

**DATED [DATE]**

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**SERVICES AGREEMENT**

between

**FIVIUM LIMITED**

and

**[CUSTOMER]**

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## 1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in these terms and conditions.

### 1.1 Definitions:

**Contract:** the Customer's purchase order and Fivium's acceptance of it under condition Effect of purchase order.

**Customer:** the person, government department, agency or company who purchases Services from Fivium.

**Customer's Project Manager:** the Customer's manager for the Project appointed in accordance with condition co-operate with Fivium in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project;.

**Deliverables:** all products and materials developed by Fivium in relation to the Project in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation 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.

**Pre-existing Materials:** materials which existed before the commencement of the Project.

**Project:** the project as described in the Project Plan.

**Project Milestone:** a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.

**Project Plan:** the detailed plan describing the Project and setting out the estimated timetable (including without limitation Project Milestones) and responsibilities for the provision of the Services by Fivium in accordance with the Contract.

**Services:** the services to be provided by Fivium under the Contract.

**Fivium Project Manager:** Fivium's manager for the Project, appointed in accordance with condition Fivium shall appoint a Project Manager who shall have authority to contractually bind Fivium on all matters relating to the Project. Fivium shall use reasonable endeavours to ensure that the same person acts as Supplier's Project

Manager throughout the Project, but may replace him from time to time where reasonably necessary in the interests of Fivium's business..

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 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 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes faxes and email.
- 1.9 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.

## **2. APPLICATION OF CONDITIONS**

- 2.1 These conditions shall:
  - (a) apply to and be incorporated in the Contract; and
  - (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Fivium unless in writing and signed by a duly authorised representative of Fivium.

## **3. EFFECT OF PURCHASE ORDER**

The Customer's purchase order constitutes an offer by the Customer to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by Fivium, or Fivium's commencement or execution of work pursuant to the purchase order, shall establish a

contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

#### **4. SUPPLIER'S OBLIGATIONS**

- 4.1 Fivium shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Project Plan.
- 4.2 Fivium shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 4.3 Fivium shall appoint a Project Manager who shall have authority to contractually bind Fivium on all matters relating to the Project. Fivium shall use reasonable endeavours to ensure that the same person acts as Supplier's Project Manager throughout the Project, but may replace him from time to time where reasonably necessary in the interests of Fivium's business.

#### **5. CUSTOMER'S OBLIGATIONS**

- 5.1 The Customer shall:
  - (a) co-operate with Fivium in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project;
  - (b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by Fivium;
  - (c) provide in a timely manner such information as Fivium may request, and ensure that such information is accurate in all material respects; and
  - (d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.
- 5.2 If Fivium's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to Fivium on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Fivium confirming such costs, charges and losses to the Customer in writing.
- 5.3 The Customer shall not, without the prior written consent of Fivium, at any time from the date of the Contract to the expiry of six months after the completion of the Services,

solicit or entice away from Fivium or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Fivium.

- 5.4 Any consent given by Fivium in accordance with condition The Customer shall not, without the prior written consent of Fivium, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from Fivium or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Fivium. shall be subject to the Customer paying to Fivium a sum equivalent to 20% of the then current annual remuneration of Fivium's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

## **6. CHANGE CONTROL**

- 6.1 The Customer's Project Manager and Fivium's Project Manager shall meet at least once every month to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 6.2 If either party requests a change to the scope or execution of the Services, Fivium shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
  - (b) any variations to Fivium's charges arising from the change;
  - (c) the likely effect of the change on the Project Plan; and
  - (d) any other impact of the change on the terms of the Contract.
- 6.3 If Fivium requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 6.4 If the Customer wishes Fivium to proceed with the change, Fivium has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

## **7. CHARGES AND PAYMENT**

- 7.1 Condition Where the Services are provided on a time-and-materials basis: shall apply if the Services are to be provided on a time-and-materials basis. condition Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Project Plan. The total price shall be paid to Fivium in instalments as set out in the Project Plan on its achieving the corresponding Project Milestone. All amounts due under this agreement shall be paid by the Customer to Fivium in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). On achieving a Project Milestone, Fivium shall invoice the Customer for the charges that are then payable, together with expenses

and the costs of materials (and VAT, where appropriate), calculated as provided in condition Any fixed price contained in the Project Plan excludes:. and condition Any fixed price contained in the Project Plan excludes: shall apply if the Services are to be provided for a fixed price. The remainder of this condition Charges and payment shall apply in either case.

