

This agreement is dated [Enter Date]

Parties

- (1) Moriyama Limited incorporated and registered in England and Wales with company number 05801671 whose registered office is at Towngate House, 2-8 Parkstone Road, Poole. Dorset, BH15 2PW (the **Consultancy**).
- (2) [Company Name] incorporated and registered in England and Wales, [Company Number] whose registered office is at [Registered address] (the **Client**).

BACKGROUND

- (A) The Consultancy is in the business of providing the Services.
- (B) The Client wishes to obtain and the Consultancy wishes to provide the Services on the terms set out in this agreement.

Agreed terms

1. Interpretation

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

Affiliate: in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

Applicable Data Protection Laws: means:

- a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Consultancy is subject, which relates to the protection of personal data.

Applicable Laws: all applicable laws, statutes, regulation and codes from time to time in force.

Bug: an error, flaw, mistake, failure, or fault in a computer program or system that produces an incorrect or unexpected result, or causes the Deliverables to behave in unintended ways based on the Client's requirements as agreed at the time that the code allegedly causing the bug was written. For the avoidance of doubt, a Bug does not include the Deliverables behaving in unintended ways as a result of:

- a) the Consultancy's reasonable interpretation of the requirements documentation or its assumption of missing information within the requirements documentation; or

b) effects or results caused by third-party systems or components or the Deliverables compatibility with them.

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.

Charges: the sums payable for the Services as set out in a Statement of Work.

Client Materials: all documents, information, items and materials in any form, whether owned by the Client or a third party, which are provided by the Client to the Consultancy in connection with the Services, including the items provided pursuant to clause 5.1(c).

Deliverables: any output of the Services to be provided by the Consultancy to the Client as specified in a Statement of Work and any other documents, products and materials produced by the Consultancy to the Client in relation to the Services.

EU GDPR: means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

Heightened Cybersecurity Requirements: any laws, regulations, codes, guidance from regulatory and advisory bodies (whether mandatory or not), international and national standards, and sanctions, which are applicable to the Client relating to security of network and information systems and security breach and incident reporting requirements, which may include the Cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, 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.

Services: the services to be provided in accordance with the terms of this agreement as set out in a Statement of Work.

Statement of Work: a detailed plan, proposal or other written instructions describing the services to be provided by the Consultancy, and where applicable, the timetable for their performance and any other the related matters.

Third Party Products and Services: any third party software (including open source software), products or services, including for example stock images, website themes or plug-ins that may be purchased by or on behalf of the Client and incorporated into the Deliverables.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.6 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.9 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.10 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.11 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.12 A reference to **writing** or **written** includes email.
- 1.13 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Commencement and duration

- 2.1 This agreement shall commence on the date when it has been signed by all the parties and shall continue, unless terminated earlier in accordance with 13 (Termination), until either party gives to the other party written notice to terminate.
- 2.2 At the date notice to terminate is served under clause 2.1:
 - (a) If there are no uncompleted Statements of Work, such notice shall terminate this agreement with immediate effect;
 - (b) If there are uncompleted Statements of Work, such notice shall terminate this agreement on the completion of all Statements of Work entered into before the date on which it is served.
- 2.3 The parties shall not enter into any further Statements of Work after the date on which notice to terminate is served under clause 2.1.
- 2.4 The Client may procure the Services by agreeing a Statement of Work with the Consultancy pursuant to clause 3 (Statements of Work).

3. Statements of Work

- 3.1 Each Statement of Work shall be agreed between the parties. If the Client requests Services or gives instructions verbally, these shall be confirmed in writing by the Consultancy. Any such confirmation shall be deemed accepted by the Client unless it specifies to the contrary in writing, within 48 hours of delivery of the confirmation by the Consultancy.
- 3.2 The Consultancy may charge for the preparation of Statements of Work on a time and materials basis in accordance with the Consultancy's usual fee rates.
- 3.3 Once a Statement of Work has been agreed or deemed accepted, no amendment shall be made to it except in accordance with clauses 7 (Change control) or 17 (Variation).
- 3.4 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

4. Consultancy's responsibilities

- 4.1 The Consultancy shall provide the Services from the date specified in the relevant Statement of Work.
- 4.2 The Consultancy shall use reasonable endeavours to provide the Services, and deliver the Deliverables to the Client, in accordance with a Statement of Work in all material respects.

