

Support and Maintenance Services Agreement

Reference Number: M-2024-[XX]

This document describes a Software Services, Support and Maintenance Agreement between:

[client name] (company number) of [client address] ("the Client")

AND

Agile Collective Ltd (company number 07889401, VAT number GB 131789989) of 21b Park End Street, Oxford, OX1 1HU ("the Supplier")

This Agreement is entered into on the Effective Date (as described below)

For and on behalf of: [Client]

Name: _____

Signed: _____

Date: _____

For and on behalf of: Agile Collective Ltd

Name:

Signed:

Date:

Signing this form indicates acceptance of the terms and conditions outlined in this Agreement. This Agreement prevails over any conditions issued by the Client.

Particulars

Effective Date	e.g. 01/01/2021
Term	12 months
Allotted Time	e.g. 3 hours per month
Support and Maintenance Fee	e.g. £390 plus VAT per month
Products	[websites]
Servers	[servers]
Payment Method	Direct bank transfer in pounds sterling
Payment Schedule	Quarterly in advance
Other	

Standard Terms and Conditions

1. Definitions

In this Agreement the following words shall have the following meanings:

- 1.1. **Additional Time** means the additional tranches of time which may be purchased by the Client in respect of Support and Maintenance in excess of the Allotted Time.
- 1.2. **Allotted Time** means the maximum total amount of time which may be spent by the Supplier in any month during the Term providing Support and Maintenance unless the Client wishes to purchase Additional Time. The Allotted Time purchased by the Client is as set out above.
- 1.3. **Business Day** Monday to Friday inclusive, excluding Public Holidays in England.
- 1.4. **Business Hours** refers to 9:00 a.m. to 5:00 p.m on Business Days.
- 1.5. **Confidential Information** means all information, in whatever form, of a confidential nature relating to a Party's business, finances, products, services, clients or customer lists.
- 1.6. **Consultancy** means advice and services provided by Supplier to Client relating to work methods or how best to use the Products or as otherwise agreed between the parties from time to time.
- 1.7. **Development** means any development services provided by Supplier to Client under this Agreement including, but not limited to, the development associated with new or altered functionality for Products.
- 1.8. **Feature Requests** means requests from the Client for Development or Consultancy, the process for which is described in Appendix C.
- 1.9. **GPL** means the various versions of the GNU General Public License including the GPL and AGPL.
- 1.10. **Installation Address** refers to the Client address referenced in this Agreement, or any other address(es) in the UK that the Supplier has agreed upon in writing.

- 1.11. **Maintenance** refers to the activities performed by the Supplier with the purpose to keep the Products secure, operational and to correct any bugs in the software that arise during ordinary use as more particularly described in Appendix A.
- 1.12. **Month** means a calendar month (e.g. 1st May to 31st May).
- 1.13. **On-site Support** refers to Support that is provided at the Installation Address.
- 1.14. **Party** means each of the Supplier and the Client, and **Parties** mean both the Supplier and Client together.
- 1.15. **Payment Method** refers to the method of payment made from the Client to the Supplier as detailed in the particulars.
- 1.16. **Products** refers to the websites set out in the particulars above.
- 1.17. **Publicly Available Code** means software source code, database structures, xml schemas, html code or any other code which is generally available to the public on the internet or otherwise.
- 1.18. **Resolution** means either (1) resolving functionality or (2) providing a workaround to enable substantial functionality to be restored
- 1.19. **Resolution Process** refers to the process which the Supplier will use to find a Resolution to the issue requiring Support.
- 1.20. **Response** means the provision of a substantive response to the initial contact from a Client requiring Support.
- 1.21. **Response Time** refers to the length of time within which the Supplier will Respond to requests for Support.
- 1.22. **Servers** means those servers set out in the particulars above.
- 1.23. **Services** means the Maintenance, Support, Development and Consultancy
- 1.24. **Service Levels** means the service levels applicable to the Support, as more particularly described in Appendix B

- 1.25. **Standard Hourly Rate** means the Supplier's prevailing hourly rate for the supply of services.
- 1.26. **Support** refers to reasonable assistance provided by the Supplier to the Client in connection with ordinary and reasonable use of the Products and/or Servers as more particularly described in Appendix B.
- 1.27. **Support and Maintenance Fee** means the fee payable by the Client to the Supplier in consideration of the Support and Maintenance
- 1.28. **Term** means the initial Term together with any Renewal Terms.
- 1.29. **Upgrade** refers to a new release of Drupal or contributed modules.

