



Crown
Commercial
Service

G-Cloud Services

Master Service Agreement

This agreement is dated dd/mm/yyyy

Parties

- (1) NETCEL LIMITED incorporated and registered in England and Wales with company number 03112961 whose registered office is at 4 Beaconsfield Road, St Albans, Hertfordshire AL1 3RD (Supplier)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Client)

BACKGROUND

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

Agreed terms

1. Interpretation

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

Acceptance Tests: The tests of the Works to be developed in accordance with clause 17

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

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

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 08:00 to 18:00 on any Business Day. The Supplier's standard chargeable day is based on 7 hours delivered during the Business Hours and as set out in the Rate Card.

Change Order: has the meaning given in clause 7.1.

Code Libraries: compiled computer code that has been written by the Supplier other than in the course of providing the Services.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control: shall be construed accordingly.

Client's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Client, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works including any such items specified in a Statement of Work.

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 Supplier in connection with the Works, including the items provided pursuant to clause (d).

Data Controller: has the meaning set out in Art. 4 para. 1(7) of the UK GDPR.

Data Processor: has the meaning set out in Art. 4 para. 1(8) of the UK GDPR.

Data Protection Legislation: (i) the UK GDPR and Data Protection Act 2018, as amended or updated from time to time, where the Supplier offers Services to Clients in the UK (ii) the EU GDPR where the Supplier offers Services to Clients in the European Economic Area (EEA); and then (iii) any successor legislation to the EU GDPR, UK GDPR or the Data Protection Act 2018.

Data Subject: an individual who is the subject of Personal Data.

Deliverables: any output of the Works to be provided by the Supplier to the Client as specified in a Statement of Work and any other documents, products and materials agreed between the Supplier and the Client in relation to the Works.

Engagement: the activities, Goods and Services to be delivered in accordance with a Statement of Works.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade-marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Mandatory Policies: the Client's business policies and codes as amended by notification to the Supplier from time to time.

Milestone: a date by which a part or all of the Works is to be completed, as set out in a Statement of Work.

Parties: the Supplier and the Client

Personal Data: has the meaning set out in Art. 4 para. 1(1) of the UK GDPR and relates only to personal data, or any part of such personal data, in respect of which the Client is the Data Controller and in relation to which the Supplier is providing services under this agreement.

Personal Data Breach: a breach of security leading to the accidental, unauthorised or unlawful destruction, loss, alteration, disclosure of, or access to, the Personal Data.

Processing and process: have the meaning set out in Art. 4 para. 1(2) of the GDPR.

Rate Card: the standard charges for the Services or the framework for calculating them as set out in a Statement of Works.

Services: the services as set out in any Statement of Work.

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

Statement of Work/SoW: a detailed plan, agreed in accordance with clause 3, describing the services to be provided by the Supplier, the timetable for their performance and the related matters.

UK GDPR: the United Kingdom General Data Protection Regulation which became effective on the 1st

January 2021. The law covers the key principles along with right and obligations when processing personal data in the United Kingdom and sits alongside the Data Protection Act 2018.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

Works: the Services which are provided by the Supplier under a Statement of Work.

- 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 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to pronouns including, but not limited to, "he", "she" and "they".
- 1.8 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.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to writing or written includes email.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.14 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.
- 1.15 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 at the head of this agreement and shall continue, unless terminated earlier in accordance with clause 14, until either party gives to the other party written notice to terminate. Such notice shall expire after 3 (three months), or on the completion of all Statements of Work entered into before the date on which it is served if this is longer.

