



General Terms and Conditions of Business

V2022-02

These Terms and Conditions apply to the delivery of services by us to you pursuant to a Proposal (as defined below).

1. Contract Formation

- 1.1. The Proposal shall set out the Services to be delivered by us and associated matters. These Terms and Conditions shall be subject to variation if required in and effected by the Proposal.
- 1.2. Your purchase order constitutes your offer to purchase the Services specified in the Proposal on the basis of these Terms and Conditions. Your offer shall only be deemed to be accepted by us when the Proposal is confirmed in writing by the parties, or when we commence the execution of the work pursuant to the Proposal (the "**Commencement Date**") at which point a Contract shall come into existence.
- 1.3. For the avoidance of doubt, where the relevant Proposal or agreement has not been confirmed in writing by either (or both) of us, these Terms and Conditions will nevertheless apply to the Contract provided that you have had prior notice of them (regardless of whether you have indicated your acceptance in writing). By instructing us to provide the Services and/or by paying any charge(s) or invoice(s) we may render, whether set out in the Contract or otherwise, you indicate your acceptance of the Terms and Conditions.
- 1.4. Each term (or part of a term) in these Terms and Conditions shall be construed separately. If any part of these Terms and Conditions is unenforceable or invalid, that shall not affect the validity or enforceability of any of the other Terms and Conditions.
- 1.5. Unless otherwise agreed in writing, you alone will be our client and your subsidiaries, shareholders and directors will not be considered to be our client.
- 1.6. Where our engagement is with a company, we will only provide the Services to the directors of the relevant company in their capacity as directors and not in their capacity as shareholders of the relevant company. We will not represent any other party in the matter unless we specifically agree to do so in writing. Certain Services supplied by us are subject to Supplemental Terms which will (where applicable) form part of your contract with us and will supplement and (unless expressly stated otherwise in the relevant Supplemental Terms) incorporate these Terms and Conditions.
- 1.7. These Terms and Conditions will prevail over any inconsistent terms and conditions contained in or referred to in any document provided by you (including your purchase order, confirmation of order or specification), or as may otherwise be implied by law, trade, custom, practice or a course of dealing.

2. Customer Responsibilities

- 2.1. You acknowledge that our ability to provide the Services is dependent upon your full and timely co-operation (which you agree to provide), as well as the accuracy and completeness of any Client Materials, designs, specifications and/or any information or data you provide to us. Accordingly, you shall provide us (in each case, for the performance of our obligations under the Contract) with: (a) responses and input to any information or feedback we reasonably request from you; and (b) access to, and use of, all information, data and documentation reasonably required by us.
- 2.2. If performance of our obligations under the Contract is prevented or delayed by a Relief Event then:
 - (a) we will be granted reasonable and proportionate relief from for any failure to carry out the Services or otherwise comply with our obligations under the Contract which arise directly or indirectly as a result of such Relief Event; and
 - (b) if the achievement of a Project Milestone or any other time for performance contained in this Agreement (including but not limited to any timescales described in the Project Plan) is delayed as a direct result of such Relief Event, the relevant Project Milestone or other time for performance shall be increased by a reasonable period of time. Where there is any implementation plan or other timetable, the parties shall agree such revised dates (agreement not to be unreasonably withheld or delayed) and specify the revised dates in the revised implementation plan or timetable (as the case may be).
 - (c) you will pay us on demand all reasonable costs, charges or losses sustained or incurred by us as a result of the Relief Event (including any direct, indirect or consequential losses, loss of profit and loss of opportunity to deploy resources elsewhere), subject to us confirming such costs, charges and losses to you in writing.

3. Project scoping and commencement

- 3.1. Before undertaking any Services, we will endeavour to confirm with you the final scope and specification of the relevant Services (including, scoping, confirming and clarifying any Services specified in the Proposal) ("**Scoping Sign Off**").



- 3.2. You will provide us with your written approval, approving the Scoping Sign Off. Before you signify your approval we shall, subject to clauses 3.3 and 3.5, make any minor adjustments to the Proposal you request, should you require them.
- 3.3. Should you require substantive alterations and/or additions that go beyond the scope of the Proposal, then we reserve the right to revise our initial cost estimate and any increased cost to our estimate shall be classed as Additional Services, which shall be requested in accordance with clause 5 and charged by us (and be payable by you) separately at our then Prevailing Rates.
- 3.4. In certain engagements, a substantive part of the Services we provide will encompass scoping services (for example scoping a functional specification in a software project). Such Services shall be chargeable regardless of whether you choose to continue or discontinue the project to which the scoping relates, provided that you have been provided advance notice that such Services will be chargeable. In such retainers, 'Scoping Sign Off' shall mean confirming with you the final scope, specification and extent of our retainer with you. Nothing in this clause 3 shall operate to release you from paying our Charges in connection with substantive scoping work undertaken by us (even if you do not decide to proceed with further work on the project following scoping, in which case, such Charges will be payable in accordance with clause 4.3).
- 3.5. Upon receipt of an approval of Scoping Sign Off, we shall begin to deliver the Services. Any additional work (including additional development, design work, amendments and/or a change to the scope or nature of the work) required by you after Scoping Sign Off will be classed as Additional Services, which shall be requested in accordance with clause 5 and charged by us (and be payable by you) separately at our then Prevailing Rates. For the avoidance of doubt, when producing a further quotation in connection with this clause, we shall be entitled to take into account subsequent costs arising as a result of suspending the Services to accommodate the changes.