2. Commencement and Duration

This Agreement shall commence on the Effective Date and shall continue for the Term.

Thereafter the Agreement shall automatically renew for further periods of 12 months (each a “Renewal Term”) unless either party terminates this agreement according to clause 7 “Termination of the Agreement”.

3. Services

- 3.1. Each month during the Term the Supplier shall, subject to the payment of the applicable Support and Maintenance Fees by the Client, spend up to the Allotted Time in providing the Support and Maintenance to the Client in accordance with the terms and conditions of this Agreement and using reasonable care and skill.
- 3.2. The Supplier shall use reasonable endeavours to provide the Support in accordance with the Service Levels.
- 3.3. If the time required in the provision of Support and Maintenance looks likely to exceed the Allotted Hours the Supplier shall notify the Client and the Client may purchase Additional Time at the Standard Hourly Rate. If the Client does not purchase

Additional Time the Supplier shall be under no obligation to provide further Support and Maintenance where such provision would exceed the Allotted Time.

- 3.4. Any unused Allotted Time or Additional Time in any month during the Term may be rolled over to the next month but may not be rolled over to any subsequent month.
- 3.5. Any unused Allotted Time or Additional Time at the end of the Term shall expire and shall not be refunded or otherwise credited.
- 3.6. The Supplier will provide the Client with monthly updates of the amount of Allotted Time used in the preceding month.
- 3.7. The Allotted Time will be shared amongst all Products and Servers. The Client may, at reasonable intervals, override the default use of the Allotted Time and can specify how the hours are used, provided that all tasks requested fall under the terms of this Agreement. This can be done via the ticketing system directly or via email or phone and will then be applied to the tickets.
- 3.8. Support and Maintenance are provided remotely by telephone or email or the ticketing systems. In the event that the Client requires On-site Support this may be provided at an additional cost in accordance with the Supplier's Standard Hourly Rate. Time spent travelling will be chargeable at 25% of the Supplier's Standard Hourly Rate on a pro rata basis. Reasonable travelling expenses are charged in addition at cost to the Client.
- 3.9. In the event that On-Site Support is necessary to rectify a problem the Client shall request such On-site Support by email to the support address. It will be at the sole discretion of the Client whether to instruct the Supplier to carry out any On-site Support but, in the event that Support cannot be reasonably provide remotely and the Client does not request On-Site Support the Supplier shall have no liability or responsibility in connection with its failure to remedy any problems requiring On-Site Support. The Supplier will use its reasonable commercial endeavours to comply with the Client's request for On-site Support but the Client acknowledges that the

Supplier's ability to provide the On-Site Support shall depend on the availability of appropriate resources at the time in question. All On-site Support shall be subject to the terms of this Agreement.

- 3.10. If the Client requires any Development or Consultancy services then it shall notify the Supplier in writing using the Feature Request process set out in Appendix C. All Development and Consultancy shall be carried out using reasonable care and skill and in accordance with the terms of this Agreement.

4. Change of Particulars

The Client may, by giving written notice to the Supplier, at any time during the Term, request a change to the Services provided, the Products, the Servers or the amount of Allotted Time purchased each month ("Change Request"). If the Supplier is agreeable to any such Change Request it shall notify the Client of any alteration in the fees or any other terms of this Agreement in writing within a reasonable period of time. Until such time as the Client notifies the Supplier in writing that it accepts any such alterations to fees or other terms the Services shall be provided as if the Change Request had not been made.