- 2.2 If there are no uncompleted Statements of Work as at the date notice to terminate is served under clause 2.1, either party shall be required to give the other party 3 (three) months' notice to terminate the agreement.
- 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 any of the Services by agreeing a Statement of Work with the Supplier pursuant to clause 3.
- 2.5 The Supplier shall provide the Works from the date specified in the relevant Statement of Work.
3. Statements of Work
- 3.1 Each Statement of Work shall be agreed in the following manner:
- (a) the Client shall ask the Supplier to provide any or all of the Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Statement of Work for the Services requested;
 - (b) following receipt of the information requested from the Client the Supplier shall, as soon as reasonably practicable either:
 - (c) provide the Client with a draft Statement of Work or
 - (d) inform the Client that it declines to provide the requested Services.
 - (e) if the Supplier provides the Client with a draft Statement of Work pursuant to clause Error! Reference source not found., the Supplier and the Client shall discuss and agree that draft Statement of Work;
 - (f) both parties shall sign the Statement of Work when it is agreed.
 - (g) the Supplier requires a purchase order to be able to secure resource for the Client and commence the Works
- 3.2 Unless otherwise agreed, the SoW Charges shall be calculated in accordance with the prevailing Rate Card.
- 3.3 The Supplier will charge for the preparation of Statements of Work on a time and materials basis in accordance with the Suppliers Rate Card.
- 3.4 Once a Statement of Work has been agreed and signed in accordance with clause (f), no amendment shall be made to it except in accordance with clause 7 or clause 20.
- 3.5 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.
4. Supplier's responsibilities
- 4.1 The Supplier shall use reasonable endeavours to manage and complete the Works, and deliver the Deliverables to the Client, in accordance with a Statement of Work in all material respects.
- 4.2 The Supplier shall use reasonable endeavours to meet any performance dates or the Milestones specified in a Statement of Work but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- 4.3 The Supplier shall appoint a manager in respect of the Works to be performed under each Statement of Work, such person as identified in the Statement of Work. That person shall have authority to contractually bind the Supplier on all matters relating to the relevant Works (including by signing

Change Orders). The Supplier shall use all reasonable endeavours to ensure that the same person acts as the Supplier's manager throughout the term of the relevant Statement of Work, but may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.

- 4.4 The Supplier shall use reasonable endeavours to observe all health and safety and security requirements that apply at any of the Client's premises and that have been communicated to it under clause 5.1(e), provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

5. Client's obligations

5.1 The Client shall:

- (a) co-operate with the Supplier in all matters relating to the Works;
- (b) appoint a manager in respect of the Works to be performed under each Statement of Work, such person as identified in the Statement of Work. That person shall have authority to contractually bind the Supplier on all matters relating to the relevant Works (including by signing Change Orders);
- (c) provide, for the Supplier, 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 Supplier including any such access as is specified in a Statement of Work;
- (d) provide to the Supplier in a timely manner and at no charge all document, 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 Supplier in connection with the Works and ensure that they are accurate and complete in all material respects;
- (e) inform the Supplier in writing of all health and safety and security requirements that apply at any of the Client's premises. If the Client wishes to make a change to those requirements which will materially affect provision of the Works, it can only do so via the change control procedure set out in clause 7;
- (f) ensure that all the Client's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Works and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Works, the use of all Client Materials and the use of the Client's Equipment insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment in all cases before the date on which the Works are to start;
- (h) comply with any additional responsibilities of the Client as set out in the relevant Statement of Work.

- 5.2 If the Supplier'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 Supplier shall be allowed an extension of time to perform its obligations at least equal to the delay caused by the Client. The Supplier may charge the Client for resources that were secured to deliver the Client's work and could not subsequently be repurposed on other fee-earning work.

6. Non-solicitation

- 6.1 Neither party shall, without the prior written consent of the other party, at any time from the date on which any Works commence to the expiry of twenty-four (24) months after the completion of such Works, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the other party in the provision of such Works.
- 6.2 Any consent given by the other party in accordance with clause 6.1 shall be subject to the soliciting party paying to the other party a sum equivalent to 50% of the then current annual remuneration of the other party's employee, consultant or subcontractor unless agreed otherwise between the Parties.

