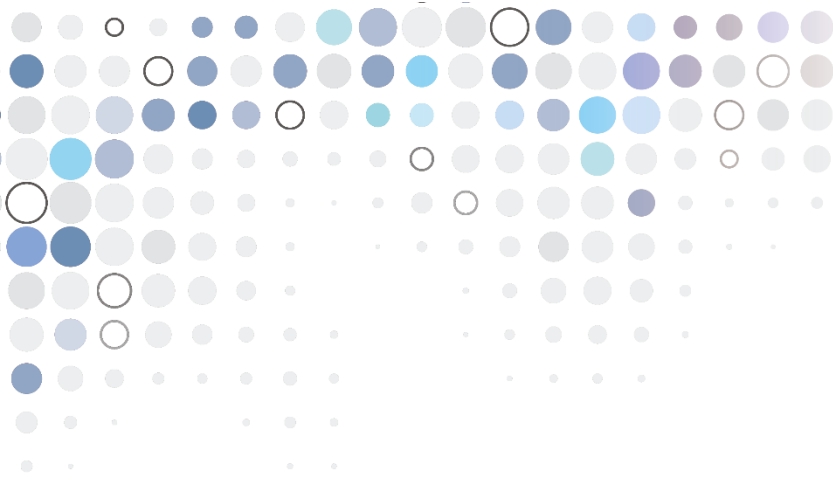




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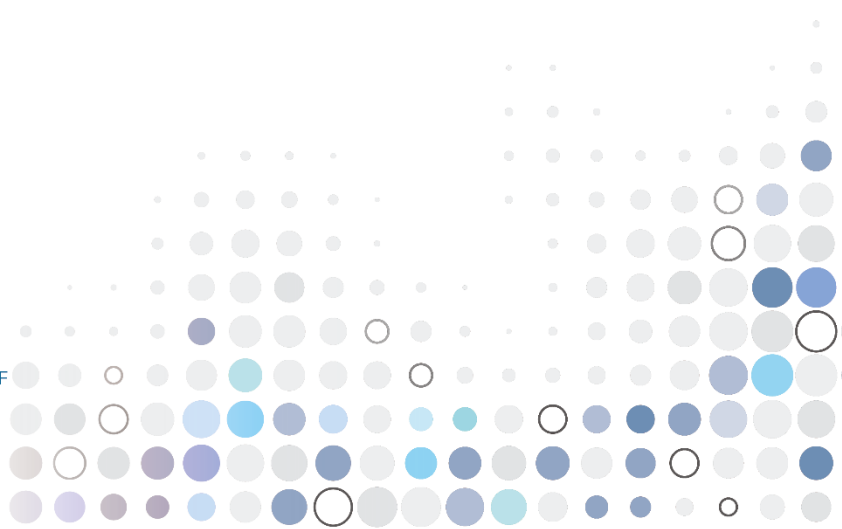
[apptechology.co.uk](http://apptechology.co.uk)

# MASTER SERVICES AGREEMENT

## APPTECHNOLOGY

AND

[CLIENT NAME]



THIS AGREEMENT is dated [DATE]

## PARTIES

**APPtechnology Limited** incorporated and registered in England and Wales with company number 07384620 whose registered office is at 28th Floor, the Gherkin, London, EC3A 8BF (APPtechnology)

**[CLIENT NAME]** incorporated and registered in England and Wales with company number **[COMPANY NUMBER]** whose registered office is at **[CLIENT ADDRESS]** (The Customer)

## 1. BACKGROUND

- (A) APPtechnology is in the business of providing the Services.
- (B) The Customer wishes to obtain and APPtechnology wishes to provide the Services on the terms set out in this Agreement.
- (C) APPtechnology specialises in the supply of outsourced services to its Customers and has agreed to provide the Services using such sub-contractors as it considers appropriate, including the Service Providers (as defined below), in accordance with the terms and conditions of this Agreement.