4.3 The Consultancy shall use reasonable endeavours to meet any performance dates specified in a Statement of Work but any such dates shall be estimates only and time for performance by the Consultancy shall not be of the essence of this agreement.

4.4 The Services (or parts of them) may be provided by any Affiliate of the Consultancy or any member of the group of companies that the Consultancy is a part of. However, the Consultancy shall remain responsible for the provision of the Services, delivery of the Deliverables and all acts and omissions of its Affiliates and members of its group as if they were its own.

5. Client's obligations

5.1 The Client shall:

- (a) co-operate with the Consultancy in all matters relating to the Services;
- (b) provide, for the Consultancy, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as reasonably required by the Consultancy including any such access as is specified in a Statement of Work;
- (c) provide to the Consultancy in a timely manner all documents, information, items and materials in any form (whether owned by the Client or a third party) required under a Statement of Work or otherwise reasonably required by the Consultancy in connection with the Services and ensure that they are accurate and complete in all material respects;
- (d) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Consultancy to provide the Services, in all cases before the date on which the Services are to start; and
- (e) comply with any additional responsibilities of the Client as set out in the relevant Statement of Work.

5.2 If the Consultancy's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Consultancy shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client.

6. Third Party Products and Services

6.1 Any Third Party Products or Services shall be supplied in accordance with the relevant third party's standard terms or as otherwise agreed between the Client and the third party. The Client shall be solely responsible for complying with the terms of any such agreement and paying for any costs, fees or expenses due to the third party. The Consultancy does not provide any warranties or guarantees in relation to the Third Party Products or Services in relation to their compatibility with the Services, the Deliverables, their fitness for purpose or otherwise.

- 6.2 Unless paying the third party direct, the Client shall pay for all Third Party Products and Services in accordance with clause 8.

7. Change control

- 7.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until agreed in writing between the parties.
- 7.2 The Consultancy may charge, on a time and materials basis at the Consultancy's usual daily rates, for the time it spends on preparing, negotiating and implementing changes proposed by the Client.

8. Charges and payment

- 8.1 In consideration of the provision of the Services by the Consultancy, the Client shall pay the Charges.
- 8.2 The Consultancy shall invoice the Client for the Charges at the intervals or in the manner specified in the Statement of Work. If nothing is specified, the Consultancy shall invoice the Client at the end of each month for Services performed during that month.
- 8.3 The Client shall pay each invoice submitted to it by the Consultancy within 30 days of receipt to a bank account nominated in writing by the Consultancy from time to time.
- 8.4 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Consultancy any sum due under this agreement on the due date:
- (a) the Client 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 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
 - (b) the Consultancy may suspend part or all of the Services until payment has been made in full.
- 8.5 All sums payable to the Consultancy under this agreement:
- (a) are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.6 This contract is divisible. Each Delivery is deemed to arise from a separate contract and will be invoiced separately. Each invoice will be payable in full irrespective of whether there are any bugs or disputes in relation to any other Deliveries or invoices.

For the purposes of this clause, a “Delivery” is a delivery of services as more particularly described in a Statement of Work.

9. Intellectual property rights

9.1 In relation to the Client Materials:

- (a) the Client and its licensors (if any) shall retain ownership of all Intellectual Property Rights in the Client Materials; and
- (b) the Client grants to the Consultancy a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of this agreement for the purpose of providing the Services to the Client.

9.2 On receipt of payment of the Charges, in full, the Consultancy assigns to the Client all Intellectual Property Rights in the Deliverables.

9.3 Intellectual Property Rights in any Third Party Products and Services shall be licenced or assigned to the Client in accordance with any terms agreed with the relevant third party.

9.4 The Consultancy:

- (a) warrants that the receipt, use of the Services and the Deliverables by the Client shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) shall, subject to clause 12.6, indemnify the Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) suffered or incurred or paid by the Client arising out of or in connection with any claim brought against the Client for 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, use of the Services and Deliverables;
- (c) shall not be in breach of the warranty at clause 9.4(a), and the Client shall have no claim under the indemnity at clause 9.4(b) to the extent the infringement arises from:
 - (i) the use of Client Materials in the development of, or the inclusion of the Client Materials in, the Services or any Deliverable;
 - (ii) any modification of the Services or any Deliverable, other than by or on behalf of the Consultancy; or
 - (iii) compliance with the Client's specifications or instructions.