7. Change control

- 7.1 Either party may propose changes to the scope or execution of the Works but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Works;
 - (b) the SoW Charges;
 - (c) the timetable for the Works; and
 - (d) any of the other terms of the relevant Statement of Work.
- 7.2 If the Supplier wishes to make a change to the Works it shall provide a draft Change Order to the Client.
- 7.3 If the Client wishes to make a change to the Works:
- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and
 - (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 7.3(a), provide a draft Change Order to the Client.
- 7.4 If the parties:
- (a) agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Statement of Work; or
 - (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 30.
- 7.5 The Supplier will charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Client pursuant to clause 7.3 on a time and materials basis at the Supplier's daily rates specified in the Statement of Works.
8. Charges and payment
- 8.1 In consideration of the provision of the Works by the Supplier, the Client shall pay the SoW Charges.
- 8.2 Where the SoW Charges are calculated on a time and materials basis:
- (a) the Supplier's standard daily fee rates for each individual person as set out in the Statement of Works are calculated on the basis of a seven-hour day, worked during Business Hours;
 - (b) the Supplier shall be entitled to charge an overtime rate as set out in the agreed Rate Card on a pro-rata basis for any time worked by individuals whom it engages on the Works outside Business

Hours.

- 8.3 Where the SoW Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in the Statement of Work.
- 8.4 Where the SoW Charges are calculated on a retainer price basis, the amount of those charges shall be as set out in the Statement of Work.
- 8.5 The SoW Charges exclude the following, which shall be payable by the Client following submission of an appropriate invoice:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Works; and
 - (b) where the SoW Charges are calculated on a time and materials basis, the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Works as such items and their cost are set out in the Statement of Work or approved by the Client in advance from time to time.
- 8.6 The Rate Card will apply for a period of 12 months from the start date of this agreement. The Supplier may increase the Rate Card and any SoW Charges not calculated in accordance with the Rate Card on an annual basis with effect from each 1 April.
- 8.7 Any increase in the Rate Card shall affect:
- (a) the SoW Charges (to the extent that they are calculated in accordance with the Rate Card) in Statements of Work in force at the date the increase takes effect; and
 - (b) the calculation of the SoW Charges for Statements of Work entered into after the date the increase takes effect.
- 8.8 The Supplier reserves the right to require the payment of a deposit by the Client and shall not be obligated to commence any works until such deposit is paid.
- 8.9 The Supplier shall invoice the Client for the SoW Charges at the intervals specified, or on the achievement of the Milestones indicated, in the Statement of Work. If no intervals are so specified, the Supplier shall invoice the Client at the end of each month for Works performed during that month.
- 8.10 The Client shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier.
- 8.11 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Supplier any sum due under this agreement on the due date:
- (a) the Client shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount; and
 - (b) the Supplier may suspend part or all of the Works until payment has been made in full.
- 8.12 All sums payable to the Supplier 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).

9. Intellectual property rights

9.1 In relation to the Deliverables:

- (a) the Supplier and its licensors shall retain ownership of all IPRs in the Deliverables, excluding the Client Materials;
- (b) the Supplier grants the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use, copy and modify the Deliverables (excluding the Client Materials) for the purpose of receiving and using the Works and the Deliverables in its business, excluding any Code Libraries;
- (c) the Supplier grants the Client a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable license to use and copy the Code Libraries for the purpose of receiving and using the Works and the deliverables in its business. For the avoidance of doubt this excludes access to the source code or and the right to re-purpose, redistribute or resell the Code Libraries.
- (d) the Client shall not sub-license, assign or otherwise transfer the rights granted in clause 9.1(b) and 9.1(c).

9.2 In relation to the Client Materials, the Client:

- (a) and its licensors shall retain ownership of all IPRs in the Client Materials; and
- (b) grants to the Supplier 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 Works to the Client.

