

**DATED:**

**(1) Goaco Group Limited**

**(2) <<Client>>**

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**IT SERVICE AGREEMENT *(STANDARD DRAFT)***

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**THIS AGREEMENT** is made the                      day of

**BETWEEN:**

- (1) Goaco Group Ltd a company registered in England under number 07172265 whose registered office is at Kent Space Business Centre Springhead Road, Northfleet, Gravesend, England, DA11 8HJ (“the **Service Provider**”) and
- (2) <<Name of Client>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of] <<insert Address>> (“the **Client**”)

**WHEREAS:**

- (1) The Service Provider provides certain IT services and has reasonable skill, knowledge, qualifications and experience in that field.
- (2) The Client wishes to engage the Service Provider to provide IT services subject to, and in accordance with, the terms and conditions of this Agreement.
- (3) The Service Provider wishes to accept such engagement and shall provide IT services to the Client subject to, and in accordance with, the terms and conditions of this Agreement.

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

|                                   |                                                                                                                                                                                                                                                                                                       |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Business Day”</b>             | means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in London;                                                                                                                                                                    |
| <b>“Confidential Information”</b> | means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such); |
| <b>“Equipment”</b>                | means the Client’s IT equipment in relation to which the Service Provider is to provide the Services as detailed in Schedule 2;                                                                                                                                                                       |
| <b>“Fees”</b>                     | means the fees payable by the Client to the Service Provider in consideration of the Services as fully described in Schedule 4;                                                                                                                                                                       |
| <b>“Software”</b>                 | means the computer software operating on the Equipment in relation to which the Service Provider is to provide the Services as detailed in Schedule 3; and                                                                                                                                            |

**“Services”**

means the services to be provided by the Service Provider to the Client as fully described in Schedule 1.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
  - 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
  - 1.2.4 a Schedule is a schedule to this Agreement; and
  - 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.
  - 1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

**2. Service Provider’s Obligations**

- 2.1 The Service Provider shall use reasonable endeavours to provide the Services in accordance with Schedule 1 in all material respects.
- 2.2 The Service Provider shall provide the Services with reasonable skill and care.
- 2.3 The Service Provider shall use reasonable efforts to meet deadlines agreed from time to time with the Client, but any such dates shall be estimates only. Time for performance shall not be of the essence of this Agreement.
- 2.4 The Service Provider shall use reasonable endeavours to act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the scope of the Services as set out in Schedule 1.
- 2.5 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 2.6 The Service Provider shall use reasonable endeavours to comply with any and all end user licence agreements which relate to any Software that the Service Provider is required to interact with in the course of providing the Services.
- 2.7 The Service Provider shall use reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client’s acceptance of any reasonable changes to the Fees that may be due as a result of such changes.

### **3. Client's Obligations**

- 3.1 The Client shall:
  - 3.1.1 Allow the Service Provider access to the Equipment and all relevant Software as reasonably required by the Service Provider in the course of providing the Services;
  - 3.1.2 Provide adequate working space and facilities for the Service Provider, its agents, subcontractors, consultants and employees as reasonably required by the Service Provider; and
  - 3.1.3 Co-operate with the Service Provider upon the Service Provider's reasonable request in the diagnosis of any defect or malfunction in the Equipment or Software.
- 3.2 The Client shall allow the Service Provider the use of any Equipment that is reasonably necessary to enable the Service Provider to provide the Services.
- 3.3 The Client shall make freely available to the Service Provider:
  - 3.3.1 any and all documentation associated with the Software;
  - 3.3.2 any and all documentation associated with the Equipment;
  - 3.3.3 original Software installation media;
  - 3.3.4 current data backups;
  - 3.3.5 any other Equipment, Software or otherwise that the Service Provider reasonably requires in order to provide the Services.
- 3.4 The Client shall use reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services and shall use reasonable endeavours to ensure the accuracy and completeness of such information.
- 3.5 The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Services. Any such instructions must be compatible with the scope of the Services as set out in Schedule 1.
- 3.6 In the event that the Service Provider requires the decision, approval, consent or any other form of authorisation or communication from the Client in order to continue providing the Services (or any part thereof), the Client shall use reasonable endeavours to provide the same in a reasonable and timely manner.
- 3.7 The Client shall use reasonable endeavours to inform the Service Provider of all health and safety rules and regulations that apply at its premises.
- 3.8 The Client shall obtain and maintain any and all necessary licences and consents necessary with respect to the Software and the Equipment.
- 3.9 The Client shall use reasonable endeavours to ensure that data backups are created regularly and in such a manner as to minimise any potential data loss.
- 3.10 The Client shall not permit any changes or modifications to be made to the Software or the Equipment by any party other than those authorised by the Service Provider.