## 2. AGREED TERMS

### 2.1. The following definitions and rules of interpretation apply in this Agreement:

|                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Affiliate                 | any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Applicable Laws           | all applicable laws, statutes, regulation and codes from time to time in force.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| APPtechnology's Equipment | any equipment, including tools, systems, cabling or facilities, provided by APPtechnology to the Customer and used directly or indirectly in the supply of the Works, including any such items specified in a Statement of Work but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Business Day              | a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Business Hours            | the period from 9.00 am to 5.00 pm on any Business Day.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Change Order              | has the meaning given in clause 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Confidential Information  | information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Customer or APPtechnology (as appropriate) for the time being confidential to the Customer or APPtechnology and trade secrets including, without limitation, technical data and know-how relating to the business of the Customer or APPtechnology or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts, including information that APPtechnology creates, develops, receives or obtains in connection with a Statement of Work, whether or not such information (if in anything other than oral form) is marked confidential, and is not for the time being in the public domain (or is in the public domain through unauthorised disclosure by the Customer or APPtechnology); |
| Customer's Equipment      | any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works including any such items specified in a Statement of Work.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Customer Materials           | all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to APPtechnology in connection with the Works, including the items provided pursuant to clause 5.1(d).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Data Protection Legislation  | the UK Data Protection Legislation (including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended) and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.                                                                                              |
| Deliverables                 | any output of the Works to be provided by APPtechnology to the Customer as specified in a Statement of Work and any other documents, products and materials provided by APPtechnology to the Customer in relation to the Works (excluding APPtechnology's Equipment).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Intellectual Property Rights | patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. |
| Milestone                    | a date by which a part or all of the Works is to be completed, as set out in a Statement of Work.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Personal Data                | any information relating to a living individual who can be identified, directly or indirectly, in particular by reference to: (a) an identifier such as a name, an identification number, location data or an online identifier, or (b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Personnel                    | employees, officers, representatives, sub-contractors and substitutes used by a Service Provider to provide the Services on APPtechnology's behalf.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Principal Contact            | the individual nominated by APPtechnology to liaise with the Customer's Representative in connection with a Statement of Work.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Representative               | the employees, agents, contractors or representatives of the Customer and other persons duly authorised on its behalf in respect of receiving the Services pursuant to a Statement of Work;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Service Provider             | the person, firm or body corporate that has agreed with APPtechnology to assist with the provision of the Services and unless the context otherwise requires reference to Service Provider means an individual Service Provider or group of Service Providers as listed in a Statement of Work.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Services                     | the services as set out in a Statement of Work.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Statement of Work Charges    | the standard charges for the Services or the framework for calculating them and/or the sums payable for the Works as set out in a Statement of Work.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Statement of Work            | a detailed plan, agreed in accordance with clause 4, describing the Services to be provided by APPtechnology, the timetable for their performance and the related matters listed in the template Statement of Work set out in Schedule 1.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| VAT                          | value added tax or any equivalent tax chargeable in the UK or elsewhere.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Works                        | the Services which are provided by APPtechnology under a Statement of Work.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

- 2.2. Clause, Schedule headings shall not affect the interpretation of this Agreement.
- 2.3. The Schedules and Statements of Work form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules and Statements of Work.

- 2.4. This Agreement shall be binding on, and ensure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 2.5. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.6. A reference to writing or written includes email but not fax.
- 2.7. A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

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### 3. COMMENCEMENT AND DURATION

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- 3.1. This Agreement shall commence the date when it has been signed by all the parties and shall continue, unless terminated earlier in accordance with clause 16 (Termination), until either party gives to the other party written notice to terminate. Such notice shall be served no earlier than the first anniversary of the date of this Agreement and shall expire on the completion of all Statements of Work entered into before the date on which it is served.
- 3.2. If there are no uncompleted Statements of Work as at the date notice to terminate is served under clause 16, such notice shall terminate this Agreement with immediate effect.
- 3.3. The parties shall not enter into any further Statements of Work after the date on which notice to terminate is served under clause 16.
- 3.4. The Customer may procure any of the Services by agreeing a Statement of Work with APPtechnology pursuant to clause 4 (Statements of Work).
- 3.5. APPtechnology shall provide the Works from the date specified in the relevant Statement of Work.

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### 4. STATEMENTS OF WORK

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- 4.1. The Customer shall ask APPtechnology to provide any or all of the Services and provide APPtechnology with as much information as APPtechnology reasonably requests in order to prepare a draft Statement of Work for the Services requested.
- 4.2. Following receipt of the information requested from the Customer, APPtechnology shall, as soon as reasonably practicable either:
- 4.3. inform the Customer that it declines to provide the requested Services; or
- 4.4. provide the Customer with a draft Statement of Work.
- 4.5. if APPtechnology provides the Customer with a draft Statement of Work pursuant to clause 4 APPtechnology and the Customer shall discuss and agree that draft Statement of Work; and both parties shall sign the draft Statement of Work when it is agreed;

- 4.6. A Statement of Work shall come into being upon the Customer and APPtechnology signing a Statement of Work and shall continue until terminated. Each Statement of Work shall specify a 'Start Date' being the date upon which the Services the subject of a Statement of Work shall commence and the Completion Date being the date on which the Services shall be completed.
- 4.7. A Statement of Work will terminate upon the earlier of:
- 4.8. completion of the Services relating to that Statement of Work to the Customer's reasonable satisfaction;
- 4.9. termination of this Agreement;
- 4.10. termination of that Statement of Work pursuant to a notice given in relation to that Statement of Work as provided by this Agreement; or
- 4.11. by either party notifying the other in writing by giving the period of notice specified in a Statement of Work.
- 4.12. A Statement of Work may be extended for such periods as are necessary to complete the Services by the parties signing a new Statement of Work and the provisions of this Agreement shall apply to the new Statement of Work.
- 4.13. Once a Statement of Work has been agreed and signed in accordance with clause 4, no amendment shall be made to it except in accordance with clause 8 (Change control) or clause 20 (Variation).
- 4.14. Each Statement of Work shall be part of this Agreement and shall not form a separate contract to it.