7.2 Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with Fivium's standard daily fee rates as amended from time to time;
- (b) Fivium's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
- (c) Fivium shall be entitled to charge at an overtime rate of 50% of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition Fivium's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays); on a pro-rata basis;
- (d) Fivium shall ensure that all members of the project team complete time sheets recording time spent on the Project, and Fivium shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition Fivium shall invoice the Customer monthly in arrear for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition Charges and payment.; and
- (e) Fivium shall invoice the Customer monthly in arrear for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition Charges and payment.

7.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Project Plan. The total price shall be paid to Fivium in instalments as set out in the Project Plan on its achieving the corresponding Project Milestone. All amounts due under this agreement shall be paid by the Customer to Fivium in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). On achieving a Project Milestone, Fivium shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition Any fixed price contained in the Project Plan excludes:.

7.4 Any fixed price contained in the Project Plan excludes:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by

third parties required by Fivium for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Fivium; and

(b) VAT, which Fivium shall add to its invoices at the appropriate rate.

7.5 The Customer shall pay each invoice submitted to it by Fivium in full, and in cleared funds, within 30 days of receipt.

7.6 Without prejudice to any other right or remedy that Fivium may have, if the Customer fails to pay Fivium on the due date Fivium may:

(a) charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and

(b) suspend all Services until payment has been made in full.

7.7 Time for payment shall be of the essence of the Contract.

7.8 All payments payable to Fivium under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.9 Fivium may, without prejudice to any other rights it may have, set off any liability of the Customer to Fivium against any liability of Fivium to the Customer.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by Fivium. Fivium hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If Fivium terminates the Contract under condition Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:, this licence will automatically terminate.

8.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on Fivium obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Fivium to license such rights to the Customer.

## **9. CONFIDENTIALITY AND SUPPLIER'S PROPERTY**

9.1 The Customer 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 Customer by Fivium or its agents, and any other confidential information concerning Fivium's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to Fivium, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

- 9.2 All materials, equipment and tools, drawings, specifications and data supplied by Fivium to the Customer shall at all times be and remain the exclusive property of Fivium, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Fivium, and shall not be disposed of or used other than in accordance with Fivium's written instructions or authorisation.
- 9.3 This condition Confidentiality and Supplier's property shall survive termination of the Contract, however arising.

## **10. LIMITATION OF LIABILITY**

- 10.1 The following provisions set out the entire financial liability of Fivium (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of the Contract howsoever arising;
  - (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
  - (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes the liability of Fivium:
- (a) for death or personal injury caused by Fivium's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 10.4 Subject to condition All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. and condition Nothing in these conditions excludes the liability of Fivium::
- (a) Fivium shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

- (i) depletion of goodwill or similar losses; or
  - (ii) loss of anticipated savings; or
  - (iii) loss of contract; or
  - (iv) loss of use; or
  - (v) loss or corruption of data or information; or
  - (vi) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) Fivium's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to £100,000 **OR** the price paid for the Services.

## **11. TERMINATION**

11.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) 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;
- (d) 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) 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 its creditors 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;
- (f) 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 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;

- (g) 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;
  - (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - (j) 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;
  - (k) 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 condition 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; to condition 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; (inclusive);
  - (l) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 11.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 11.3 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

## **12. FORCE MAJEURE**

Fivium shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Fivium or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

### **13. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **14. 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.

### **15. SEVERANCE**

15.1 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.

15.2 If 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.

### **16. ENTIRE AGREEMENT**

16.1 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.

16.2 Each party acknowledges that in entering into this agreement it does not rely on, and 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.

16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

### **17. ASSIGNMENT**

17.1 The Customer shall not, without the prior written consent of Fivium, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

- 17.2 Fivium may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

**18. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**19. THIRD PARTY RIGHTS**

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

**20. NOTICES**

- 20.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or
- (b) sent by email to a director of the company.

- 20.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;
- (c) if sent by email, at 9.00 am on the next Business Day after transmission.

- 20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include email.

**21. GOVERNING LAW**

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

## **22. JURISDICTION**

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