9.5 The Client:

- (a) warrants that the receipt and use in the performance of this agreement by the Consultancy, its agents, subcontractors or consultants of the Client Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
 - (b) shall indemnify the Consultancy against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by the Consultancy arising out of or in connection with any claim brought against the Consultancy, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Client Materials.
- 9.6 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this clause 9, the Indemnified Party shall:
 - (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 9.4(b) or 9.5(b) (as applicable) (**IPRs Claim**);
 - (b) 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;
 - (c) 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
 - (d) 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.

10. Data protection

- 10.1 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 10.2 The parties have agreed to enter into the Data Sub-Processing Agreement attached.

11. Confidentiality

- 11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or

suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2(a).

11.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12. Limitation of liability

12.1 References to liability in this clause 12 (Limitation of liability) include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

12.3 Nothing in this clause 12 shall limit the Client's payment obligations under this agreement.

12.4 Nothing in this agreement shall limit the Client's liability under clause 9.5 (IPR indemnities).

12.5 Nothing in this agreement limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.6 Subject to clauses 12.2 (No limitations in respect of deliberate default) and 12.5 (liabilities which cannot legally be limited), the Consultancy's total liability to the Client for all other loss or damage shall not exceed the lower of £100,000 or 125% of the Charges payable under the Statement of Work in which the liability arose.

- 12.7 Subject to clauses 12.2 (No limitations in respect of deliberate default), 12.3 (No limitation on the Client's payment obligations), 12.4 (Liability under identified clauses) and 12.5 (Liabilities which cannot legally be limited), this clause 12.7 specifies the types of losses that are excluded:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 12.8 If either the Consultancy or the Client identifies any Bugs in any of the Deliverables within a period of 30 days from the date on which it goes "live" or is handed over to the Client (the "Live Date"), the Consultancy shall correct them within a reasonable time at no further cost to the Client. The Client acknowledges and accepts that 30 days from the Live Date should be ample time to find all Bugs but if after 30 days further Bugs are found, the Consultancy shall correct them but will make an extra charge for this in accordance with its current fees and prices.
- 12.9 If the Client reports a Bug but on investigation by the Consultancy it is discovered not to be so, the Consultancy shall be entitled to charge the Client for the time spent investigating the bug in accordance with its current fees and prices.
- 12.10 Whilst the Consultancy shall use all reasonable endeavours to ensure compliance, the Consultancy does not provide any warranty or guarantee that the Services or Deliverables will comply with any disability, e-commerce, data protection or other applicable legislation, code of practice, rule or law that may be in force from time to time.
- 12.11 The Consultancy does not provide any warranty, guarantee or assurance, either express or implied, that the Deliverables will generate any minimum number or value of sales, enquiries, visits, volume of traffic, ranking with any search engine or any other results return on investment. Any figures or targets quoted by the Consultancy, either verbally or in writing, are estimates only.
- 12.12 The Consultancy does not warrant that:
- (a) the Client's use of the Deliverables will be uninterrupted or error-free;
 - (b) the Deliverables will be free from Vulnerabilities; or
 - (c) the Deliverables will comply with any Heightened Cybersecurity Requirements.

13. Termination

13.1 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:

- (a) the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) 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;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) 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 the other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) 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;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) 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;
- (i) 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;
- (j) 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 clauses 13.1(c) to 13.1(i) (inclusive);

- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - (l) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.
- 13.2 Without affecting any other right or remedy available to it, the Consultancy may terminate this agreement with immediate effect by giving written notice to the Client if:
 - (a) the Client fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment; or
 - (b) there is a change of Control of the Client.

14. Obligations on termination and survival

- 14.1 On termination or expiry of this agreement:
 - (a) the Client shall immediately pay to the Consultancy all of the Consultancy's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Consultancy may submit an invoice, which shall be payable immediately on receipt;
 - (b) the Consultancy shall on request return any of the Client Materials not used up in the provision of the Services.
 - (c) all existing Statements at Work shall terminate automatically.
 - (d) any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 14.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

15. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the relevant Statement of Work by giving 14 days' written notice to the affected party.

16. Assignment and other dealings

- 16.1 The Client shall not 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.
- 16.2 The Consultancy may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that the Consultancy gives prior written notice of such dealing to the Client.

17. Variation

Subject to clause 7 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. Waiver

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

19. Rights and remedies

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

20. Severance

- 20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 20.2 If any provision or part-provision of this agreement is deemed deleted under 20.1 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.