4. Our charges

- 4.1. We shall render invoices in respect of the Services (and any Additional Services, where applicable) comprising fees, expenses, disbursements, outlays (including any amounts due in accordance with clause 4.2) and VAT thereon (where appropriate) ("**our Charges**"). Details of our Charges and any special payment terms are set out in the Proposal.
- 4.2. We may need to enter into binding contractual commitments ("**Third Party Contracts**") on your behalf (or otherwise for your benefit) ("**Third Party Providers**"). You acknowledge that those Third Party Contracts create rights and obligations between us and those Third Party Providers and you agree that, although you are not a party to the Third Party Contracts, you are (and at all times will be) responsible and held liable for all costs in relation to those Third Party Contracts ("**Third Party Costs**") provided that you are given prior written notice of the content of such Third Party Contracts before they are entered into by us on your behalf. You agree to fully indemnify us and hold us harmless from any such Third Party Costs we incur on your behalf and pay such Third Party Costs promptly upon our written demand.
- 4.3. Where the Services are provided on a time-and-materials basis:
 - (a) the Charges payable for the Services shall be calculated in accordance with our agreed daily fee rates as amended from time to time;
 - (b) our agreed daily fee rates are calculated on the basis of Business Hours; and
 - (c) we shall invoice you monthly in arrears for its charges for time and materials, subject to any cap where the services are provided on a capped time-and-materials basis (together with expenses and VAT where appropriate) for the month concerned.
- 4.4. Where Services are provided on a fixed price basis, the price for the Services shall be the amount set out in the Proposal or in our quotation. Where the price envisages deposit payments, payment in instalments and/or Project Milestones, the Charges shall be paid to us in advance, in the instalments as set out in the Proposal or on it achieving the corresponding Project Milestone as applicable. On achieving a Project Milestone, we shall invoice you for the Charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate).
- 4.5. Where the Charges are calculated on a retainer basis, their amount shall be the fixed amounts set out in the relevant Proposal payable at the frequency set out in that Proposal.
- 4.6. Our Charges may differ from estimates or quotations given in the Proposal, which shall be provisional only provided that any changes to the Charges need to be expressly agreed in writing in advance of work being undertaken. In particular, any Additional Services shall be requested in accordance with clause 5 and charged by us (and be payable by you) separately at our then Prevailing Rates.
- 4.7. In return for the delivery of the Services by us (and the delivery of any Additional Services, where applicable), you shall pay our Charges (without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law)) on presentation of our invoice or at such other time as may be specified in the Proposal.



- 4.8. Unless we shall specify otherwise in writing, you shall pay any invoices rendered by us in full and in cleared funds within thirty (30) calendar days of the date of invoice. Payment shall be made to the bank account nominated in writing by us. Time of payment is of the essence.
- 4.9. If you fail to make any payment due to us under the Service Contract by the due date for payment, then, without limiting our remedies under clause 11, we may charge you interest on the overdue amount at the rate of five per cent (5%) per annum above Starling Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You shall pay the interest immediately on demand by us. Alternatively, we may at our sole discretion claim interest and fixed sums under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.10. In the event you dispute our Charges, you will notify us within seven (7) calendar days of receipt of the relevant invoice as to any amount in such Charges that may be in dispute and you shall pay any undisputed amount within such 28 day period. You agree with us that any right to dispute our Charges after the expiry of the within seven (7) calendar day period stipulated shall be irrevocably waived by you.
- 4.11. If any request for payment of our Charges is not met on time or if you fail to provide information or Client Materials when reasonably requested, we may cease further work on that matter and any other matter being handled by us for you or any person associated with you. In such circumstances we accept no liability for the effects of any delays.
- 4.12. Where there is more than one client set out in the Proposal in respect of the Services, unless provision is made in the Proposal for payment of our Charges by one of you or by a third party, all of you shall each be fully liable separately to pay our Charges as well as being so liable together as a group and we shall be entitled to call upon any of you and all of you for payment in full.
- 4.13. The existence of any agreement between us and another person that our Charges will be paid by that other person will not absolve you from discharging all your obligations to us including payment of all our Charges.
- 4.14. Unless otherwise agreed in writing: all our Charges are payable in pounds sterling; and any monies paid other than in pounds sterling will be converted into sterling at the then prevailing rate and we may make a reasonable charge for this conversion.

5. Provision of Additional Services

- 5.1. If, at any time after the acceptance of a Contract pursuant to clause 1.2, the scope of the Services changes (or if either of us wishes to change the scope of the same including where you request Additional Services), then the party requesting the change shall submit details of the change or the requested change to the other in writing. If either of us identifies or requests a change to the scope or execution of the Services, then we shall, within a reasonable time, provide a written estimate to you of:
 - (a) the likely time required to implement the change;
 - (b) any variations to our charges arising from the change;
 - (c) the likely effect of the change on the Project Plan; and
 - (d) any other impact of the change on the terms of this Service Contract.
- 5.2. Within seven (7) Business Days of receipt of the written quote referred to in clause 5.1, you shall inform us in writing of whether or not you wish the requested change to be made. If you want us to proceed with the change, we have no obligation to do so unless and until we have agreed in writing on the necessary variations to our charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

6. Development and acceptance of Software Services

- 6.1. Where we develop a software application or provide any other kind of software coding, programming or website design service as part of the Services ("**Software Services**"), we may run Acceptance Tests at such junctures as we may specify in the Proposal or otherwise agree with you in writing. The acceptance criteria for such tests shall be objective. You shall promptly provide such assistance as we may reasonably require in order to complete such Acceptance Tests. In the event that any Acceptance Tests are not successfully completed, we will be given the opportunity to retest such elements which were not successfully completed and/or (with your consent, not to be unreasonably withheld or delayed) to modify the Acceptance Tests or acceptance criteria. We will notify you once the Acceptance Tests have been successfully completed (a "**Testing Notification**") in respect of Project Deliverables relating to Software Services ("**Software Deliverables**") and will provide reasonable evidence of such completion on request. You will within twenty (20) Business Days of receipt of the Testing Notification provide written notice confirming either:
 - (a) that the Software Deliverables have passed (or, in the circumstances referred to in clause 6.3 is deemed to have passed) the relevant Acceptance Tests referred to in the Testing Notification (a '**Success Notification**'); or



- (b) that the Software Deliverables failed to pass the relevant Acceptance Tests (or part of them) referred to in the Testing Notification, giving full details of the nature and extent of such failure(s) (a '**Failure Notification**').

If, within twenty (20) Business Days of receipt of a Testing Notification, you have not provided us with either a Success Notification or a Failure Notification, then you will be deemed to have served a Success Notification of the relevant Acceptance Tests upon on us.