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## 5. APPTECHNOLOGY'S RESPONSIBILITIES AND SERVICE PROVIDERS

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- 5.1. APPtechnology shall use reasonable endeavours to provide the Works, and deliver the Deliverables to the Customer, in accordance with a Statement of Work in all material respects.
- 5.2. APPtechnology agrees to provide the Services to the Customer during a Statement of Work using a single Service Provider or group of Service Providers and the Customer agrees to receive the Services as set out in a Statement of Work. APPtechnology acknowledges and accepts that it shall remain liable for the acts and/or omissions of a Service Provider or group of Service Providers in accordance with clause 15.
- 5.3. APPtechnology shall use reasonable endeavours to meet any performance dates or the Milestones specified in a Statement of Work but any such dates shall be estimates only and time for performance by APPtechnology shall not be of the essence of this Agreement.
- 5.4. APPtechnology shall appoint a manager in respect of the Works to be performed under each Statement of Work, such person as identified in the Statement of Work. That person shall have authority to contractually bind APPtechnology on all matters relating to the relevant Works (including by signing Change Orders). APPtechnology shall use reasonable endeavours to ensure that the same person acts as APPtechnology's manager throughout the term of the relevant Statement of Work, but may replace that person from time to time where reasonably necessary in the interests of APPtechnology's business.
- 5.5. APPtechnology shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Customer's premises and that have been communicated to it provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.
- 5.6. If APPtechnology agrees to carry out any work at the Customer's express request outside the scope of the Services, the provisions of this Agreement will apply to the work undertaken and the Fee shall be agreed between the parties at the relevant time.
- 5.7. This Agreement constitutes a contract for services between APPtechnology and the Customer for APPtechnology to provide Services to the Customer using a Service Provider or group of Service Providers as may be agreed and set out in a Statement of Work from time to time and any Statement of Work is subject to the terms of this Agreement.
- 5.8. APPtechnology agrees that it (and shall procure that the Service Providers and Personnel):
- 5.9. shall provide the Services in accordance with a Statement of Work but will use its/their own discretion as to the method and manner of performing the Services in accordance with any applicable professional standards and with any and all agreed project specifications but in doing so will give due regard to the Customer's reasonable requests within the scope of the Services;
- 5.10. will not submit to supervision, direction or control by the Customer, accept any employee type benefits if offered by the Customer or any other person or otherwise permit a Service Provider or its Personnel to integrate into the Customer's organisation;

- 5.11. provide the Services with reasonable skill and care, to the reasonable satisfaction of the Customer and in accordance with the terms of this Agreement;
- 5.12. will comply with any agreed project timetable for delivery of the Services by the Target Completion Date specified in a Statement of Work;
- 5.13. shall provide the Services for such hours as it deems necessary to complete the Services by the Target Completion Date;
- 5.14. shall rectify at its own cost any defects in the Services as notified in writing by the Customer to APPtechnology during any agreed Warranty Period;
- 5.15. provide any necessary equipment, materials and technical resources at its own expense to undertake the Services at the Location as applicable;
- 5.16. will comply with (and procure that a Service Provider complies with) the Working Time Regulations 1998 in respect of the Personnel and give reasonable notice of any necessary suspension of the Services to comply with the Working Time Regulations 1998;
- 5.17. follow any statutory rules and regulations (including but not limited to health and safety and use of the Customer's equipment) reasonably applicable to independent contractors whilst providing the Services at the Customer's premises; and
- 5.18. shall procure that a Service Provider pays for any necessary training and reference books in respect of its Personnel.
- 5.19. For the avoidance of doubt, neither APPtechnology, a Service Provider nor Personnel shall be subject to (or to the right of) supervision, direction or control by any person as to the method, location and time for the provision of the Services.
- 5.20. The Customer acknowledges and accepts that Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 will not apply to a Statement of Work because (i) the supply of agreed Services in connection with a Statement of Work under this Agreement is a fully contracted out service and (ii) APPtechnology, being a client of a Service Provider, qualifies as small within the meaning of sections 60A-60G Income Tax (Earnings and Pensions) Act 2003. Accordingly, for the purposes of a Service Provider, a Statement of Work shall be within the scope of Chapter 8 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 and APPtechnology shall use reasonable efforts to ensure that a Service Provider obtains independent legal advice (not HM Revenue & Customs' CEST tool regarding the status of a Statement of Work.
- 5.21. APPtechnology acknowledges that it is engaged as an independent contractor and nothing in this Agreement renders it nor any Service Provider (including a Service Provider's Personnel, Substitute Personnel and Sub-contractors) an employee, agent or partner of the Customer and APPtechnology will not hold itself out as such.
- 5.22. APPtechnology procures that a Service Provider shall make its own payment and other arrangements in respect of holiday, sickness, disability, insurance and pensions for its Personnel.