21. Entire agreement

- 21.1 This agreement (which for the avoidance of doubt includes any Statement of Work) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties,

representations and understandings between them, whether written or oral, relating to its subject matter.

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

22. Conflict

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

23. No partnership or agency

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

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

24. Third party rights

- 24.1 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. Any Affiliate of the Consultancy or any member or the group to which it belongs may enforce any term of this agreement (and any term contained within a Statement of Work).
- 24.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

25. Notices

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

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to:
 - (i) the Consultancy at pa@moriyama.co.uk; and
 - (ii) the Client at the email address specified in the Statement of Work.

- 25.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 11.00 am on the second Business Day after posting;
 - (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 25.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26. Counterparts

- 26.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 26.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

27. Governing law and Jurisdiction

- 27.1 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.
- 27.2 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.

This agreement has been entered into on the date stated at the beginning of it.

Signed by Jenny Bradshaw for
and on behalf of Moriyama
Limited

.....
Managing Director

Signed by
for and on behalf of
[Company Name] Limited

.....
Director

Data Sub-Processing Agreement

1. Specific Processing

- 1.1. The details of the specific processing are set out in any applicable Statement of Work.
- 1.2. The parties acknowledge and understand that, unless otherwise agreed in a Statement of Work, the Consultancy shall act as a processor on behalf of the Client with respect to the Personal Data (as defined below).

2. Consultancy obligations

- 2.1. The Consultancy shall process personal data received from or processed on behalf of the Client in connection with the Services (the "Personal Data") only on the documented instructions of the Client. These may be specific instructions or instructions of a general nature as set out or provided for in the Agreement. For the avoidance of doubt, this does not prevent the Consultancy processing Personal Data where required under Applicable Laws and, in such circumstances, the Consultancy shall notify the Client of that legal requirement unless Applicable Laws prohibit such notification on important public interest grounds.
- 2.2. The Consultancy shall inform the Client immediately if, in its opinion, an instruction issued in accordance with paragraph 2.1 would result in either the Client or the Consultancy breaching the Applicable Data Protection Laws.
- 2.3. All Personal Data shall be treated as strictly confidential by the Consultancy and may not be copied, disclosed or processed in any way (i) without the express authority of the Client or (ii) unless required by law or any relevant regulatory body.
- 2.4. The Consultancy warrants that all individuals who it authorises to process Personal Data on behalf of the Client, including employees, are obliged to protect the confidentiality of such Personal Data.
- 2.5. The Consultancy warrants that it, and its employees and agents, will comply at all times with the Applicable Data Protection Laws and shall not perform its/their obligations under the Agreement in such a way as to cause the Client to breach any of its obligations under the Applicable Data Protection Laws.
- 2.6. Where the Consultancy processes Personal Data (whether stored in the form of physical or electronic records) on behalf of the Client it shall:
 - (a) process Personal Data only to the extent, and in such a manner, as is necessary in order to comply with its obligations under the Agreement;
 - (b) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against

accidental loss, destruction, damage, alteration or disclosure in compliance with obligations set out in the Applicable Data Protection Laws, including, where appropriate:

- i. the anonymisation or pseudonymisation and encryption of Personal Data;
 - ii. ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - iii. restoring the availability and access to Personal Data in the event of a physical or technical incident; and
 - iv. regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring security of the processing;
- (a) if so requested by the Client, within a reasonable timeframe supply details of the technical and organisational measures in place to safeguard the Personal Data, and otherwise make available to the Client all information necessary to demonstrate compliance with the obligations set out in the Agreement and/or the Applicable Data Protection Laws;
- (b) on reasonable prior notice and where applicable, permit persons authorised by the Client to enter into any Consultancy premises where Personal Data is processed on behalf of the Client and to inspect the Consultancy's systems to ensure that sufficient security measures are in place (noting that, without prejudice to this clause, it does not permit the Client to enter personal residences of the Client's employees (e.g. where they work from home), and the Client recognises that as the Consultancy's systems are likely to be cloud based it is not possible to consider such third-party cloud based services to be covered by this clause. Furthermore, without prejudice to the Agreement, this clause will survive the termination of the Agreement);
- (c) not process or transfer Personal Data outside the UK or EEA without the prior written consent of the Client and, where the Client consents to any such transfer, the Consultancy shall put in place measures to ensure the Personal Data remains adequately protected as required under the Applicable Data Protection Laws (in addition to any relevant obligations placed on a Consultancy under the Applicable Data Protection Laws);
- (d) not transfer or disclose any Personal Data to any third party or sub-contract any processing function without verifying that the sub-contractor can provide sufficient guarantees to protect the Personal Data and without the prior written consent of the Client (and for the avoidance of doubt, not to add or replace any sub-contractor without the Client's consent) and ensure that any third party to which it sub-contracts any processing has entered into a written contract with the Consultancy which contains all the obligations that are contained in this Agreement, and where applicable includes the relevant legal contractual terms (e.g. the ICO's International Data Transfer Assessments or EU Standard Contractual Clause) for any