9.3 The Supplier:

- (a) warrants that the receipt, use of the Works 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 13.3, keep the Client indemnified in full against all costs, expenses, damages and losses, including any interest, fines, reasonable legal and other professional fees and expenses awarded against or incurred or paid by the Client as a result of or in connection with any claim brought against the Client for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use of the Works and the Deliverables; and
- (c) shall not be in breach of the warranty at clause 9.3(a), and the Client shall have no claim under the indemnity at clause 9.3(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 Works or any Deliverable;
 - (ii) any modification of the Works or any Deliverable, other than by or on behalf of the Supplier; and
 - (iii) compliance with the Client's specifications or instructions.

9.4 The Client:

- (a) warrants that the receipt and use in the performance of this agreement by the Supplier, 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, subject to Clause 13.3, keep the Supplier indemnified in full against all costs, expenses,

damages and losses, including any interest, fines, reasonable legal and other professional fees and expenses awarded against or incurred or paid by the Supplier as a result of or in connection with any claim brought against the Supplier, 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.

9.5 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 9.3(b) or clause 9.4(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 reasonable 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. Compliance with laws and policies

10.1 In performing its obligations under this agreement, the Supplier shall comply with:

- (a) the Applicable Laws; and
- (b) the Mandatory Policies.

10.2 Changes to the Works required as a result of changes to the Applicable Laws or the Mandatory Policies shall be agreed via the change control procedure set out in clause 7.

11. Data protection and data processing

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). Schedule 2 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, Personal Data) and categories of Data Subject.

11.3 Without prejudice to the generality of clause 11.1, the Client will ensure that it has all necessary appropriate consents and notices in place or other lawful basis to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

11.4 Without prejudice to the generality of clause 11.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that Personal Data in line with the instructions of the Client and the Applicable Laws.
- (b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK or the EEA unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a Personal Data breach affecting the Client;
- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the Client or the Client's designated auditor.

11.5 The Client consents to the Supplier appointing the following list of third-party processors as a processor of Personal Data under this agreement:

- System infrastructure providers [e.g. Salesforce, Microsoft, Kantata, Xero]
- Hosting infrastructure providers [e.g. Amazon Web Services, Microsoft Azure]
- Contractors (e.g. acting as sub-processors based within the United Kingdom who may provide additional flexible resourcing capabilities to deliver the Services. In any case, wherever possible, any data will be anonymised before sharing with the sub-processors)
- Contractors (e.g. acting as sub-processors based inside or outside of the EEA who may provide additional flexible resourcing capabilities to deliver the Services. In any case, wherever possible, any data will be anonymised before sharing with the sub-processors)

The Supplier confirms that it has entered or (as the case may be) will enter with the third-party

processor into a written agreement typically on the following basis:

- System & Hosting infrastructure third party's standard terms of business
- Contractors incorporating terms which are substantially similar to those set out in this clause 11.

11.6 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 11. In no event shall this exceed an amount equivalent to two (2) million pounds sterling (£2,000,000).

11.7 The Client acknowledges that the Supplier is reliant on the Client for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Client's instructions.

12. Confidentiality

12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Clients, 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 12.2(a).

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

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 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.

12.4 The provisions of Clause 12.1 shall not preclude publicity referring to the existence of the Contract, including the use of the Client's logo and writing case studies.

13. Limitation of liability

13.1 Neither Party limits or excludes its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession)
- (d) any other liability which cannot be limited or excluded by applicable law.

13.2 Subject to clause 13.1, neither party shall be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill;
- (f) loss of use or corruption of software, data or information; and
- (g) any indirect or consequential loss.

13.3 Subject to clause 13.1, the Supplier's total liability to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the lower of £1,000,000 and FIFTY per cent (50%) of the average annual charges (calculated by reference to the charges in successive 12-month periods from the date of this agreement) paid by the Client under this agreement.