- 6.2. If you provide us with a Failure Notification then we will use all reasonable endeavours to remedy all the faults identified in the Software Deliverables and the relevant Acceptance Test(s) shall be repeated promptly, following which we will resubmit a Testing Notification in respect of the relevant Acceptance Test(s) (without prejudice to our right to charge for Additional Services where the Failure Notification relates to the circumstances provided in clause 6.3).
- 6.3. If any Failure Notification or any other failure for Software Deliverables to pass the Acceptance Tests arises from a Non-Supplier Defect then a Success Notification shall be deemed to have been served by you in respect of the Software Deliverables, notwithstanding such Non-Supplier Defect. We shall provide assistance reasonably requested by you in remedying any Non-Supplier Defect in the Software Deliverables by supplying Additional Services, which shall be requested in accordance with clause 5 and charged by us (and be payable by you) separately at our then Prevailing Rates.
- 6.4. Acceptance of the relevant Software Deliverables ("**Acceptance**") shall be deemed to have occurred on whichever is the earliest of:
 - (a) the date that you serve on us (or pursuant to clause 6.1 you are deemed to have served on us) Success Notifications in respect of the Acceptance Tests for those Software Deliverables; or
 - (b) the date that the relevant Software Deliverables are put into commercial or operational use.
- 6.5. You acknowledge that open source software, libraries or code (as defined by the Open-Source Initiative at <http://www.opensource.org/docs/definition.php>) ("**Open Source Software**") may be used in the Project Deliverables. We warrant that there has not and will not be included or used any Open Source Software which is licensed under a restrictive software licence (including under the General Public License (as described by the Free Software Foundation and set out at www.gnu.org/licenses/gpl) nor do the OWA Digital Materials operate in such a way that it is compiled with or linked to any restrictively licensed elements.
- 6.6. Whilst we assume responsibility for carrying out all necessary tests to ensure that the Software Deliverables are capable of meeting the requirements of the Proposal, you shall remain responsible for ensuring that the Software Deliverables meet the requirements of the App Store Review Guidelines unless such requirements are expressly stated in the Proposal. If changes are required as a result of the Software Deliverables failing to comply with the App Store Review Guidelines, we will be entitled to charge for that work as Additional Services.

7. Support of Software Services

- 7.1. Unless we are providing Enhanced Support Services to you (in which case clause 7.2 will apply in substitution to this clause) after Acceptance of any Software Deliverables we warrant that for a period of twelve (12) months from the date of Acceptance of any Software Deliverables ("**Warranty Period**"), that the relevant Software Deliverables will materially meet the applicable specifications and acceptance criteria set out in the Proposal. During the Warranty Period, we will use our reasonable endeavours to fix any Defects that become apparent in the relevant Software Deliverables without further charge to you. Where the Defects are attributable to Non-Supplier Defects arise, we will use our reasonable endeavours to repair the Non-Supplier Defects in the Software Deliverables. Such work shall be classed as Additional Services and will be subject to us agreeing to perform those Additional Services, which shall be requested in accordance with clause 5 and charged by us (and be payable by you) separately at our then Prevailing Rates.
- 7.2. We shall not be liable under the warranty set out in clause 7.1 to the extent that failure to meet applicable specifications or acceptance criteria is caused by:
 - (a) any modification of a Project Deliverable after we deliver it to you if such modification was not made by us or on our behalf;
 - (b) your operation or use (or the operation or use by any third party acting on your behalf) of some or all of the Project Deliverable in combination with products not provided or approved by us; and
 - (c) any failure of the Project Deliverable that arises as a result of your any act or omissions of or that contravenes reasonable written instructions provided by us to you.
- 7.3. Where our Proposal expressly identifies the provision of services to support and maintain the Software Deliverables ("**Enhanced Support Services**") then we will support the Software Deliverables in accordance with the Service Levels.
- 7.4. You acknowledge that complex software is never wholly free from defects, errors, bugs, security vulnerabilities, or compatibility issues and except as expressly and specifically provided in clause 6, the



Services and the Project Deliverables provided by us under or in connection with this Contract (including the Software Deliverables and the Software Services) are provided "as is" and as available. We exclude, and you waive, any and all warranties, representations, terms and conditions (to the extent that they may lawfully be so excluded) implied by law or by custom or trade practice in respect of the provision of such services.

8. Limitation of liability

- 8.1. You agree and acknowledge that the level of the Charges takes fully into account the limits of our entire financial liability (set out below) for the applicable Services supplied or to be supplied to you, your use of them, and for anything else in connection with any Service Contract between us for Services.
- 8.2. Neither party shall be liable to the other whether in contract, tort or otherwise for:
- (a) any loss of profit, business, revenue (other than any loss of profits or revenue derived by us in relation to this Agreement including the Charges and the early termination compensation payable pursuant to clause 10.7), goodwill or anticipated savings;
 - (b) any indirect or consequential loss or damage (including any indirect or consequential losses which result in loss of profit, business, revenue, goodwill or anticipated savings);
 - (c) any liability arising as a result of any term implied by common law or statute, order, regulation or any other enactment.
- 8.3. Nothing in these Terms and Conditions shall exclude or limit liability for:
- (a) death or personal injury arising from negligence or that of servants, agents or employees of the parties;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any other liability which cannot be excluded or limited by law.
- 8.4. Subject to clauses 8.2 and 8.3, the aggregate liability of us to you and to Other Beneficiaries of each and all persons, in contract tort or otherwise, for any loss or damage suffered by you (or by any such other party) arising from or in connection with the Services, however the loss or damage is caused (including our negligence but not our fraud or other deliberate breach of duty) shall not exceed the Charges paid or due and payable to us under the Service Contract in the period of twelve (12) months prior to the first event giving rise to the claim or in the first twelve (12) months of the Agreement if the event giving rise to the claim occurs in the first twelve (12) months
- 8.5. Any advice, option, statement of expectation, forecast or recommendation supplied by us as part of the Services shall not amount to any form of guarantee that we have determined or predicted future events or circumstances.

9. Timescales and Circumstances beyond our control

- 9.1. We shall use reasonable endeavours to meet any performance dates for the Services specified and agreed in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for the performance of the services. In particular, timescales for the development of proposed features in the Proposal are estimates only, and more exact time estimates will be provided as the project progresses. We shall be entitled to defer provision of the services until any monies due from you have been received
- 9.2. Neither of us will be in breach of our contractual obligations, nor shall either of us incur any liability, if and to the extent that we may become unable to carry out all or any of our obligations under the Contract as a result of any Force Majeure Event.
- 9.3. In the event of any Force Majeure Event preventing, hindering or delaying either one of us from performing its obligations under this Contract the affected party shall not be in breach of this Contract and shall be entitled to a reasonable extension of time for the full performance of such obligations. If the affected party is prevented, hindered or delayed by any Force Majeure Event for a continuous period in excess of three (3) months and such prevention substantially affects the operation of this Agreement, the other Party shall have the right to terminate this Agreement upon giving thirty (30) days' written notice of such termination to the Party affected by the Force Majeure Event, in which case neither Party shall have any liability to the other except that rights and liabilities accrued prior to such termination shall continue to subsist.