- 5.23. APPtechnology acknowledges that a Service Provider is exclusively responsible for the payment of National Insurance contributions and the discharge of any income tax liability in respect of the SoW Charges referred to in clause 9 and will pay any such contributions and taxes to the appropriate authorities.
- 5.24. APPtechnology is exclusively responsible for the discharge of VAT payable in respect of the SoW Charges referred to in clause 9 and will pay such VAT to the appropriate authorities.
- 5.25. This Agreement remains in force for the duration of a Statement of Work and APPtechnology further agrees that clause 5.20.4 shall remain in force for 1 year after termination of a Statement of Work howsoever caused.
- 5.26. The Customer is under no obligation to offer any other work in addition to the agreed Services and APPtechnology is under no obligation to accept and perform any additional work if offered.
- 5.27. Once the Services have been completed the Customer shall not be under any obligation whatsoever to offer additional work to APPtechnology and APPtechnology shall be under no obligation whatsoever to accept any further work if offered.
- 5.28. For the avoidance of doubt, the parties do not intend to create any mutuality of obligations either during the performance of the Services or during any period of notice specified in a Statement of Work.
- 5.29. The Services shall be provided on a non-exclusive basis and APPtechnology and Service Providers (including the Personnel) shall be free to enter into contracts to provide services to third parties provided that such a contract does not place APPtechnology in breach of this Agreement nor interfere, conflict or compete with the Services provided or the business of the Customer.
- 5.30. APPtechnology further warrants that:
- 5.31. it has full capacity to enter into this Agreement;
- 5.32. it is not subject to an insolvency event of any kind within the meaning of the Insolvency Act 1986;
- 5.33. prior to the commencement of the Services it will inform the Customer of any unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974 and Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 in respect of any Personnel as utilised by a Service Provider;
- 5.34. it shall (and procures that a Service Provider and its Personnel shall) both during a Statement of Work and after its termination keep confidential and not (except as authorised, required for the purposes of this Agreement or required by law) use or disclose or attempt to use or disclose any of the Confidential Information with the exception of Confidential Information which is already in or (otherwise than through the Service Provider's or the Personnel's unauthorised disclosure) becomes available to, or within the knowledge of, the public generally;
- 5.35. it will not knowingly infringe any Intellectual Property Rights owned by a third party;

- 5.36. there is no legal restriction upon a Service Provider providing the Services on APPtechnology's behalf and any necessary permits have been obtained from the UK Home Office in respect of a Service Provider's Personnel in the event that such Personnel are not UK citizens;
- 5.37. neither the Service Providers nor their Personnel own (directly or indirectly) any of the issued share capital of APPtechnology; and
- 5.38. that a Service Provider's Personnel have the necessary skills to undertake the Services on its behalf.
- 5.39. APPtechnology will not, and will procure that a Service Provider will not, hold itself out as having authority to bind the Customer nor have any authority to incur any expenditure in the name of or on behalf of the Customer.
- 5.40. APPtechnology shall procure that in relation to any attendance at the Customer's premises by its Principal Contact and/or a Service Provider's Personnel all such persons shall comply with the Customer's regulations in relation to health and safety and security as are relevant to independent contractors and site visitors.

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## 6. CUSTOMER'S OBLIGATIONS

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- 6.1. The Customer shall:
- 6.2. co-operate with APPtechnology in all matters relating to the Works;
- 6.3. provide, for APPtechnology, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by APPtechnology including any such access as is specified in a Statement of Work;
- 6.4. provide to APPtechnology in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Statement of Work or otherwise reasonably required by APPtechnology in connection with the Works and ensure that they are accurate and complete in all material respects;
- 6.5. inform APPtechnology of all health and safety and security requirements that apply at any of the Customer's premises;
- 6.6. ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements;
- 6.7. obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable APPtechnology to provide the Works, including in relation to the installation of APPtechnology's Equipment, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Works are to start; and
- 6.8. If APPtechnology's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or

employees then, without prejudice to any other right or remedy it may have, APPtechnology shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