14. Termination

14.1 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 such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 60 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (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 (being a company) 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 that other party (being a company) 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 if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (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 clause 14.1(c) to clause 14.1(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.2 Without affecting any other right or remedy available to it, either party may terminate an Engagement 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 in relation to that Engagement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 60 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in relation to that Engagement 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.

14.3 For the purposes of clauses 14.1(a) and 14.2(a) material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this agreement or the Engagement; over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

14.4 Without affecting any other right or remedy available to it, the Supplier 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 fourteen days after being notified to make such payment; or
- (b) there is a change of control of the Client.

16. Consequences of termination

15.1 On termination or expiry of this agreement:

- (a) all existing Engagements shall terminate automatically;
- (b) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (c) the Supplier shall on request return any of the Client Materials not used up in the provision of the Works; and
- (d) the following clauses shall continue in force: clause 1. (Interpretation), clause 6. (Non-solicitation), clause 9. (Intellectual property rights), clause 12. (Confidentiality), clause 13. (Limitation of liability), clause 15. (Consequences of termination), clause 19. (Waiver), clause 21. (Severance), clause 23. (Conflict), clause 28. (Multi-tiered dispute resolution procedure), clause 29. (Governing law) and clause 30. (Jurisdiction).

15.2 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.

15.3 On termination of an Engagement:

- (a) the Engagement shall terminate immediately;
- (b) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

15.4 The Supplier shall on request return any of the Client Materials not used up in the provision of the Works.

17. Force majeure

17.1 Force majeure event means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including

- (a) acts of God
- (b) riots, war or armed conflict
- (c) pandemic or epidemic
- (d) acts of terrorism
- (e) acts of government, local government or Regulatory Bodies
- (f) fire, flood, storm or earthquake, or disaster

but excluding any industrial dispute relating to the Supplier, the Supplier's personnel or any other failure in the Supplier or its sub-contractors' supply chain;

16.2 Provided it has complied with clause 16.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement or an Engagement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or the Engagement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

16.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

16.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

17. Acceptance Tests

17.1 Prior to release of the project deliverables, the Supplier will complete appropriate quality assurance testing to meet the agreed acceptance criteria.

17.2 It is the responsibility of the Client to carry out Acceptance Tests against the agreed UAT test

documentation for each project release.

- 17.3 The Client will give the Supplier notice of the start and completion of their Acceptance Tests.
- 17.4 The Client will carry out Acceptance Tests against the agreed UAT test documentation for each project release as defined during planning.
- 17.5 If any deliverable fails to pass the Acceptance Tests, the Client shall raise the issue with the Supplier giving details of such failure(s). The Supplier will remedy the defects and deficiencies and repeat the relevant test(s).
- 17.6 If any deliverable fails to pass any repeated Acceptance Tests, then the Client may choose:
- (a) to agree a new date for carrying out further tests on the deliverable on the same terms and conditions. If the deliverable fails any further tests then the Client may request a repeat test; or
 - (b) to accept the deliverable subject to the change of the agreed acceptance criteria and/or reduction of the Statement of Work charges as, after taking into account all the relevant circumstances, is reasonable; or
 - (c) if the Supplier is unable to correct the issue, and there is no reasonable work around, to reject the deliverable, in which event the Client may terminate the Statement of Work, and receive a refund in respect of any pre-paid amounts in relation to the non-conforming deliverable up to the last accepted milestone as defined in the Statement of Work.

18. Warranties

- 18.1 On completion of all Acceptance Tests as defined under clause 17:
- (a) Where the SoW Charges are calculated on a fixed price basis, and on completion of all Acceptance Tests as defined under clause 17, the Supplier warrants that the Works will be in all material respects in accordance with the Statement of Works and for a period of 30 days thereafter.
 - (b) Where the SoW Charges are calculated on a time and materials basis or retained basis, each release will be required to include a post-launch sprint to cover warranty tasks.
- 18.2 The warranty in clause 18.1 will not apply to any non-conformance caused by source code or configuration of the site that is modified in any way by any entity other than the Supplier.
- 18.3 Subject to clauses 18.1 and 18.2, the Supplier makes no warranty that operation of the Works will be uninterrupted or error-free, nor that the Works will be compatible with any particular browser or other software other than any specifically identified as suitable in the Statement of Works.