10. Duration and Termination

- 10.1. The Contract shall commence on the Commencement Date. Where the Proposal includes an Initial Term then unless terminated earlier in accordance with this Clause 10, the Contract shall continue for the Initial Term and shall automatically extend for twelve (12) months ("**Renewal Term**") at the end of the Initial Term and at the end of each Renewal Term thereafter. Either of us may give written notice to the other, not later than thirty (30) days before the end of the Initial Term or the relevant Renewal Term, to terminate this Contract at the end of the Initial Term or the relevant Renewal Term, as the case may be. Where the Proposal does not contain an Initial Term, the Contract shall continue until we complete the relevant supply of the Services after which the Contract shall terminate automatically, subject to earlier termination in accordance with this Clause 10.



- 10.2. Without affecting any other right or remedy available to it, either of us may give notice in writing to the other terminating the Contract:
- (a) immediately, if the defaulting party suffers an Insolvency Event; or
 - (b) immediately, if the defaulting party commits a breach of any material term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of twenty (20) Business Days of being notified in writing to do so;
 - (c) on thirty (30) days notice, if either of us has, for a continuous period of three (3) months, not been able to perform its obligations as a result of a Force Majeure Event;
 - (d) on thirty (30) days written notice, if you do not accept any amendments to the Contract pursuant to Clause 15.
- 10.3. Without affecting any other right or remedy available to it, we may give notice in writing to you terminating the whole (or part) of the Contract immediately if;
- (a) you fail to pay any valid amount due under the Contract on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment;
 - (b) you commit a repeated breach of its obligations under the Contract. A repeated breach shall be defined as two or more breaches of the same, or any three breaches of different obligations under this Contract within a twelve month period where each of those breaches have been notified in writing to the relevant party;
 - (c) in the event that you, or any of your senior employees or staff, acting in an official capacity do anything or any act which might reasonably be deemed to bring us, our products or our business into disrepute or to damage in any way our public standing, goodwill, name or reputation;
 - (d) in the event that you, or any of your senior employees or staff, acting in an official capacity, do any act or thing which is unlawful or unethical.
- 10.4. Without limiting our other rights or remedies, we may suspend performance of all or any part of our obligations under the Contract or any other contract between the us if:
- (a) you become subject to any of the events listed at clauses 10.2 or 10.3 or if, acting reasonably and in good faith, we believe that you are about to become subject to any of them; or
 - (b) if you fail to pay any amount validly due under the Contract on the due date for payment. We shall have no liability to you for any losses, damages, expenses or costs that you may incur by reason of such suspension.
- 10.5. On termination of the Contract for any reason:
- (a) your right to receive the Services shall cease automatically;
 - (b) all outstanding unpaid invoices are immediately payable and, in respect of Services provided by us but for which no invoice has been submitted, we may submit an invoice to you, which shall be payable immediately on receipt of invoice;
 - (c) we will use reasonable commercial efforts to transfer to you the Project Deliverables and/or any other product of the Services (whether tangible or intangible,) including the Source Code within thirty (30) days of receipt of such a written request from you, provided that you have, at the date of that request, paid all of our fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) and provided that you meet any charges that we may incur for providing such assistance;
 - (d) save for the licence granted at clause 12.9 (which shall continue unless terminated by us in accordance with its terms) all other rights and licences under the Contract shall terminate on the date of termination of the Contract;
 - (e) each of us shall, as soon as reasonably practicable, return or destroy (as directed by the other in writing) the other party's Confidential Information except that we shall each be entitled to retain copies of the other's Confidential Information as required by any applicable law, court order or regulatory agency or authority (provided in such case such Confidential Information is kept in confidence in accordance with this Contract); and
 - (f) each of us shall, as soon as reasonably practicable, return all the equipment and materials owned by, or subject to the control of the other. Until these are returned or repossessed, the party in possession of these shall be solely responsible for their safe-keeping and shall provide or procure all access and assistance which is reasonably necessary for the party who is the owner of such equipment and materials to regain possession of them.
- 10.6. We may destroy or otherwise dispose of any of your, storage media, software, data, equipment or other items in our possession unless we receive, no later than forty five (45) days after the effective date of the termination of this Contract, a written request from you for their delivery. We will use reasonable commercial efforts to deliver the same to you within thirty (30) days of our receipt of your written



request, provided that you have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) and provided that you meet any reasonable charges that we may charge for providing such assistance. You shall on receipt of reasonable documentary evidence pay all reasonable expenses incurred by us in returning or disposing of such items.

- 10.7. If prior to the expiry of the Initial Term or any Renewal Term set out in clause 10.1, you terminate this Contract for any reason other than as set out in clause 10.2 or we terminate the Contract pursuant to Clauses 10.2 or 10.3, then in addition to any outstanding amounts payable in respect of clause 10.5(b), you shall be obliged to pay us by way of early termination compensation, the balance of the Charges you would have paid over a period equal to the unexpired residue of the Initial Term or the Renewal Term immediately prior to the date of termination of this Contract, less a 35% discount to reflect accelerated receipt of payment, our duty to mitigate our loss and savings in overhead. Any such payment shall become due within thirty (30) days of receipt of invoice.
- 10.8. We both acknowledge that any sums calculable and payable pursuant to clause 10.7 represent a genuine pre-estimate of our losses (rather than a penalty) and are reasonable and proportionate in view of our legitimate business interests.
- 10.9. Any provision of these Terms and Conditions that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract (including clauses 4 (*Our charges*), 7 (*Limitation of liability*), 9 (*Timescales and circumstances beyond our control*), 11 (*Confidentiality*), 12 (*Intellectual property rights, ownership and use*), 13 (*Data protection*), 14 (*Non-solicitation of personnel and employment liabilities*), 20 (*No partnership or agency*), 21 (*Complaints*), 22 (*Law & jurisdiction*) and 23 (*Definitions*)) shall remain in full force and effect.

11. Confidentiality

- 11.1. It is agreed between the parties that:
- (a) we may acquire Confidential Information regarding your business and your affairs in the course of delivering the Services; and
 - (b) you may acquire Confidential Information regarding our business and our affairs in the course of receiving the Services.
- 11.2. Confidential Information shall not include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, for the purpose of legal or regulatory proceedings, by any court of competent jurisdiction or by any regulatory or administrative body or the disclosing Party's insurers (provided that before any such disclosure, the disclosing Party shall, to the extent legally permissible, shall give the other party reasonable notice of the proposed disclosure).
- 11.3. We each shall hold the other's Confidential Information in confidence for the Term and for a period of three (3) years after the termination or expiry of the Term.
- 11.4. We shall be entitled to disclose any Confidential Information to our employees, agents and advisors for the purposes of providing the Services in accordance with this Contract. 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 the Services.
- 11.5. We shall each take all reasonable steps to ensure that anyone to whom it provides (or makes available) the Confidential Information of the other Party as permitted by this Contract complies with the confidentiality provisions of this Contract as if they were directly obliged.
- 11.6. We shall be entitled to make a public announcement concerning the existence, subject matter or terms of the Contract, the wider transactions contemplated by it, or the relationship between the parties, provided that we shall make reasonable attempts to agree the contents of the announcement before making it. Nothing in this clause 11.6 shall be construed as limiting either party's obligations under the remainder of this clause 11.
- 11.7. We may include a textual credit incorporating a link to our website.