5. Client Obligations

- 5.1. During the Term the Client shall:
- 5.1.1. co-operate with the Supplier in performing the Services and provide any assistance or information as may reasonably be required by the Supplier, including in relation to the diagnosis of any faults;
 - 5.1.2. keep all passwords and other log in details provided by the Supplier secure and confidential;
 - 5.1.3. provide the Supplier with passwords and credentials, internet access and all other access and information reasonably necessary to enable the Supplier to provide the Support, including via remote support;

- 5.1.4. report faults promptly to the Supplier;
- 5.1.5. unless otherwise stated in the Particulars to this Agreement or otherwise agreed in writing between the parties, keep full backup copies of all of its data.
- 5.1.6. keep and operate the Products and/or Servers in a proper and prudent manner and ensure that only competent trained employees are allowed to operate the Products and/or Servers.
- 5.1.7. notify the Supplier of any significant changes to Product or Server configuration in a timely manner; and
- 5.1.8. ensure that the address at which any On-Site Support is provided is safe and hazard free and shall indemnify the Supplier for any injury to person or Supplier property resulting directly or indirectly from any breach by the Client of this clause.

6. Fees and payment

- 6.1. In consideration of the provision of the Support and Maintenance the Client shall pay the Support and Maintenance Fee in full and without deduction or set off monthly in advance within 30 days of the date of the Supplier's invoice to the bank account nominated by the Supplier.
- 6.2. Charges for Development and Consultancy and any other services provided under this Agreement other than Support and Maintenance shall be calculated in accordance with the Standard Hourly Rate and invoiced monthly in arrears. The Client shall pay such invoices within 30 days of the date of the invoice to which they relate.
- 6.3. Any Additional Time purchased by the Client shall be payable in advance before any Support or Maintenance exceeding the Allotted Time for that month shall be provided.

- 6.4. The Supplier may increase the Support and Maintenance Fee and/or Standard Daily Rates at any time by giving not less than 30 days' prior written notice of such increase and provided that the Supplier may not so increase the fees or rates more than once in any 12 month period.
- 6.5. All sums payable under or in connection with this Agreement are exclusive of VAT unless expressly stated. VAT shall, if applicable, be payable in addition by the Client at the prevailing rate.
- 6.6. The Client shall pay the Supplier by the agreed Payment Method in the particulars.
- 6.7. In the event that payment of any sums under this Agreement is not made when due, the Supplier reserves the right to:
 - 6.7.1. charge interest at the rate of 4% above the then current base rate of the Bank of England on any overdue sums from the due date until payment is made in full in cleared sums, whether before or after judgement; and/or
 - 6.7.2. suspend the provision of any Services until such time as payment (including any accrued interest) is received in full.

7. Termination of the Agreement

- 7.1. Either Party may terminate this Agreement immediately at any time:
 - 7.1.1. On giving not less than 30 days' prior written notice to the other Party; or
 - 7.1.2. if a new agreement, or a modified agreement, has been reached between the Client and the Supplier regarding the same subject matter; or
 - 7.1.3. if the other Party becomes insolvent, has an insolvency practitioner appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution for it to be wound up (otherwise than in the furtherance of a scheme for solvent amalgamation or reconstruction) or an analogous event occurs in respect of a Party in any jurisdiction to which that Party is subject; or

- 7.1.4. if the other Party is in material breach of this Agreement and in the event of a breach capable of being remedied, fails to remedy the breach within 28 days of receipt of written notice specifying the breach.

8. Consequences of Termination

- 8.1. Upon expiration or termination, neither of the parties to this Agreement shall be under any obligation to the other Party under this Agreement, except any obligations that will have arisen under this Agreement prior to its expiration or termination, including payment of fees.
- 8.2. The Client's right to use any of the Supplier's Intellectual Property Rights shall immediately cease.
- 8.3. Clauses 6, 8, 9, 10, 11, 15, 17 and 19 shall continue in full force and effect notwithstanding the termination of this Agreement.