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## 7. PERSONNEL

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- 7.1. APPtechnology will use reasonable efforts to provide continuity in the delivery of the agreed Services and will appoint a Principal Contact as nominated in a Statement of Work to liaise with the Customer's Representative as nominated in a Statement of Work.
- 7.2. The Customer acknowledges and accepts that a Service Provider's Personnel will at all times throughout the provision of the Services remain the employees or sub-contractors of a Service Provider and a Service Provider's Personnel will remain under the overall control of a Service Provider and the parties acknowledge and agree that a Service Provider's Personnel are not, nor are they deemed to be for any purpose, employees of the Customer.
- 7.3. The Customer acknowledges and accepts that a Service Provider shall be entitled to substitute its Personnel ('Substitute Personnel') at its sole discretion and the Customer may only refuse to accept any such Substitute Personnel if (acting reasonably) such Substitute Personnel is not suitable with regard to qualifications or security clearance. In the event of substitution of any Personnel, APPtechnology procures that a Service Provider shall in its own time and expense be responsible for a reasonable handover period to the Substitute Personnel.
- 7.4. A Service Provider shall be entitled to sub-contract elements of the Services as specified in a Statement of Work and the Customer may only refuse to accept a sub-contractor ('Sub-contractor') if (acting reasonably) such a Sub-contractor is not suitable with regard to qualifications or security clearance.
- 7.5. APPtechnology will remain responsible for any Services undertaken by the Substitute Personnel or Sub-contractor.
- 7.6. APPtechnology will procure that any Substitute Personnel or Sub-contractors (as appropriate) will adhere to the confidentiality and data protection provisions of this Agreement.

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## 8. CHANGE CONTROL

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- 8.1. Either party may propose changes to the scope or execution of the Works but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Works;
  - (b) the SoW Charges;
  - (c) the timetable for the Works; and
  - (d) any of the other terms of the relevant Statement of Work.
- 8.2. If APPtechnology wishes to make a change to the Works it shall provide a draft Change Order to the Customer.
- 8.3. If the Customer wishes to make a change to the Works:
- 8.4. it shall notify APPtechnology and provide as much detail as APPtechnology reasonably requires of the proposed changes, including the timing of the proposed change; and
- 8.5. APPtechnology shall, as soon as reasonably practicable after receiving the information provide a draft Change Order to the Customer.
- 8.6. APPtechnology may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 8.3 on a time and materials basis at APPtechnology's daily rates specified a Statement of Work.

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## 9. CHARGES AND PAYMENT

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- 9.1. In consideration of the provision of the Works by APPtechnology, the Customer shall pay the SoW Charges without deduction of income tax, National Insurance contributions or any other sum and shall reimburse any unlawful deduction forthwith upon demand.
- 9.2. Where the SoW Charges are calculated on a time and materials basis:
- 9.3. APPtechnology's daily fee rates for each Service Provider as set out in a Statement of Work are calculated on the basis of an eight-hour day or pro rata, worked during Business Hours;
- 9.4. the provisions of Schedule 3 – Professional Working Days shall apply at all times during the term of this Agreement ;
- 9.5. APPtechnology shall ensure that every Service Provider whom it engages on the Works completes time sheets to record time spent on the Works, and APPtechnology shall indicate the time spent per individual in its invoices; and
- 9.6. The Customer is under no obligation to pay APPtechnology in respect of any period when no Services have been provided.
- 9.7. Where the SoW Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in a Statement of Work.

- 9.8. The SoW Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:
- 9.9. the cost of hotel, subsistence, travelling and any other pre-approved ancillary expenses reasonably incurred by the Service Providers whom APPtechnology engages in connection with the Works; and
- 9.10. the cost to APPtechnology of any pre-approved materials or services procured by APPtechnology from third parties for the provision of the Works as such items and their cost are set out in the Statement of Work.
- 9.11. Any charges incurred by APPtechnology relating to any software due to be installed with the Customer must be paid in full by the Customer, before any licence keys will be released.
- 9.12. APPtechnology may increase any SoW Charges on an annual basis with effect from each anniversary of the date of this Agreement will be the lesser of 3% or in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the date of this Agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 9.13. APPtechnology shall invoice the Customer for the SoW Charges at the intervals specified, or on the achievement of the Milestones indicated, in the Statement of Work. If no intervals are so specified, APPtechnology shall invoice the Customer at the end of each month for Works performed during that month.
- 9.14. Disputes to invoices must be raised within 10 business days of receipt. Both parties agree to work in a timely manner to resolve the dispute in accordance with Clause 32. The Customer shall pay each invoice excluding disputed amounts and submitted to it by APPtechnology within 30 days of receipt to a bank account nominated in writing by APPtechnology from time to time.
- 9.15. The Customer shall pay each invoice submitted to it by APPtechnology within 30 days of receipt to a bank account nominated in writing by APPtechnology from time to time.
- 9.16. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay APPtechnology any sum due under this Agreement on the due date:
- 9.17. the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at the rate prescribed in the Late Payment of Commercial Debts (Interest) Act 1998; and
- 9.18. APPtechnology may suspend part or all of the Works until payment has been made in full.
- 9.19. All sums payable to APPtechnology under this Agreement:
- 9.20. are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- 9.21. shall be paid in full without any set-off, counterclaim, deduction or withholding.