12. Intellectual Property Rights, ownership and use

- 12.1. We shall at all times retain ownership of the Intellectual Property Rights that subsist in the OWA Digital Materials and nothing contained in these Terms and Conditions shall operate to pass ownership of the same.



- 12.2. Unless agreed otherwise in the Proposal, you will retain ownership of any Intellectual Property Rights that may subsist in the Client Materials and you grant us a non-exclusive, irrevocable, world-wide, royalty-free license to use the Client Materials to enable us to provide the Services to you.
- 12.3. You warrant and represent to us on an ongoing basis that any Client Materials and their use by us for the provision of the Services:
- (a) will not infringe the Intellectual Property Rights or any right of confidence, right of privacy, right under Data Protection Legislation or any other right of any third party;
 - (b) will not infringe any applicable laws, regulations or third party rights (including material which is illegal, obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous) ("**Inappropriate Content**");
 - (c) are either owned by you or validly licensed to you;
- and, subject to clause 12.5, you agree to fully indemnify us for any loss, damage, costs and expenses arising from any breach of the warranties in this clause 12.3 including any other third party claims arising from the Client Materials infringing the Intellectual Property Rights, rights of confidence, rights of privacy, rights under Data Protection Legislation or any other rights of any third party.
- 12.4. Subject to clauses 12.5 and 12.6, we shall indemnify you against all liabilities, costs, expenses, damages and losses and all other reasonable professional costs and expenses suffered or incurred by you arising directly out of any claim made against you for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the use of any Project Deliverables.
- 12.5. The indemnities in clauses 12.3 and 12.4:
- (a) are subject to the following conditions:
 - i) the indemnified party promptly notifies the indemnifier in writing of the claim;
 - ii) the indemnified party makes no admissions or settlements without the indemnifier's prior written consent (which shall not be unreasonably withheld or delayed);
 - iii) the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require at the indemnifier's sole cost; and
 - iv) the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim at the indemnifier's sole cost.
 - (b) shall not restrict or limit either party's general obligation at law to take commercially reasonable actions to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under any of the indemnities set out in those clauses.
- 12.6. The indemnity in clause 12.4 may not be invoked to the extent that the action or claim arises out of (a) our compliance with any designs, specifications or instructions you may provide or stipulate to us (b) a modification of the Project Deliverables by anyone other than us or a third party acting on our behalf.
- 12.7. You shall acquire ownership of the Project Deliverables and/or any other product of the Services (whether tangible or intangible), including the Source Code and Modifications and all Intellectual Property Rights subsisting in the same on payment (in cleared funds) of every part of the Charges relating to the Services. For the purposes of delivering services to you or other clients, we shall be entitled to use, develop and share knowledge, experience and skills of general application gained through performing the Services.
- 12.8. Until such time that ownership of the Project Deliverables passes to you pursuant to clause 12.6 (following payment of every part of the Charges relating to the relevant Services) we reserve all rights in the Project Materials (including ownership rights). Until ownership passes, we reserve the right to the transfer the Project Deliverables onto a tangible medium and delete the code from our servers if you become subject to any of the events listed at clauses 10.2 or 10.3 or if clause 10.4 applies.
- 12.9. Where, as part of providing any Services we permit you to use the OWA Digital Materials in the Proposal, then, in such circumstances and in the absence of written terms supplied by us, we grant you a limited licence to use the OWA Digital Materials for the extent necessary to receive the benefit of the Project Deliverables (but for no other commercial purposes) ("**Permitted Purpose**"). Such licence shall be non-exclusive, personal to you and revocable at any time on written notice. Where the OWA Digital Materials we license to you are software, then in addition to the foregoing licence terms, such licence shall be the compiled/executable embedded form in which it has been delivered to you as an element of the Project Deliverables. In respect of any of the licences we grant you pursuant to this clause 12.9, you shall not, without prejudice to the generality of the foregoing:
- (a) use, copy or transfer any such OWA Digital Materials (or any part of it) except for the Permitted Purpose; or
 - (b) alter, adapt, merge, modify or translate such OWA Digital Materials (or any part of it) in any way except for the Permitted Purpose; or
 - (c) reverse-engineer, disassemble or decompile such licensed software (or any part of it).