9. Liability

- 9.1. Subject to clauses 9.3 and 9.6, the Supplier shall not in any circumstances have any liability for any loss of profits; loss of anticipated savings; loss of business opportunity; loss of or goodwill; loss of, or damage to (including corruption of) data (in each case whether direct or indirect) nor for any indirect or consequential loss.
- 9.2. The Supplier agrees to take out insurance up to a reasonable sum with a reputable insurer to cover the liabilities of the Supplier to the Client under the contract. Subject to clause 9.3, the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to the sums actually paid by the Client to the Supplier in the 12 months prior to the liability arising.

- 9.3. Nothing in this Agreement shall limit or exclude a Party's liability for (a) death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents; (b) fraud or fraudulent misrepresentation; or (c) any other liability which may not be properly limited or excluded under applicable law.
- 9.4. Any Services are not subject to any condition or warranty except as expressly set out in this Agreement and all implied conditions and warranties are hereby excluded to the maximum extent permitted by applicable law.
- 9.5. The Client shall be solely responsible for and hold the Supplier fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses suffered or incurred by the Supplier as a result of any breach or default on the part of the Client in connection with the subject matter of this Agreement.
- 9.6. In the event that the Supplier has agreed to provide any data backup services (as specified in the Particulars or other written agreement) the Supplier shall be liable to restore the Client's information or data to the last backup on the Supplier's systems. This shall be the Client's sole and exclusive remedy for any damage, loss or corruption to data. The Client acknowledges and accepts that it is responsible for ensuring that all data that it provides is accurate, correct and not corrupted and the Supplier shall not be liable in connection with the accuracy or quality of the data or information provided by the Client.

10. Intellectual Property

- 10.1. As between the Supplier and the Client, the Client is the owner and/or licensee of all Intellectual Property Rights in the Products which existed prior to the Effective Date.
- 10.2. The Client warrants and undertakes that it has all necessary rights, licences and consents to use the Products and to receive the Services from the Supplier in the manner anticipated or instructed in accordance with this Agreement and the Client shall indemnify the Supplier for any loss or damages suffered or incurred in connection with any breach of this warranty.
- 10.3. Unless otherwise specifically and expressly agreed in writing between the parties, the Supplier shall retain all of its Intellectual Property Rights in the product of any Development and Consultancy or which is otherwise used as part of or developed or created by the Supplier in connection with this Agreement, including any custom code. The Client acknowledges and accepts that any software developed by Supplier, including under this Agreement, may be licensed by the Supplier to third parties under the GPL or other licence at Supplier's discretion.
- 10.4. The Supplier grants to the Client the non-exclusive royalty free right to use such of its Intellectual Property Rights as is reasonably necessary for the Client to receive and take advantage of the Support and Maintenance during the Term for its own internal business purposes.
- 10.5. The Supplier grants to the Client the perpetual non-exclusive royalty free right to use any code created by the Supplier pursuant to Development or Consultancy specifically for the Client provided that where such code contains any open source components, such code shall be licensed to the Client on the terms of the GPL unless Supplier notifies the Client in writing that an alternative open source licence applies to such code.
- 10.6. The Parties acknowledge that all Intellectual Property Rights in any Publicly Available Code which is provided as part of the Services remains the property of the licensors

of that Publicly Available Code and each Party's use of it is subject to the GPL or other applicable licence terms and each Party agrees that it shall comply with the terms of such licences.

11. Data Protection

- 11.1. If the Supplier processes any personal data on the Client's behalf when performing its obligations under this Agreement, such processing will be carried out in accordance with all relevant laws and regulations and the provisions of the Data Processing Addendum which is attached to, incorporated into, and forms part of this Agreement.

12. Assignment

The Client may not assign or otherwise transfer this Agreement or any part of it to any other party without the Supplier's prior written consent. The Supplier may not assign or otherwise transfer this Agreement or any part of it to any other party without the Client's prior written consent.

13. Relationship

Nothing in this Agreement is intended to or shall be deemed to establish any partnership or joint venture between the Parties and the Parties acknowledge that the Supplier is an independent contractor and not an employee of the Client.

14. Complete Agreement

The complete agreement consists of this Agreement, its appendices and the Supplier's Terms and Conditions. This Agreement supersedes any and all prior agreements, understandings, promises and representations by both parties and prevails over any terms and conditions provided by the Client.