### **4. Insurance**

- 4.1 The Service Provider shall have in place, in relation to the Services, adequate insurance coverage.

- 4.2 The Service Provider shall procure that any sub-contractors engaged by it to provide all or any part of the Services also have adequate insurance coverage in place.

## **5. Fees and Payment**

- 5.1 In consideration of the Services, the Client shall pay the Fees to the Service Provider in accordance with the provisions of Schedule 4 and this Clause 5.
- 5.2 The Service Provider shall invoice the Client for Fees due in accordance with the provisions of Schedule 4.
- 5.3 The Client shall pay the Fees due within [30 days] of receipt of the relevant invoice from the Service Provider.
- 5.4 All payments to be made by the Client under this Agreement shall be made in GBP, in full and in cleared funds, to such bank as the Service Provider may from time to time nominate in writing.
- 5.5 Where any payment under this Agreement falls due on a day that is not a Business Day, it may be made on the next following Business Day.
- 5.6 Without prejudice to sub-Clause 10.4.1 and any other rights or remedies open to it, if the Client fails to pay the Service Provider within the period set out in sub-Clause 5.3:
- 5.6.1 The Client shall pay interest on the overdue sum at the rate of 5% per annum above the base rate of Lloyds Bank plc from time to time. Such interest shall accrue on a daily basis from the due date until payment is made in full to the Service Provider of the overdue sum, whether before or after judgment. The Client shall pay the interest due together with the overdue sum.
- 5.6.2 The Service Provider shall have the right to suspend the Services until payment of the overdue sum (together with any interest due) is made in full.
- 5.7 The Fees are exclusive of VAT.
- 5.8 All sums due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (except such amount (if any) of tax that is to be deducted or withheld by law).

## **6. Limitation of Liability**

- 6.1 Neither Party shall be liable – whether in contract, tort (including negligence), breach of statutory duty or otherwise – to the other if it breaches any of its obligations under this Agreement (or arising therefrom), for any loss suffered by the other Party in the form of lost revenue or profit or failure to achieve any benefit expected to be derived from this Agreement, loss of use of any asset, loss of data recorded on any computer or other equipment, loss which is not the direct and immediate consequence of the breach, business interruption or management time, or any other loss which is otherwise indirect, commercial, economic, special or consequential.
- 6.2 The total liability of the Service Provider – whether in contract, tort (including negligence), breach of statutory duty or otherwise – for any and all claims of

breaches and/or non-performance of its obligations or liability under this Agreement shall be limited to (i) £500, or (ii) the total Fees actually paid by the Client in the 12 months preceding the date of the claim, whichever is the greater sum.

- 6.3 Nothing in this Agreement shall limit or exclude either Party's liability for death or personal injury or any other liability which cannot be excluded by law.

## 7. Confidentiality

- 7.1 Each Party undertakes that, except as provided by sub-Clause 7.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and for as long as the disclosing Party deems the Confidential Information disclosed to be confidential:
- 7.1.1 keep confidential all Confidential Information;
  - 7.1.2 not disclose any Confidential Information to any other party;
  - 7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;
  - 7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
  - 7.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4 above.
- 7.2 Either Party may:
- 7.2.1 disclose any Confidential Information to:
    - 7.2.1.1 any sub-contractor or supplier of that Party;
    - 7.2.1.2 any governmental or other authority or regulatory body; or
    - 7.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 7.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 7, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
  - 7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.
- 7.3 The provisions of this Clause 7 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

**8. Assignment and Sub-Contracting**

- 8.1 Subject to sub-Clause 8.2, this Agreement is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence any of its rights hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
- 8.2 The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Service Provider.