13. Data protection

- 13.1. Each party to this Contract shall comply with all applicable requirements of the Data Protection Legislation in connection with the processing of the Protected Data. 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. Both parties to this Contract acknowledge that for the purposes of the Data Protection Legislation, you are the controller and we are the processor of the Protected Data. The scope, nature, purpose and duration of the processing of the Protected Data are set out in Annex 1.
- 13.3. You:
- (a) warrant to us that you have the legal right to disclose all Protected Data that you do in fact disclose to us under or in connection with the Contract, and that the processing of that Protected Data by us for the purpose of providing the Services and otherwise complying with our obligations under the Contract will not breach any provision of the Data Protection Legislation; and
 - (b) shall ensure that you have a lawful basis under the Data Protection Legislation, and all necessary appropriate notices in place, and (where applicable) that you have obtained all necessary valid consents, to enable lawful disclosure of the Protected Data to us for the purposes of the Contract.
- 13.4. If, notwithstanding our intentions (as set out at clause 13.2), we process personal data as a controller, we shall comply with the provisions of the Data Protection Legislation which are imposed on a controller.
- 13.5. Each party to this Contract shall implement and maintain appropriate technological and organisational measures, having regard to the state of technological development and the cost of implementing any measures, to the Protected Data against accidental loss or destruction of, or damage to, the Protected 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.
- 13.6. You shall, in relation to any Protected Data:
- (a) only process the Protected Data: (i) to the extent necessary to provide the Services or otherwise comply with our obligations under this Contract; (ii) in accordance with your specific instructions (save where such instructions infringe the Data Protection Legislation, in which case we shall promptly notify you (and shall be entitled to suspend the provision of the relevant Services until we both have agreed appropriate amended instructions which are not infringing); or (iii) as required by the Applicable Laws;
 - (b) ensure that all our personnel who have access to and/or process the Protected Data are obliged to keep it confidential;
 - (c) not transfer any Protected Data outside of the United Kingdom unless such transfer complies with the requirements of the Data Protection Legislation;
 - (d) notify you without undue delay on becoming aware of any personal data breach affecting any Protected Data;
 - (e) at your cost, assist you in ensuring compliance with your obligations under the Data Protection Legislation in respect of security of processing, personal data breach notifications, data protection impact assessments, prior consultations with Supervisory Authorities, and the fulfilment of your obligations to respond to complaints and requests from data subjects for exercising their data subject rights in respect of their Protected Data;
 - (f) comply with the duration of processing provisions set out in Annex 1;
 - (g) subject to clause 10.6, on your written request, delete or return the Protected Data and its copies to you on expiry or termination of this Contract, unless and to the extent that we are required by the Applicable Laws to retain the Protected Data;
 - (h) complete and accurate records and information to demonstrate our compliance with clauses 13.5 to 13.7 (inclusive); and
 - (i) at your cost, make available to you on your written request such information that is in our possession or control as is necessary to demonstrate our compliance with the obligations placed on us under clauses 13.5 to 13.7 (inclusive), and allow for and contribute to audits, including inspections, by you (or another auditor mandated by you) for this purpose (subject to a maximum of one audit request in any twelve (12) months' period). We shall be entitled to withhold information where it is commercially sensitive or confidential to us or our other customers.
- 13.7. This clause 13.7 applies to any third-party processors of the Protected Data:
- (a) Your consent to us appointing the third-party processors set out in Annex 1 ("**Approved Third-party Processors**").
 - (b) We may amend and update the list of Approved Third-party Processors by providing you with a written notice of any proposed new third-party processor. You may notify us promptly in writing within fourteen (14) days after receipt of our list if you have a reasonable basis for objecting to a new third-party processor. We shall not appoint (or disclose any Protected Data to) that proposed third-party processor until reasonable steps have been taken to address the objections raised by you and we have been provided with a reasonable written explanation of the steps taken.
 - (c) We confirm that we have entered or (as the case may be) will enter with any third-party processor into a written agreement incorporating terms which are substantially similar to those set out in

this clause 13, and, in either case, which reflect the requirements of the Data Protection Legislation.

- (d) As between you and us, we shall remain fully liable for all acts or omissions of any third-party processor appointed by us pursuant to this clause 13.

- 13.8. You shall indemnify us and keep us indemnified against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to data subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by you of your obligations under this clause 13.

14. Non-solicitation of personnel and employment liabilities

- 14.1. You must not, without our prior written consent, either during the term of the Contract or within the period of twelve (12) months following the termination or expiry of it, engage, employ or solicit for engagement or employment any of our employees or contractors personnel who have been involved in any way in the negotiation or performance of the Contract ("**Our Personnel**").
- 14.2. You agree that if you breach the provisions of clause 14.1 by successfully soliciting, interfering with, procuring or enticing away any of Our Personnel, you shall pay us promptly upon our written demand a sum equivalent to half the annual salary or fees paid by us to the person so solicited immediately before that person leaves our employment or ceases to be engaged by us.
- 14.3. You agree that the amount referred to in clause 14.2 represents a reasonable pre-estimate of the loss and damage which we would suffer in the event of the circumstances described in clause 14.2 arising and are reasonable for the purposes of protecting our proper business interests we have relied on the representations you make to us at Clause 14.1 in entering into the Contract.
- 14.4. The provisions of this clause 14 are without prejudice to our right to seek interim remedies through the court or otherwise in respect of the matters contemplated by it.
- 14.5. We agree that when the Contract expires or terminates, there will be no "relevant transfer" (as defined in the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**")) and as a result, none of your employees, contractors or any other individuals ("**Your Personnel**") shall transfer their employment to us, nor will any of Our Personnel transfer to you. You will indemnify us for all losses, liabilities, costs (including reasonable legal costs), fees, expenses, actions, procedures, claims, demands and damages (including the amount of damages awarded by a court of competent jurisdiction) incurred by us (including all salary, redundancy, pension, recruitment and other costs) if, pursuant to TUPE upon the termination or expiry of the Contract (and notwithstanding the provisions of this clause 14.5), either: (1) any of Your Personnel or other individuals do transfer to us; and/or (2) any of Our Personnel or other individuals do transfer to you.

15. Variation

We shall be permitted to, and you acknowledge that we may, amend the terms of Terms and Conditions or Supplemental Terms forming part of the Contract. We shall give you at least thirty (30) calendar days' notice in writing of any change to the same. Any such revised Terms and Conditions and/or Supplemental Terms shall be effective as the Terms and Conditions / Supplemental Terms from the date of expiry of such notice. You can provide us with written notice during this thirty (30) day period, informing us that you do not accept the amendments. Subject to the preceding sentences of this clause 15, no variation of the Contract shall be effective unless it is agreed in writing by each of us.

16. Waiver and assignment

- 16.1. Our failure to exercise or enforce any rights available to us shall not be a waiver of any rights and does not prevent us enforcing the rights at a later date.
- 16.2. You shall not have the right to assign the benefit (or transfer the burden) of the Contract to another party unless (in our sole discretion) we provide our prior written consent.

17. Notices and counterparts

- 17.1. Any notice to be given under the Contract shall be in writing and shall be delivered by pre-paid first class post (or pre-paid overseas equivalent) to our registered business address (or such other address as may be notified in writing from time to time). The sender must prove that the notice was correctly sent. Unless there is evidence to the contrary, notices delivered shall be deemed to have arrived:
 - (a) When posted from and to addresses in the UK, at 09:00 on the second Business Day after posting;
 - (b) When posted from and to addresses overseas, at 09:00 on the tenth Business Day after posting; and
 - (c) When sent by email, the notice shall be deemed received at the time of transmission (provided the sender can produce a valid transmission report), save that, if this time of transmission falls outside of Business Hours in the place or receipt, when Business Hours resume.
- 17.2. This clause 17 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.



- 17.3. The Proposal 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 Contract.

18. Entire Agreement

The Contract sets out the entire agreement and understanding between the parties in connection with the services and supersedes any prior arrangements, understandings, agreements, statements or representations (unless made fraudulently) relating to the Services. In the event of any inconsistency between the Proposal and any other elements of the Contract, the Proposal shall prevail. In the event of any inconsistency between these Terms and Conditions and the Supplemental Terms that may apply, the Supplemental Terms shall prevail.