processing by a sub-contractor outside the UK or EEA; permits both the Consultancy and the Client to enforce those obligations; is governed by UK law and automatically terminates upon termination of this Agreement; and

- (e) without prejudice to clauses 2.6.5 and 2.6.6 the Client agrees the Consultancy may engage those sub-contractors set out in Appendix 1 of this Agreement and authorises their use as part of signing this Agreement.

2.7. For the avoidance of doubt, the Consultancy remains fully liable to the Client for the performance of the obligations of any sub-contractor appointed by the Consultancy to assist with the performance of the Services under the Agreement.

3. Complaints and rights of data subjects

3.1. The Consultancy shall ensure that it protects the rights of data subjects under the Applicable Data Protection Laws and shall:

- (a) promptly notify the Client in writing (within at least two working days) if it receives:
 - (i) a request from a data subject to have access to his or her Personal Data or to exercise any of his or her rights under Articles 15-22 GDPR; or
 - (ii) a complaint or request relating to the Client's obligations under the Applicable Data Protection Laws; and
- (b) provide the Client with full co-operation and assistance in relation to any such complaint or request made, including by:
 - (i) promptly providing the Client with full details of any complaint or request and any additional information requested by the Client;
 - (ii) taking all steps necessary to enable the Client to comply with a request from a data subject within the relevant timescale set out in the Applicable Data Protection Laws and in accordance with the Client's reasonable instructions;
 - (iii) providing the Client with any Personal Data it holds in relation to a data subject (within the timescales required by the Client);
 - (iv) using appropriate technical and organisational measures as far as this is possible, to assist the Client to respond to requests from data subjects to exercise their rights; and
 - (v) ensuring that (other than as set out above) no reply or other communication is made in response to such complaint or request unless approved by the Client.

4. Notification of Security Breaches

4.1. A data security breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data. This includes breaches that are the result of both accidental and deliberate causes.

- 4.2. The Consultancy shall notify the Client without undue delay after any data security breach occurs and in any event no later than 12 (twelve) hours after the breach has occurred, and shall include in that notification a full description of:
- (a) the nature of the data security breach including details of the Personal Data and data subjects affected;
 - (b) the likely consequences of the breach; and
 - (c) the measures taken or proposed to be taken by the Consultancy to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.
- 4.3. The Consultancy shall provide reasonable assistance to the Client in the event that the Client is required to notify affected data subjects.

5. Data protection impact assessments / consultations with the ICO

- 5.1. The Consultancy shall provide reasonable assistance to the Client with any data protection impact assessments and prior consultations with the ICO which the Client reasonably considers to be required by the Applicable Data Protection Laws, in each case solely in relation to Personal Data processed pursuant to this Agreement and taking into account the nature of the relevant processing activity and information available to the Consultancy.

6. Duration of processing

- 6.1. The Consultancy shall process the Personal Data as required under the Agreement in accordance with this Agreement until the sooner of:
- (a) the Agreement terminating for any reason; or
 - (b) the Client reasonably requesting (orally or in writing) that the Consultancy stops processing the Personal Data.
- 6.2. The Consultancy agrees that, on termination or expiration of this Agreement or in the event that it is notified by the Client that it is not required or permitted to process any further Personal Data, the Consultancy shall:
- (a) transfer a copy of all Personal Data held by it in relation to this Agreement to the Client in a format reasonably requested by the Client;
 - (b) and/or, at the Client's request, and unless legally required to retain the information, the Consultancy shall destroy all such Personal Data (including back-ups and copies) using a secure method which ensures that it cannot be accessed by any third party and shall provide the Client with a written confirmation of secure disposal.

Appendix 1: Sub-Contractors

As of the date of this agreement, the Consultancy uses the following sub-contractors:

Sub-contractor	Purpose	Location of processing
Anktech Pvt Ltd	Developer	Jaipur, India