15. Severance

If any term of this Agreement is found to be invalid, illegal or enforceable it shall be deemed deleted and the remaining terms shall continue in full force and effect.

16. Variation

Amendments, additions and modifications to this Agreement are legal only when both parties acknowledge such amendments, additions and modifications by letter, signed by authorised representatives of both parties.

17. Confidentiality

Each Party shall treat as confidential all Confidential Information and shall not divulge such Confidential Information to any person (except to such Party's own employees and then only to those employees or sub-contractors or advisors who need to know the same) without the other Party's prior written consent provided that this Clause 17 shall not extend to information which was rightfully in the possession of such Party prior to the Effective Date, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause 17) or which is trivial or obvious. Each Party shall ensure that its employees and sub contractors are aware of and comply with the provisions of this Clause 17 and shall be liable for all acts and omissions of its own employees and sub-contractors. The foregoing obligations as to confidentiality shall survive any termination of this Agreement.

18. Force Majeure

The Supplier will not be liable for any failure or delay under this Agreement where such failure or delay results from events, acts, omissions or actions outside of its reasonable control, including, but not limited to any act of God, outbreak of hostilities, insurrection, riot, civil disturbance, acts of terrorism, or regulations of any government or authority provided that the Supplier takes commercially reasonable steps to mitigate the effect of such event and notifies the Client as soon as reasonably practicable.

19. Choice of Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with English Law and the parties submit to the jurisdiction of the courts of England and Wales.

20. 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 preclude or restrict the further exercise of that or any other right or remedy. 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.

21. Rights of Third Parties

No person other than a Party to this Agreement shall have any rights to enforce any of its terms and the Contracts (Rights of Third Parties) Act 1999 is hereby expressly excluded.

22. Disputes

Both Parties shall expend reasonable effort to resolve any dispute that may arise with respect to the conclusion, interpretation or execution of this Agreement, as well as any other dispute in the matter of or in connection with this Agreement, either legal or factual, without juridical intervention.

Any dispute that cannot be resolved in the aforementioned manner, and that cannot be resolved by mutually agreed arbitration, shall be submitted to the courts.

A dispute is present if either of the Parties alleges so in writing.

23. Service of Notices

Any written notice or other written information required or authorised by this Agreement to be given by either Party to the other may be given by hand or sent (by first class post,

facsimile transmission or email) to the other Party at the relevant address, fax number or email address as stated in this Agreement or such other address or number as the recipient may have notified the sender from time to time.

Appendix A – Maintenance

a. In any given Month during the Term, the Supplier will:

- provide the Client with security updates to the Products ; and
- apply security updates to the Servers

as far as possible within the Allotted Time. If the Allotted Time is exceeded before all security updates and Upgrades are performed the Client will be notified. If any update or Upgrade changes the function of any element of the Product or Servers in such a way that requires training then that training will be provided as part of the Maintenance services.

b. Maintenance work only extends to updates of Drupal modules and Drupal core. It does not include the installation of new modules, nor the creation of new content or functionality. Any request for new features or work which falls outside this Agreement should be made via the Feature Request Process detailed in Appendix C.

c. The Supplier will monitor the Drupal security announcements mailing list and will apply security updates for Drupal core and contributed Drupal modules in a timely manner and without request from the Client.

d. Non-security updates to Drupal core or contributed Drupal modules will be assessed and may be applied at the Supplier's discretion.

e. Drupal security updates are only supported by the community for the version before the current stable version. For example, if Drupal 7 were the current stable version, security updates would be available for Drupal 6 and Drupal 7. When Drupal 8 was released, security updates would no longer be guaranteed for Drupal 6 by the Drupal security team. In the event that any of the Products fall outside the community supported versions, the Supplier will make every effort to support the Product, but cannot guarantee security support.

f. In the event that any of the Products fall outside the community supported version, the Supplier may recommend an upgrade or rebuild through a separate Feature Request.