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## 10. INTELLECTUAL PROPERTY RIGHTS

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- 10.1. In relation to the Deliverables:
- 10.2. APPtechnology and its licensors shall retain ownership of all IPRs in the Deliverables, excluding materials arising from the performance of the Services and the document and other work prepared by any source for the Customer
- 10.3. the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 10 to any party outside of their wholly owned subsidiaries; and
- 10.4. subject to their entering into appropriate confidentiality undertakings, to third parties for the purpose of the Customer's receipt of services similar to the Works.
- 10.5. In relation to the Customer Materials, the Customer:
- 10.6. and its licensors shall retain ownership of all IPRs in the Customer Materials; and
- 10.7. grants to APPtechnology a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this Agreement for the purpose of providing the Works to the Customer.
- 10.8. APPtechnology:
- 10.9. warrants that the receipt, use of the Works and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- 10.10. shall, subject to clause 15, indemnify the customer against all liabilities, costs, expenses, damages and losses suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third parties Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use of the Works and Deliverables.
- 10.11. shall not be in breach of the warranty at clause 10 and the Customer shall have no claim under the indemnity above to the extent the infringement arises from:
- 10.12. the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Works or any Deliverable;
- 10.13. any modification of the Works or any Deliverable, other than by or on behalf of APPtechnology; and
- 10.14. compliance with the Customer's specifications or instructions.
- 10.15. The Customer:
- 10.16. warrants that the receipt and use in the performance of this Agreement by APPtechnology, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 10.17. If either party (Indemnifying Party) is required to indemnify the other party (Indemnified Party) under this clause 10, the Indemnified Party shall:

- 10.18. notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at 10.3.1 or clause 10.3.2 (as applicable) (IPRs Claim);
- 10.19. allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- 10.20. provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- 10.21. not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

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## 11. SOFTWARE SOLUTIONS AND SUBSCRIPTION SERVICES

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### Acceptance

- 11.1. Where a Software Solution or Subscription Service is owned and delivered by APPtechnology then the conditions of section 6 apply with APPtechnology as the Vendor of the technology.
- 11.2. Where APPtechnology is not the original vendor of the software or subscription service, APPtechnology will include within a formal quotation the Vendors terms and conditions of sale, software as a service subscription agreement, software support agreement or end user license agreement for the Customer to review.
- 11.3. The Customer is required to review and accept the provided terms of the relevant Vendor documentation before the release of any Software.
- 11.4. Software will only be release when the conditions of clause 11.6 have been satisfied unless other terms have been agreed in advance.
- 11.5. Within 2 calendar months of when the software maintenance agreement expires, APPtechnology will provide a quotation for the extension of maintenance. The Customer is under no obligation to accept this quotation. If the Customer does not accept the quotation, the software will no longer be supported (including but not limited to; security patching, feature upgrades, inclusive support). The full terms of maintenance will be detailed in the Vendors terms and conditions.

### Subscription Services

- 11.6. For subscription solutions, the Customer must accept and commit to the minimum subscription duration.
- 11.7. Within 2 calendar months of the end of the initial subscription duration, APPtechnology will provide a quotation for the extension of the service. The Customer is under no obligation to accept this quotation. If the Customer does not accept the quotation, the

service will cease at midnight (GMT) on the last working day of the Subscription period unless there are auto renewal terms in the Vendors EULA. Where a third parties Vendor's EULA has been accepted by the Customer then the auto renew terms of the EULA must be met by the Customer with regards to termination of subscriptions.

- 11.8. Should the Customer accept the duration terms, or fail to terminate any auto renewal terms specified, the new service period will commence for the duration specified in a Schedule or a Statement of Work, whereby the terms of this clause 11 will remain in effect.

#### Warranty and Support

- 11.9. Software Support Services will be provisioned by the Vendor to the Customer unless APPtechnology has agreed to perform a role as a response co-ordinator. The Customer will operate within the Vendors support and escalation process procedures.
- 11.10. Warranty and Limit of Liability for Software Solutions or Services will be as per the Vendors Warranty and Limit of Liability terms and conditions, and are applicable to the Customer as if the Customer had transacted directly with the Vendor, accepting the Vendors Terms.
- 11.11. The Vendors terms and conditions will survive the life of this contract.

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## 12. COMPLIANCE WITH LAWS

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- 12.1. In performing its obligations under this Agreement, APPtechnology shall comply with the Applicable Laws.
- 12.2. Changes to the Works required as a result of changes to the Applicable Laws shall be agreed via the change control procedure set out in clause 8 (Change control).