19. Third party rights

The Contract shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights. No third party shall have any right to enforce or rely on any provision of the Contract which does or may confer any right or benefit on any third party, directly or indirectly, expressly or impliedly. The application of any legislation giving or conferring on third parties contractual or other rights in connection with the Contract shall be excluded.

20. No partnership or agency

Nothing in the Contract is intended to or shall operate to create a partnership between us, or authorise either of us to act as agent for the other, and neither of us shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. Complaints

- 21.1. Whilst we are confident that we will deal with all matters to your utmost satisfaction, if at any time you have a complaint or wish to make some comment about the service you have received, please would you discuss it in the first instance with the person with whom you usually deal. We will endeavour to deal with your complaint to your satisfaction. If however you are still unhappy about some aspect, please do not hesitate to communicate with our Operations Director, Tim Collingwood, who will do their best to resolve it.

22. Law & jurisdiction

- 22.1. This Contract and any disputes or claims arising out of its subject matter or formation (including any non-contractual dispute or claim) shall be governed by and construed in accordance with English law.
- 22.2. Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales and waives any objection which it may have now or in the future to the courts of England and Wales being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 22.3. Each party submits to the non-exclusive jurisdiction of the courts of England and Wales for the purposes of: (i) enforcing any judgment or award made by the courts of England and Wales or (ii) seeking emergency injunctive relief in any territory where the other party has disclosed or threatens or is likely to disclose any Confidential Information in breach of the Contract, in order to prevent, restrain or curtail such disclosure, or to prevent, restrain or curtail the infringement or unauthorised use of any of its Intellectual Property Rights.

23. Definitions

The meanings of the following words and phrases which are used in these Terms and Conditions shall be as set out below:

"Additional Services" means any services which you request that we agree to provide to you which are outside the scope or execution of the Services as set out in the Proposal in accordance with the procedure set out in clause 5.

"Acceptance" has the meaning given in clause 6.4.

"Acceptance Tests" means such acceptance tests (if any) as may be specified in the Proposal to test compliance of any software developed by us with any specification set out in the Proposal.

"Applicable Laws" means applicable law of the United Kingdom (or a part of the United Kingdom as required by the context).

"App Store" means an online or remote-accessed location where the Applications will be made available for downloading.

"App Store Review Guidelines" means the requirements set out in the relevant App Store or any other relevant rules, regulations and best practice guidelines issued from time to time by host of the App Store including without limitation iOS binaries, app contract information, export compliance information, app metadata, localized metadata, and promotional graphics.



"Business Day" means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

"Business Hours" means the period from 09.00 to 17.30 on any Business Day.

"Client Materials" means any information, data, plans, photographs, images, drawings, video or any other documents or multimedia (whether in a tangible or non-tangible form) supplied to us by you or by any third party on your behalf, but (unless otherwise agreed in the Proposal).

"Client Responsibilities" means any acts or activities identified in the Proposal as being your responsibilities together with such other acts which need to be performed by you or other third parties engaged or directed by you under the Contract in order for us to be able to provide the Services;

"Commencement Date" has the meaning given in clause 1.2.

"Confidential Information" means any technical or commercial know-how, specifications, inventions, processes or initiatives, trade secrets or other information which are of a confidential nature and have been disclosed by one party to the other (including the details of any Contract, Proposal and/or these Terms and Conditions) received or obtained by a party that is proprietary or confidential of the other party and (i) is clearly labelled as such; (ii) is otherwise clearly identified as such; or (iii) from its nature and/or the circumstances of its disclosure it is reasonable to infer that it is such.

"Contract" means these Terms and Conditions and the Proposal, together with any Supplemental Terms to which specific contractual reference is made in the Proposal.

"controller", "processor", "data subject", "personal data", "personal data breach", and "appropriate technical and organisational measures" shall have the respective meanings given to them in the applicable Data Protection Legislation.

"Data Protection Legislation" means all Applicable Laws relating to the processing, privacy and/or use of personal data, as applicable to either Party or the Services, including: (i) the GDPR; (ii) the Data Protection Act 2018; (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; (iv) any laws which implement any of the foregoing laws; and (v) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing laws.

"Defect" shall mean programming and design errors that materially impair the performance, utility, or functionality of a Project Deliverables, or any material non-compliance of a Deliverable, as represented in the Proposal for such Project Deliverable, other than Non-Supplier Defects.

"Enhanced Support Services" has the meaning given in clause 7.2.

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics and pandemic explosions, fires, floods, riots, terrorist attacks and wars).

"GDPR" means (i) the General Data Protection Regulation, Regulation (EU) 2016/679; or (ii) the General Data Protection Regulation, Regulation (EU) 2016/679 as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the Applicable Laws from time to time).

"Our Charges" has the meaning given in clause 4.1.

"OWA Digital Materials" means any information, data, plans, photographs, images, drawings, video, Source Code, proprietary software or any other documents or multimedia (whether in a tangible or non-tangible form) provided or utilised by us. It also includes any work, knowledge, experience and skills of general application owned by us prior to our engagement with you or gained through performing the Services, but not including, for the avoidance of doubt, the Client Materials.

"Initial Term" means the initial term of the Contract as expressly set out in the Proposal;

"Insolvency Event" means a person that:

- (a) 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;
- (b) applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986
- (c) becomes insolvent or bankrupt;
- (d) or ceases to trade or threatens to cease to do business;
- (e) is the subject of an order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction, which does not materially reduce that entity's assets);
- (f) has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any part of its assets;
- (g) enters into or proposes any composition or arrangement with its creditors generally (otherwise than for the purpose of a financing or solvent amalgamation or reconstruction); or

is the subject of any events or circumstances analogous to any of the foregoing in any applicable jurisdiction

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade



secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or 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.

"Modifications" means modifications and/or alterations to any Client Materials carried out by us as part of the Services.

"Non-Supplier Defects" a defect in the Project Deliverables which is caused either by any of your acts or omissions (or those of your employees, agents and subcontractors) or by the acts or omissions of a third party for whom we have no responsibility (for example another party that you are contracting with that provides goods or services on which the performance of our Services are dependent)

"Open Source Software" has the meaning given in clause 6.5.

"Other Beneficiaries" means any and each person or organisation identified in the Proposal (other than you) as a beneficiary of the Services and any product thereof.

"Permitted Purpose" has the meaning given in clause 12.8.

"Prevailing Rates" means our hourly pro rata charges from time to time for carrying out any work that is part of a time-and-materials basis or out of the scope of the Proposal.