Appendix B – Support

- a. During the Term the Supplier will provide Support to the named Client Primary Contact listed below or such other person as may be reasonable nominated by the Client in writing from time to time during Business Hours.
- b. Support will be provided by email, telephone or online ticketing system, quoting the Client reference number where required in accordance with the Service Levels set out below.
- c. The ticketing system is the preferred method for support. The process of raising a support ticket in the ticketing system helps to break it down into logical steps and saves time in identifying the solution and therefore responding to the Client.
- d. Where the Client logs a ticket it shall note the Priority but acknowledges and accepts that if the Supplier, acting reasonably, considers the Priority to be incorrect, the Supplier may re-categorise the ticket and shall notify the Client of any such re-categorisation when providing the Response.
- e. If requested by the Client and accepted by the Supplier in accordance with the terms of the Agreement, Support may also be provided by way of On-site Support.

f. Contact details:

The ticketing system url for support:	https://support.agile.coop/[url]
Client support telephone number:	Phone
Client support email:	Email
Primary Supplier contact (contracts)	Name Phone Email

Primary Supplier contact (support)	Name Phone Email
Primary Client contact (contracts)	[details]
Primary Client contact (support)	[details]

g. Service Levels:

Priority	Target Response Time	Target Resolution Time
1 - Critical An error or failure that materially impacts the operations of the Client’s business or disables major functions of the Products or Servers.	1 hour during Business Hours	Same Day (1 Business Day)
2 – High An error or failure that seriously impacts the appearance or non-essential	1 hour during Business Hours	3 Business Day

operations of the Client's business or disables some functions of the Products or Servers.		
3 – Normal An error or failure that somewhat impacts the appearance or non-essential functions of the Products or Servers.	1 hour during Business Hours	7 Business Days
4 – Low An error or failure that has minimal impact and no urgency attached.	1 hour during Business Hours	14 Business Days

h. Support shall not cover the following circumstances:

- that the Supplier cannot replicate the fault;
- that the fault is caused by the systems other than the supported Products and Servers;
- that the Client fails to comply with the Supplier's specifications or reasonable

instructions;

- that the Client fails to provide reasonable information or failure to provide reasonable information in a timely fashion;
- of any connectivity problems.

i. Resolution may require:

- The Client to arrange a restore from their last good backup (time to start running from last good backup)
- Client to accept a work-around
- Client to arrange for the upgrade or reconfiguration of their Products and Servers.

j. The Supplier shall use its reasonable commercial endeavours to meet the Service Levels but in the event that it fails to provide a Resolution according to the Resolution Process the Client shall be entitled to the service credit specified in the table below on submitting a written claim for such service credit:

Priority Level	Service Credit
1	An amount equal to 15% of the-then current Monthly Support and Maintenance Fee for each additional day or part of a day that the Supplier fails to provide a Resolution.
2	An amount equal to 10% of the-then current Monthly

	Support and Maintenance Fee for each additional day or part of a day that the Supplier fails to provide a Resolution.
3	An amount equal to 5% of the-then current Monthly Support and Maintenance Fee for each additional day or part of a day that the Supplier fails to provide a Resolution.
4	An amount equal to 3% of the-then current Monthly Support and Maintenance Fee for each additional day or part of a day that the Supplier fails to provide a Resolution.

- k. The parties acknowledge that each service credit is a genuine pre-estimate of the loss likely to be suffered by the Client and is not a penalty and the provision of a service credit shall be the exclusive remedy for a particular service level failure.
- l. Services Credits shall be shown as a deduction from the amount due from the Client in the next invoice. The Supplier shall not in any circumstances be obliged to pay any money or make any refund to the Client and in no circumstances shall the total value of Service Credits in any month exceed the monthly fee payable by the Client (except to the extent that such limitation is unlawful).
- m. Support does not include the following:
- **Customisation** - This Support contract covers the software specified in Appendix A in its "as installed" form only. Any problems arising from customisation of the software by the Client will be dealt with at the Supplier's discretion.
 - **Bespoke versioning** - The Client will benefit from system-wide upgrades and

developments as they are made. However, the Supplier reserves the right to charge the Standard Hourly Rate for 'local' changes to the system as requested by the Client. These would be the result of agreed an specification between both parties, including time-scales and costs

- **Operating system** - The Supplier is not responsible for problems caused by defective or incompatible operating systems or databases.
- **Hardware** - The Supplier is not responsible for problems caused by defective or incompatible Hardware. The Supplier will not be responsible for any of the following costs:
 - Consequential loss as a result of failure or misuse of the software
 - Costs incurred by the Client resulting from delays in adjusting or replacing Software which are outside the Supplier's direct control.