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## 13. DATA PROTECTION

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- 13.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 13.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the customer is the controller and APPtechnology is the processor. Schedule 2 sets out the scope, nature and purpose of processing by APPtechnology, the duration of the processing and the types of personal data and categories of data subject.
- 13.3. APPtechnology acknowledges, and procures that the Service Providers acknowledge, that for the purposes of the Data Protection Legislation, the Customer is the data controller, APPtechnology is the data processor and the Service Providers (including any Sub-contractors) are sub-data processors.
- 13.4. Without prejudice to the generality of clause 13, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to APPtechnology for the duration and purposes of this Agreement.
- 13.5. Without prejudice to the generality of clause 13, APPtechnology shall, in relation to any personal data processed in connection with the performance by APPtechnology of its obligations under this Agreement:
- 13.6. process that personal data only on the documented written instructions of the Customer unless APPtechnology is required by Applicable Laws to otherwise process that personal data. Where APPtechnology is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, APPtechnology shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit APPtechnology from so notifying the Customer;
- 13.7. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 13.8. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

- 13.9. not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- 13.10. the Customer or APPtechnology has provided appropriate safeguards in relation to the transfer;
- 13.11. the data subject has enforceable rights and effective legal remedies;
- 13.12. APPtechnology complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- 13.13. APPtechnology complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 13.14. assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 13.15. notify the Customer without undue delay on becoming aware of a personal data breach;
- 13.16. at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
- 13.17. maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and immediately inform the Customer if, in the opinion of APPtechnology, an instruction infringes the Data Protection Legislation.
- 13.18. With not less than 30 days notice, the Customer may consent or reject to APPtechnology appointing a third party processor of personal data under this Agreement. APPtechnology confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement which reflects and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and APPtechnology, APPtechnology shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 13.
- 13.19. Either party may, at any time on not less than 30 days' notice, revise this clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- 13.20. APPtechnology agrees that any Substitute Personnel appointed under clause 7.3 and/or a Sub-contractor appointed under clause 7.4 is a third-party processor of Personal Data under this Agreement. APPtechnology procures that a Service Provider will enter into a written agreement, which incorporates terms which are substantially similar to those set out in this clause 13, with the Substitute Personnel and/or a Sub-contractor.

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## 14. CONFIDENTIALITY

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- 14.1. Each party undertakes that it shall not at any time, and for a period of two years after termination of this Agreement, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 14.2.
- 14.2. Each party may disclose the other party's Confidential Information:
- 14.3. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 14; and
- 14.4. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.5. No party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

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## 15. LIMITATION OF LIABILITY

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- 15.1. APPtechnology has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £2,000,000 per claim (public and products liability), £5,000,000 professional indemnity, and £5,000,000 Employers' liability. The limits and exclusions in this clause reflect the insurance cover APPtechnology has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 15.2. Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for:
- 15.3. death or personal injury caused by negligence;
- 15.4. fraud or fraudulent misrepresentation; and
- 15.5. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 15.6. Subject to clause 15.2, APPtechnology's total liability to the Customer shall not exceed the limits of the relevant insurance stated. APPtechnology's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement.
- 15.7. This clause 15 sets out specific heads of excluded loss [and exceptions from them]:
- 15.8. subject to clause 15.2, the types of loss listed in clause 15 are wholly excluded by the parties
- 15.9. The following types of loss are wholly excluded

- 15.10. Loss of profits.
- 15.11. Loss of sales or business.
- 15.12. Loss of agreements or contracts.
- 15.13. Loss of anticipated savings.
- 15.14. Loss of use or corruption of software, data or information not directly related to the Works.
- 15.15. Loss of or damage to goodwill.
- 15.16. Indirect or consequential loss.
- 15.17. APPtechnology has given commitments as to compliance of the Services with relevant specifications in clause 4.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 15.18. Unless the Customer notifies APPtechnology that it intends to make a claim in respect of an event within the notice period, APPtechnology shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 1 month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

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## 16. TERMINATION

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- 16.1. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 16.2. the other party commits a material breach of any term of this Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 16.3. 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;
- 16.4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 16.5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- 16.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);

- 16.7. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company);
- 16.8. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 16.9. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 16.10. 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;
- 16.11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16; or
- 16.12. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 16.13. Without affecting any other right or remedy available to it, APPtechnology may terminate this Agreement with immediate effect by giving written notice to the Customer if:
- 16.14. the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- 16.15. there is a change of control of the Customer.