"processing" in respect of any personal data, shall have the meaning given to it in the applicable Data Protection Legislation (and related expressions, including **"process"**, **"processed"**, and **"processes"** shall be construed accordingly).

"Project Deliverables" means any product or service developed or delivered by us (which may be to such specification and in such stages as set out in the Proposal, or as otherwise agreed by us in writing from time to time) in relation to the Services and Modifications, including as applicable, artwork, photographs, images, plans, drawings, visualisations, advertising copy, computer software, reports and any other documents or materials in any tangible or intangible format, but excluding (unless agreed otherwise in the Proposal) any Source Code.

"Project Milestones" means the date by which a part of the Software is estimated to be completed, as set out in the Project Plan.

"Project Plan" means the plan describing the Services and setting out the estimated timetable, responsibilities and any applicable Project Milestones for the provision of the same by us.

"Proposal" means the document(s) we provide to you in writing (which may include a Project Plan) which set out the description or specification of the applicable Services that we will provide to you.

"Protected Data" means personal data received from you or on your behalf, or otherwise obtained in connection with the performance of our obligations under this Contract.

"Relief Event" means

- (a) your failure to perform or procure the performance of any of your obligations under this Contract (including the Customer Responsibilities) or any other breach of your obligations under the Contract, in each case whether by act or omission;
- (b) your failure to provide us with (i) reasonable co-operation in relation to this Agreement and in all matters relating to the Services (ii) reasonable access to such documents, equipment, items, Client Materials and other materials in any form (whether owned by you or a third party) as may reasonably be required by us, in each case to provide the Services;
- (c) any impediment, failure or default, whether by act or omission, by any third party for whom we have no responsibility and/or with whom we have no contractual relationship

"Renewal Term" means the term of the Contract as set out in clause 10.1

"Scoping Sign Off" has the meaning given in clause 3.1.

"Services" means the services or goods to be delivered by us under the Proposal (including Software Services and, where applicable the Enhanced Support Services).

"Service Level Agreement" the Supplemental Terms which apply to the provision of Enhanced Support Services.

"Service Levels" means the service levels to which the Services are to be provided when you have asked us to provide Enhanced Support Services, as set out in the Service Level Agreement

"Software Deliverables" has the meaning given in clause 6.1

"Software Services" has the meaning given in clause 6.1.

"Source Code" means the human-readable source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation containing sufficient information for the proper use, further development and maintenance of the relevant software.

"Supervisory Authority" means any regulator, authority or body responsible for administering data protection laws as they apply to the Protected Data and/or to any party to this Contract.

"Supplemental Terms" means any supplemental terms supplied to you by us in respect of certain Services (such as Enhanced Support Services) which supplement and (unless expressly stated otherwise) incorporate these Terms and Conditions;

"Terms and Conditions" means this document, including the Schedules.



"Warranty Period" has the meaning given in clause 7.1.

"we" "us" or "our" means OWA Digital Ltd (incorporated and registered in England and Wales with company number 03104307 and whose registered office is at North Bastle, Hexham, England, NE48 1NG).

"you" and "your" (and derivatives) means the addressee (or addressees) of the Proposal and, in the case of a company, is deemed to include any new holding company of such company.

23.1. In these Terms and Conditions:

- (a) words and expressions defined in the Proposal shall, except where otherwise provided or expressly defined above, have the same meaning in these Terms and Conditions and any provisions contained in the Proposal dealing with construction or interpretation shall, except where otherwise provided, apply as if expressly set out herein;
- (b) references to the singular include the plural and vice versa and references to one gender include all genders;
- (c) references to a **"person"** include any company, partnership or unincorporated association (whether or not having separate legal personality) and references to a **"company"** include any company, corporation or other body corporate (wherever and however incorporated or established). The expression **"subsidiary"** has the meaning given in the Companies Act 2006;
- (d) references to a statute or statutory provision include (i) that statute or statutory provision as modified, re-enacted or consolidated from time to time (whether before or after the date of this Agreement) (ii) any past statute or statutory provision (as modified, re-enacted or consolidated from time to time) which that statute or statutory provision has directly or indirectly replaced and (iii) any subordinate legislation made from time to time under that statute or statutory provision.
- (e) the words "include(s)" and "including" are to be construed as if followed by the words "without limitation"; and
- (f) references to "writing" or "written" shall include emails, provided that if a notice is required to be given under this Agreement and is served by email it must also be confirmed by post to our registered office address.

Annex 1

Data Protection Particulars

1. Subject matter of the processing

This Contract relates to the activities set out in the Proposal. The processing under this Contract applies to the Protected Personal Data as defined in the Contract and further described in paragraph **Error! Reference source not found.** below.

2. Nature and purpose of the processing

We will process the Protected Data for the purpose of:

- (a) providing the Services to you, including those Services set out in the Proposal; and
- (b) otherwise complying with our obligations under this Contract.

3. Duration of the processing

In respect of any Protected Data, the Protected Data shall be held by us no longer than the earlier of:

- (a) 90 days following the end of the provision of the relevant Services involving the processing of such Protected Data; or
- (b) the date after the expiry or termination of this Contract determined in accordance with clause 10.6.

4. Categories of data subjects and types of personal data

Categories of Data Subjects	Types of data
Administrators Registered Users Front-end Users Subscribers	Identity data: name, gender, date-of-birth, nationality, IP address
	Contact data: email address, telephone/mobile number, address, location, time-zone
	User preference data: purchasing history, subscriptions preferences
	Health data: administrative data, patient data
	Employment data: place of work, job title, work email address, work telephone/mobile number, work address, work location, work time-zone
	Biometric data: facial recognition, fingerprint recognition, voice recognition

5. Approved third-party processors

Third party processor	Location	International transfer basis or mechanism	Purpose of processing
Cloudflare	US	Standard Contractual Clauses	Cloudflare's services may be used in order to support the provision of services by OWA Digital Ltd.
Facebook	US	Standard Contractual Clauses	Facebook services may be integrated with should the project specifically require.
Google	US	Standard Contractual Clauses	Google services may be integrated should the project require.



Loqate	UK	n/a	Loqate services may be integrated should the project require.
Mailchimp	US	Standard Contractual Clauses	Mailchimp services may be integrated should the project require.
PayPal	US	Standard Contractual Clauses	PayPal services may be integrated should the project require.
Stripe	US	Standard Contractual Clauses	Stripe services may be integrated should the project require.
Twitter	US	Standard Contractual Clauses	Twitter services may be integrated should the project require.