Appendix C – Feature Requests

- a. All requests from the Client for Development or Consultancy should be notified to Supplier by one of the following means:
 - Place a ticket in the ticketing system which is clearly marked as a “feature request” which sets out the scope of the Development or Consultancy required; or
 - Email or phone call to discuss the Development or Consultancy required (if by phone call a confirmation email is required).
 -
- b. Upon receipt of a Feature Request, an estimate of time and cost can be provided to the Client for review at request. For the avoidance of any doubt, Consultancy and Development is not carried out during the Allotted Time unless otherwise expressly agreed between the parties in writing.
- c. Supplier shall not commence any Consultancy or Development until Supplier receives written (email) confirmation from Client to proceed.
- d. The Feature Request may then be split into new tickets and placed into the ticketing system for prioritisation if necessary.

Addendum – Data Processing

1. Definitions

1.1 In this Addendum the following terms shall have the following meanings:

“Data Protection Legislation”	the Data Protection Act 1998 (whilst in force), the General Data Protection Regulation (Regulation (EU) 2016/679) (once applicable), the Data Protection Bill (once enacted into English law), the ePrivacy Regulation repealing Directive 2002/58EC (once applicable), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (whilst in force) and all laws and regulations applicable to the relevant party relating to the Processing of Personal Data under or in relation to the Agreement, and the equivalent of any of the foregoing in any relevant jurisdiction.
“Personal Data”, “Data Subject”, “Controller”, “Processor” and “Process”	shall be interpreted in accordance with applicable Data Protection Legislation.
“Personal Data Breach”	means a breach of security leading to the destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data.

2. Obligations

- 2.1 Each Party shall comply with its obligations under applicable Data Protection Legislation.
- 2.2 In the event that the Supplier Processes Client Personal Data under the Agreement, the parties record their intention that the Supplier is the Processor and the Client is the Controller of such Personal Data. Annex 1 to this Addendum sets out the subject-matter and duration of the Processing of Client Personal Data, the nature and purpose of the Processing, the type of Personal Data and the categories of Data Subjects. In the event of any change during the term of the Agreement, the parties shall work together in good faith to amend Annex 1 by written agreement.
- 2.3 The Supplier shall Process Client Personal Data only in accordance with the Client's documented instructions, unless the Supplier is required to Process Client Personal Data other than in accordance with Client documented instructions by applicable European Union law provided that (unless prohibited by applicable European Union law) the Supplier shall notify the Client of such legal requirement before such Processing.
- 2.4 The Supplier shall not transfer Client Personal Data outside of the European Economic Area without the Client's prior documented consent and in compliance with the following conditions:
 - 2.4.1 the Supplier or the Client has provided appropriate safeguards in relation to the transfer;
 - 2.4.2 the Data Subject has enforceable rights and effective legal remedies; and
 - 2.4.3 the Supplier complies with its obligations under Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred.

- 2.5 The Supplier shall ensure that individuals engaged in the Processing of Client Personal Data under the Agreement are subject to appropriate obligations of confidentiality in respect of such Personal Data.
- 2.6 The Supplier shall implement appropriate technical and organisational measures as set out in Annex 2 of this Addendum so as to ensure a level of security appropriate to the risk involved in Processing Client Personal Data pursuant to the Agreement.
- 2.7 Unless otherwise required by applicable law, following termination or expiry of the Agreement the Supplier shall, at the Client's option, delete or return all Client Personal Data and all copies thereof to the Client.
- 2.8 The Client warrants and undertakes that:
- 2.8.1 it shall not instruct the Supplier to Process Client Personal Data where such Processing would be unlawful;
 - 2.8.2 it shall have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement;
 - 2.8.3 it has reviewed Annex 1 and that it contains full and accurate details of "type of Personal Data" and "categories of Data Subject" to which the Agreement relates; and
 - 2.8.4 it has reviewed Annex 2 and considers such security measures appropriate in the context of the Processing of Client Personal Data as anticipated by the Agreement.
- 2.9 The Client shall indemnify and hold the Supplier harmless against any claims made

