint sub-processors in accordance with this Clause and the Applicable Data Protection Laws. Bit Zesty may continue to use those sub-processors already engaged as at the date of the Contract, subject to Bit Zesty complying with the obligations of this Clause and complying with the Applicable Data Protection Laws: Bit Zesty shall:

(a)   notify the Customer of the appointment of any new sub-processor and the Customer is entitled to object to such appointment within 7 days of receipt of notice from Bit Zesty;

(b)   ensure that the sub-processor executes a contract that contains terms which offer substantially the same level of protection as those set out in the Contract,

(c)   ensure that the sub-processor does not process Customer Personal Data except on the instructions of the Customer (which shall be conveyed to the sub-processor by Bit Zesty); and

(d)   where such sub-processor fails to fulfil its obligations under its contract with Bit Zesty (referred to in Clause 14.6(b) above), remain fully liable to the Customer for the sub-processor's performance of its contractual obligations.

The Customer acknowledges that any objection to the appointment of a new sub-processor may affect Bit Zesty's ability to provide its services under the Contract, and Bit Zesty shall not be liable for any failure to provide, or delay in providing, its services under the Contract if and to the extent that such failure or delay resulted from its inability to use such sub-processor to provide such services as a result of the Customer's objection.

14.7 Bit Zesty shall not, without the prior written consent of the Customer transfer or otherwise process Customer Personal Data outside the UK or European Economic Area (**EEA**). Where such consent is granted, Bit Zesty may only process the Customer Personal Data outside the UK or EEA under the following conditions:

(a) Bit Zesty is processing the Customer Personal Data in a territory which is subject to adequacy regulations under the Applicable Data Protection Laws that the territory provides adequate protection for the privacy rights of individuals. Bit Zesty must identify to the Customer the territory that is subject to such adequacy regulations;

(b) If Clause 14.7(a) does not apply, Bit Zesty participates in a valid cross-border transfer mechanism under the Applicable Data Protection Laws, so that Bit Zesty (and, where appropriate, the Customer) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the UK GDPR or EU GDPR (as applicable); or

(c) The transfer otherwise complies with the Applicable Data Protection Laws.

15. General

15.1 <u>Force majeure</u>: If either party is affected by any circumstances beyond our reasonable control (including any war or military action, terrorism, sanction, strike, fire or natural disaster ("**Force Majeure Event**") it shall forthwith notify the other party. Neither party shall be liable to the other for delay in performance, or non-performance of any of its obligations under this Contract due to any Force Majeure Event of which it has notified the other and the time for performance of that obligation shall be extended accordingly.

15.2 <u>Assignment and subcontracting</u>: Neither party may at any time assign, transfer, charge or deal in any other manner with all or any of its rights under the Contract without the written consent of the other party. Bit Zesty may subcontract its obligations under this Contract.

15.3 <u>Notices</u>:
(a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, to its address set out in the Proposal (or as otherwise notified in writing), sent by fax to its fax number given in the Proposal (or as otherwise notified in writing) or sent by email to its email address set out in the Proposal (or as otherwise notified in writing).

(b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the date and time of transmission (subject to a satisfactory transmission report) or if sent by email, on the date and time it is sent (subject to any error message or bounce back). If any fax or email is sent on a day which is not a Business Day (or after 5.00pm (local time) on any Business Day) then it shall be deemed to have been received at 9.00am on the next following Business Day.

(c) Email and fax may not be used for the service of any proceedings or other documents in any legal action.

15.4 <u>Waiver</u>: A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

15.5 <u>Severance</u>: If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.6 <u>No partnership</u>: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

15.7 <u>Third parties</u>: A person who is not a party to the Contract shall not have any rights under or in connection with it.

15.8 <u>Variation</u>: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by Bit Zesty.

15.9 <u>Governing law and Jurisdiction</u>: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

SCHEDULE

Details of the processing and the Customer Personal Data

1.1   **Nature and Purpose of processing:** Bit Zesty shall process the Customer Personal Data only insofar as is necessary to perform its Services under the Contract and as further instructed by the Customer from time to time. Such processing shall be in the context of (i) the provision of any support and maintenance services in respect of software applications/databases where Bit Zesty is responsible for hosting such software applications/databases, or where Bit Zesty is not responsible for hosting but has administrative access to such software applications/databases which necessarily permits access to Customer Personal Data (ii) the provision of software development services to the Customer which may permit access to Customer Personal Data. Where Bit Zesty is not responsible for hosting any software application/database, the processing of Customer Personal Data by Bit Zesty is an incidental part of the provision of its services.

1.2   **Duration of the processing:** subject to earlier return or deletion of Customer Personal Data in accordance with the provisions of the Contract, Bit Zesty will process Customer Personal Data for the duration of the Contract, unless otherwise agreed in writing.

2.   **Types of Personal Data:** Customer Personal Data is determined and controlled by the Customer and may include the following types of personal data:

First and last name

Title

Position

Employer

Contact information

ID data

Professional, personal or location data

3.   **Categories of Data Subject:** Customer Personal Data is determined and controlled by the Customer and may include the following categories of data subject:

Prospects, customers, business partners and suppliers of the Customer

Employees or contact persons of the Customer's prospects, customers, business partners and suppliers

Employees, agents, advisors, contractors of the Customer

Users of websites, or software applications developed, supported or maintained by Bit Zesty for the Customer under the Contract