**9. Force Majeure**

- 9.1 No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 9.2 In the event that a Party to this Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 60 days the other Party may at its discretion terminate this Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of this Agreement.】

**10. Term and Termination**

- 10.1 This Agreement shall come into force on the date of signing of this Agreement and shall continue for a term of <<insert Term>> from that date, subject to the provisions of this Clause 10.
- 10.2 Either Party shall have the right, exercisable by giving not less than 30 days' written notice to the other at any time prior to the expiry of the term specified in sub-Clause 10.1 (or any further period for which this Agreement has been extended pursuant to this provision) to extend this Agreement for a further period of <<insert period>>.
- 10.3 Either Party may terminate this Agreement by giving to the other not less than 30 days' written notice, to expire on or at any time after <<insert minimum term of agreement>>.
- 10.4 Either Party may immediately terminate this Agreement by giving written notice to the other Party if:
- 10.4.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 20 Business Days of the due date for payment;

- 10.4.2 the other Party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 20 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- 10.4.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
- 10.4.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- 10.4.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);
- 10.4.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
- 10.4.7 that other Party ceases, or threatens to cease, to carry on business; or
- 10.4.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 10, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 10.5 For the purposes of sub-Clause 10.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 10.6 The rights to terminate this Agreement given by this Clause 10 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

## 11. **Effects of Termination**

Upon the termination of this Agreement for any reason:

- 11.1 any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable;
- 11.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain In full force and effect;
- 11.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;
- 11.4 subject as provided in this Clause 11 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 11.5 each Party shall (except to the extent referred to in Clause 7) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control

which contain or record any Confidential Information.

**12. No Waiver**

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

**13. Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

**14. Costs**

Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

**15. Set-Off**

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any other agreement at any time.

**16. Relationship of the Parties**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

**17. Non-Solicitation**

17.1 Neither Party shall, for the term of this Agreement and for a period of **12 months** after its termination or expiry, solicit, entice away, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to this Agreement without the express written consent of that Party.

17.2 The Client acknowledges the considerable time and resources the Service Provider spends in procuring highly skilled and qualified personnel to provide services to the Service Provider's client base. Therefore, in the event of a breach of Clause 17.1 by the Client, the Client shall pay to the Service Provider the equivalent of 12 months' remuneration for the relevant person.

**18. Third Party Rights**

18.1 No part of this Agreement is intended to confer rights on any third parties and

accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

- 18.2 Subject to this Clause 18 this Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

**19. Notices**

- 19.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

- 19.2 Notices shall be deemed to have been duly given:

19.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

19.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

19.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

19.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

**20. Entire Agreement**

- 20.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

- 20.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

**21. Counterparts**

This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

**22. Severance**

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

**23. Law and Jurisdiction**

- 23.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 23.2 Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

SIGNED for and on behalf of the Service Provider by:  
<<Name and Title of person signing for the Service  
Provider>>

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Authorised Signature

Date: \_\_\_\_\_

SIGNED for and on behalf of the Client by:  
<<Name and Title of person signing for the Client>>

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Authorised Signature

Date: \_\_\_\_\_

## **SCHEDULE 1**

### **The Services**

<<Insert details of the Client's (relevant) Service requirements>>

## **SCHEDULE 2**

### **Equipment**

<<Insert details of the Client's (relevant) Equipment>>

### **SCHEDULE 3**

#### **Software**

<<Insert details of the Client's (relevant) Software>>

## **SCHEDULE 4**

### **Fees**

The Services are provided on either of the following bases:

- An hourly rate of £[x]; or
- A day rate of £[x].

The Service Provider and the Client shall agree on a per day basis the method of charging for the Services for that day. In the event that the Service Provider and the Client cannot agree the fees for a particular day, the Services shall not be provided, and this shall not constitute a breach of this Agreement.