against it as a result of the Supplier acting in accordance with the Client's instructions as set out in this Addendum, or as a result of the Client's breach of the provisions in paragraph 2.8.

3. Sub Processors

- 3.1 The Supplier may engage such other Processors ("Sub Processors") as the Supplier considers reasonably appropriate for the Processing of Client Personal Data in accordance with the terms of the Agreement (including in connection with support, maintenance, development and the use of third party data centres) provided that the Supplier shall notify Client of the addition or replacement of such Sub Processors and the Client may, on reasonable grounds, object to a Sub Processor by notifying the Supplier in writing within 5 days of receipt of the Supplier's notification, giving reasons for the Client's objection. The parties shall work together to reach agreement on the engagement of Sub Processors. The current list of Sub Processors is set out in Annex 1 to this Addendum.
- 3.2 The Supplier shall require all Sub Processors to enter into an agreement that is compatible with and of equivalent protective effect to this Addendum and the Supplier shall remain responsible and liable for Sub Processors' acts and omissions.

4. Data Subject requests

- 4.1 In the event that any Data Subject exercises its rights under applicable Data Protection Legislation against the Client, the Supplier shall use reasonable commercial efforts, to assist the Client in fulfilling the Client's obligations as Controller following written request from the Client, provided that the Supplier may charge the Client on a time and materials basis in the event that the Supplier considers, in the Supplier's reasonable discretion, that such assistance is onerous, complex, frequent or time consuming.

5. Personal Data Breach

- 5.1 Upon discovering a Personal Data Breach, the Supplier shall notify the Client as soon as reasonably practicable and shall assist the Client to the extent reasonably necessary in connection with notification to any applicable supervisory authority and Data Subjects, taking into account the nature of Processing and the information available to the Supplier.

6. Privacy Impact Assessment

- 6.1 In the event that the Client considers that the Processing of Personal Data performed pursuant to the Agreement requires a privacy impact assessment to be undertaken, following written request from the Client, the Supplier shall use reasonable commercial endeavours to provide relevant information and assistance to the Client to facilitate such privacy impact assessment. The Supplier may charge the Client for such assistance on a time and materials basis.

7. Audit and amendment

- 7.1 Where requested by the Client, the Supplier shall make available all information necessary to demonstrate the Supplier's compliance with this Addendum and shall contribute to audits of the Supplier premises and systems conducted by the Client or another auditor mandated by the Client.
- 7.2 The Supplier reserves the right to amend this Addendum on written notice to the Client if the Supplier considers it reasonably necessary as a result of any changes in law or practice relating to the protection or treatment of Personal Data.

Annex 1 – Record of Processing

For details of what data, how and why we process data on our client's behalf, see our [Record of Processing](#).

Subject-matter of the Processing of Client Personal Data:

- the Supplier Processes Client Personal Data for the purpose of providing the services specified in this Agreement.
- the Supplier Process Client Personal Data for the purpose of providing IT Support Services.

Duration of the Processing of Client Personal Data:

- During the Term of the Agreement. After termination or expiry of the Agreement the data may be returned to the Client or deleted at the Client's option.

Sub Processors

Bytemark

Used for virtual servers for internal systems. This is their [Privacy Policy](#).

Google

Used for internal and client communications. This is their [Privacy Policy](#).

Hetzner

Encrypted backups and internal systems. This is their [Privacy Policy](#).

Krystal

Used for virtual servers for client, development and internal systems. This is their [Privacy Policy](#).

Annex 2 – Security Standards

Please see our [Data Protection policy](#).