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## 17. CONSEQUENCES OF TERMINATION

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- 17.1. On termination or expiry of this Agreement:
- 17.2. all existing Statements at Work shall terminate automatically;
- 17.3. the Customer shall immediately pay to APPtechnology all of APPtechnology's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, APPtechnology may submit an invoice, which shall be payable immediately on receipt;
- 17.4. the Customer shall return all of APPtechnology's Equipment. If the Customer fails to do so, then APPtechnology may enter the Customer's premises and take possession of APPtechnology's Equipment. Until APPtechnology's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping;
- 17.5. APPtechnology shall on request return any of the Customer Materials not used up in the provision of the Works; and
- 17.6. all clauses shall continue in force:

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

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## 18. FORCE MAJEURE

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- 18.1. Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
- 18.2. acts of God, flood, drought, earthquake or other natural disaster;
- 18.3. epidemic or pandemic;
- 18.4. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 18.5. nuclear, chemical or biological contamination or sonic boom;
- 18.6. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- 18.7. collapse of buildings, fire, explosion or accident; and
- 18.8. interruption or failure of utility service.
- 18.9. If a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 18.10. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 18.11. The Affected Party shall:
- 18.12. as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- 18.13. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 18.14. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving 2 weeks' written notice to the Affected Party.

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## 19. ASSIGNMENT AND OTHER DEALINGS

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- 19.1. The Customer shall provide 60 days notice it wishes to assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 19.2. APPtechnology shall provide 60 days notice it wishes to assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

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## 20. VARIATION

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- 20.1. Subject to clause 8 (Change control), no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

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## 21. WAIVER

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- 21.1. A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 21.2. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 21.3. A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

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## 22. RIGHTS AND REMEDIES

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

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## 23. SEVERANCE

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- 23.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 23.2. If any provision or part-provision of this Agreement is deemed deleted under clause 23.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

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## 24. ENTIRE AGREEMENT

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- 24.1. 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.

- 24.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

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## 25. CONFLICT

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- 25.1. If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Schedules or a Statement of Work, the provisions of this Agreement shall prevail.

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## 26. MARKETING

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- 26.1. Either party may submit to the other marketing materials for promotion of the services provided into or received.
- 26.2. Marketing may include (but not limited to) case studies, white papers, blog posts and announcements of project milestones.
- 26.3. Neither party will publish until such time as the other has approved in writing their approval of the materials including (but not limited to) use of logos, branding, employee names and positions.
- 26.4. Such approval will not be unreasonably withheld.

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## 27. NO PARTNERSHIP OR AGENCY

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- 27.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 27.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

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## 28. THIRD PARTY RIGHTS

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- 28.1. Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 28.2. The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

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## 29. NOTICES

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- 29.1. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case).

- 29.2. Any notice shall be deemed to have been received:
- 29.3. if delivered by hand, at the time the notice is left at the proper address; and
- 29.4. if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting.
- 29.5. This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

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## 30. COUNTERPARTS

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- 30.1. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 30.2. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 30.3. No counterpart shall be effective until each party has executed and delivered at least one counterpart.

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## 31. NON-SOLICITATION

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- 31.1. The Customer shall not, without the prior written consent of APPtechnology, at any time from the date on which any Works commence to the expiry of 12 months after the completion of such Works, solicit or entice away from APPtechnology or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of APPtechnology in the provision of such Works.

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## 32. DISPUTES

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- 32.1. The parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement or any breach of it.
- 32.2. If the dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to a mediator for resolution and either party may (at such meeting or within 14 days of its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator ('Neutral Adviser') before resorting to litigation.
- 32.3. If the parties are unable to agree on a Neutral Adviser or if the Neutral Adviser agreed upon is unable or unwilling to act, any party may, within [14] days from the date of the proposal to appoint a Neutral Adviser or within [14] days of notice to any party that they are unable or unwilling to act, apply to the Centre for Dispute Resolution ('CEDR') to appoint a Neutral Adviser.

- 32.4. If the parties fail to reach agreement in the structured negotiations within [30] days of the Neutral Adviser being appointed, such a failure shall be without prejudice to the right of any party subsequently to refer any dispute or difference to litigation but the parties agree that before resorting to litigation structured negotiations in accordance with this clause shall have taken place.
- 32.5. Nothing contained in this clause shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect any proprietary or trade secret right.

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### 33. GOVERNING LAW

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

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## 34. JURISDICTION

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- 34.1. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.
- 34.2. This Agreement has been entered into on the date stated at the beginning of it.

### Executed By Both Parties

|                                                                                                           |            |
|-----------------------------------------------------------------------------------------------------------|------------|
| Signed for and on behalf of the Customer:<br><b>[CLIENT NAME]</b><br><br>Name:<br><br>Title:<br><br>Date: | Sign here: |
|-----------------------------------------------------------------------------------------------------------|------------|

|                                                                                                |            |
|------------------------------------------------------------------------------------------------|------------|
| Signed for and on behalf of <b>APPtechnology</b> :<br><br><br>Name:<br><br>Title:<br><br>Date: | Sign here: |
|------------------------------------------------------------------------------------------------|------------|