19. Assignment and other dealings

- 19.1 Save in respect of clause 19.2 neither party shall assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- 19.2 The Supplier may at any time sub-contract or delegate in any manner any of its obligations under this agreement and any Engagement to any third party. The Supplier shall be responsible for the actions of its third party subcontractors or delegates.

20. Variation

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

21. Waiver

21.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

21.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

21.3 A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

22. 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.

23. Severance

23.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

23.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. Entire agreement

24.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

24.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

25. Conflict

If there is an inconsistency between any of the provisions of this agreement and the provisions of a Statement of Work, the provisions of the Statement of Work shall prevail.

26. No partnership or agency
- 26.1 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.
- 26.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
27. Third party rights
- No one other than a party to this agreement shall have any right to enforce any of its terms.
28. Notices
- 28.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the address specified below:
Supplier email address
Client email address
- 28.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next Business Day delivery services, at 11.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (c) if sent by email, at 11.00 am on the next Business Day after transmission.
- 28.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
29. Counterparts
- This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
30. Dispute resolution procedure
- 30.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the **[EMPLOYEE TITLE]** of the Client and Commercial Director of the Supplier shall attempt in good faith to resolve the Dispute;
 - (b) if the **[EMPLOYEE TITLE]** of the Client and Commercial Director of the Supplier are for any reason

unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Client and Chief Operating Officer of the Supplier who shall attempt in good faith to resolve it.

31. Governing law

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.

32. Jurisdiction

Each party irrevocably agrees that the courts of England 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.

Schedule 1 [Template Statement of Work]

TBC

Schedule 2 PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. PROCESSING BY THE SUPPLIER

1.1 SCOPE

The provisions of clause 11 shall apply to the processing of the Personal Data described in this Schedule 2, carried out for the Client by the Supplier, and to all Personal Data held by the Supplier in relation to all such processing whether such Personal Data is held at the date of this MSA or received afterwards.

1.2 NATURE

The Supplier will Process Personal Data as necessary to perform the Services which may include any of the following:

- Consultancy and Product Development services
- Delivery
- Continuous improvement
- Support

1.3 PURPOSE OF PROCESSING

The Supplier is only to carry out the Services, and only to process the Personal Data received from the Client:

- for the purposes of those Services and not for any other purpose;
- to the extent and in such a manner as is necessary for those purposes; and
- strictly in accordance with the express written authorisation and instructions of the Client (which may be specific instructions or instructions of a general nature or as otherwise notified by the Client to the Supplier).

1.4 DURATION OF THE PROCESSING

Personal data will be processed by the Supplier for the duration of the existing contracts and then deleted or appropriately disposed of in accordance with the Supplier's data retention policy, unless agreed upon in writing by both the Client and Supplier.

2. TYPES OF PERSONAL DATA

To perform the Services, the Supplier will Process Personal Data, which may include, but is not limited to the following categories of Personal Data:

- First and last name
- Title
- Position
- Employer
- Contact information (company, email, phone, physical business address)

3. CATEGORIES OF DATA SUBJECT

To perform the Services, the Supplier will Process Personal Data, which may include, but is not limited to the

following categories of data subjects:

- Prospects, customers, business partners and vendors of Client (who are natural persons)
- Employees or contact persons of Client's prospects, customers, business partners and vendors
- Employees, agents, advisors, freelancers of Client (who are natural persons)
- Client's Users authorised by Client to use the Services

Signature

Signed by [NAME OF DIRECTOR] for
and on behalf of Netcel Limited

.....
Director

Signed by [NAME OF DIRECTOR] for
and on behalf of [NAME OF CLIENT]

.....
Director