

FLUID PROJECT DELIVERY TERMS

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This agreement is dated as at the date of execution of a relevant Statement of Work referencing the terms of this agreement.

- (1) FluidIT Consulting Group Ltd incorporated and registered in England and Wales with company number 09873604 whose registered office is at Avenue HQ, 10-12 East Parade, Leeds, LS1 2BH ("**Supplier**" / "**we**" or "**us**")
- (2) The entity named in the relevant Statement of Work referencing this agreement ("**Customer**" / "**you**")

BACKGROUND

- (A) The parties have agreed that the Supplier will provide professional services on the terms of this agreement.
- (B) The customer acknowledges that any summary document other than as expressly incorporated herein shall not apply and shall be overridden by the terms of this agreement.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Acceptance Criteria: the acceptance criteria or other completion conditions for a Deliverable or a particular Result where we agree these with you specifically in a Statement of Work.

Acceptance Tests: the tests that are to be run as agreed in the Statement of Work to determine whether a Deliverable complies with its Acceptance Criteria, where applicable, and the expected results of those tests.

Affiliate: any entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity.

Applicable Laws: (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

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

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Commencement Date: means the date that each Project commences as set out in the Statement of Work.

Consulting: the professional services and other advice and guidance as may be provided by the Supplier from time to time relating to or provided alongside the Project in any capacity.

Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **Controls, Controlled** and the expression **change of Control** shall be construed accordingly.

Customer Materials: means anything provided by the Customer to the Supplier for inclusion within the Services howsoever arising, including but not limited to content of the Customer's own clients, the Customer Software, any hardware deployed by the Customer involved in or required to use the Services and any other materials, data or content not originating from the Supplier.

Customer Software: means any and all software programs and environments, including all interfaces and code pre-dating the Commencement Date or otherwise either in the possession of or licensed to the Customer by any third party prior to the Commencement Date excluding any Software provided by the Supplier as defined below.

Customer Systems: the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Customer, its Affiliates, or any of its or their agents or contractors.

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

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Deliverables: as expressly set out in the Statement of Work, the deliverables to be provided under a project which may include Software, Documentation or other reports and guidance notes provided as part of the Consulting Services from time to time.:

Project Team: the persons described in the Statement of Work and any replacements from time to time.

Dispute Resolution Procedure: the procedure set out in clause 37.

Documents/ Documentation: the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by the Supplier and referred to in the User Stories.

Fees: the aggregate price for the Services and the Deliverables, as specified in the applicable Statement of Work.

Force Majeure Event: event, circumstance or cause beyond either party's reasonable control, including terrorist activity, shortage of raw materials, power or fuel, failures and delays in the banking or payment collections or payment transfer systems, any breakdown of plant or machinery, any failure of any computer software or hardware, or any failure in a communications network.

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading software development company that uses the Agile Process or a similar process to develop software.

Index: the Retail Prices Index Jevons (RPIJ) of the United Kingdom Office for National Statistics or, if that index ceases to be published, the nearest index having like effect.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related 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.

Latent Vulnerabilities: any instances of typical classes of Vulnerability. For example buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection.

Licence: the licences granted under clause 10 .

Open-Source Software: any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition or any libraries or code licensed from time to time under the General Public Licence, or anything similar.

Product Owner: the Customer representative in charge of the Project on the Customer's side, where applicable.

Project: the project described in the applicable Statement of Work.

Project Completion: the date on which the notice is given to the Supplier under clause 6.5.

Project Term: the term of the Project, commencing on the Commencement Date and ending on Project Completion or earlier termination of this agreement under clause 23.

Rates: the standard rate card the Supplier makes available on its website or to customers generally from time to time.

Relief Events: the following events:

- a) any failure by the Customer to comply with its obligations under this agreement;
- b) any error or malfunction in the Customer Systems or any other software, hardware or systems for which the Supplier is not responsible or any failure by the Customer, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which the Supplier is not responsible;
- c) any failure by the Customer or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to the Supplier which is reasonably required by the Supplier for the proper performance of its obligations under this agreement; or
- d) any of the causes or events set out in clause 11.5.

Representative: has the meaning given in clause 21.1 and includes, for clarity, in the case of the Customer, the Product Owner and, in the case of the Supplier, each member of the Project Team.

Requirement: the non-technical description of a requirement of the Customer, describing the intended operations, functions, performance and other characteristics intended to be outcomes of a Project.

Resource Allowance: a unit of measurement of the amount of resource allocated for:

- a) Services under a Project carried out according to a Retainer; or
- b) Support Services.

Result: the result of development work carried out under this agreement to meet a particular Requirement.

Services: an all-inclusive term intended to generally reference the services to be provided by or on behalf of the Supplier under this agreement howsoever provided.

Software: the software or modules thereof to be developed under this agreement by the Supplier excluding any Customer Software.

Source Code: the source code of the software to which it relates, in the language in which the software was written, together with all related flowcharts and technical documents, all of a level sufficient to enable the Customer's development personnel to understand, develop and maintain that software.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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

Virus: any thing or device (including any software, code, file or programme) which may:

- a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or
- c) adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

- 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) and that person's personal representatives, successors and permitted assigns.
- 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 the other genders.
- 1.8 A reference 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 it is in force as at the date of this agreement.

- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** includes email but not fax.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 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.
- 1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Any approval or consent required under this agreement shall not be unreasonably withheld or delayed, unless stated otherwise.
- 1.16 Any estimate given under this agreement shall be based on due diligence and fair and reasonable assumptions.
- 1.17 Any requirement for notice shall be deemed to be a requirement for written notice and, if no timescale is specified for the giving of notice or the performance of any obligation under this agreement, the deemed requisite timescale shall be as soon as reasonably possible.

2. Commencement and duration

- 2.1 This agreement shall commence on the date of last signature to these terms and conditions and each Project falling under and made pursuant to this agreement shall begin on the Commencement Date of the relevant Statement of Work and shall continue, unless terminated earlier in accordance with clause 23, until Project Completion when the Project under that Statement of Work shall terminate automatically without further notice. This Agreement shall expire naturally upon the completion or termination of all active and contemplated Projects under it.
- 2.2 By executing a Statement of Work referencing this Agreement, a new and separate contract for Services will be created and each subsequent Statement of Work shall create a new and separate contract in each instance.

3. Project Engagement

- 3.1 If you require Services from us, then you should give us as much detail as possible of any Requirement or specific Deliverables you need and we will respond within five (5) Business Days with a draft Statement of Work, usually in the same format as the template attached to

this Agreement, or a request for further information where reasonably required. If you need anything specific adding to the Statement of Work for your internal process/compliance purposes then please let us know as soon as possible.

- 3.2 Where we send you a draft Statement of Work we will let you know if it is suitable for Commencement or if we need further information from you to be able to scope any Requirement or Deliverable you may need.
- 3.3 If you know what you need and this can be well defined, we will set this out as a Deliverable and we will work with you to determine the Acceptance Criteria used to judge Acceptance Tests by and determine Project Completion.
- 3.4 If you know roughly where you want to end up, but you aren't sure how to get there, we might agree a list of Requirements with you rather than set Deliverables. If we do this, then we will work with you to achieve a Result that matches your Requirements as closely as possible in the circumstances taking into account the Fee and duration of the Project and you accept that this is not likely to precise match your initial Requirements.
- 3.5 We will generally assume responsibility for managing the Project and its delivery, and where we perform this kind of management service for you then we will almost always be heavily reliant on some Dependencies of your own staff or materials/resources etc. Where we identify Dependencies we will set these out in the Statement of Work or we will flag them up to you as soon as possible during the Project as and when they become apparent or as they cause delay.

4. Project Participants

- 4.1 We will agree with you who is going to be involved in the Project and we will list these people, or their general job roles, in each Statement of Work (the "Project Participants"). Our team who are involved in the Project form the Project Team and we might work with your representatives on a project. Together, those people form the "Project Participants".
- 4.2 The Project Participants, whether that's our employees or contractors (our "Project Team") or yours as the Customer, will work with reasonable skill and care and will be suitably skilled and qualified for the task they are allocated to perform. Where we don't specify a certain level of qualification or similar requirement we may both assume certain skill levels in accordance with Good Industry Practice.
- 4.3 The parties each acknowledge and agree that:
 - (a) the respective roles and responsibilities, level of dedication to the Project and (where appropriate) criteria concerning requisite skills, experience and qualifications of the Project Participants should be agreed at the outset as part of the initial Statement of Work; and

- (b) timely and successful Project Completion may be facilitated by continuity of personnel in their roles as Project Participants, but that the Supplier may, at its reasonable discretion, replace Project Team members from time to time during the Project Term. We will use our reasonable endeavours to ensure the continuity of at least one person with prior knowledge of your business where applicable.

4.4 Any Project Participant shall respond to any queries or reasonable requests for information from any other Project Participant as soon as reasonably possible.

5. Project Delivery

5.1 Both parties each:

- (a) acknowledge that the Requirements and Deliverables as agreed from time to time provide an overarching framework for the Project, and
- (b) agree that they shall perform their roles, responsibilities, obligations and duties in a manner consistent with that framework and, as far as reasonable to do so, with a focus on maximising the potential for attaining the goals outlined in the Statement of Work.

5.2 The parties agree that the Product Owner shall be responsible for the provision from time to time under this agreement of details of, respectively, any Customer approvals required relating to budget changes, scope changes, reprioritisation of Deliverables/Requirements or any other Change Request.

5.3 Where the Product Owner adjusts the level of priority or any part of the Services the Supplier shall, where possible and foreseeable, set out any impact on the Project including but not limited to the Fees and Project Term and may require the Customer to complete a formal Change Request.

5.4 Project management and reporting – The Project Manager shall be reasonably available to the Customer to arrange meetings as required from time to time, and where any regular meetings are required the parties shall indicate a desired frequency of such meetings in the Statement of Work. Meetings and status update reports may be provided remotely unless expressly stated to the contrary in the Statement of Work.

6. Project Methodology

6.1 For clarity, the parties acknowledge and agree that each Project has different requirements which may evolve over time and accordingly:

- (a) Unless expressly set out in the Statement of Work, the Supplier will propose what it considers to be a suitable methodology for delivering each Project it manages, such as “Agile” or “Waterfall” or any other methodology following Good Industry

Practice based on the needs of the Customer at the time. Such determination may take into account differing levels of priority as to duration, cost, efficiency, creativity etc;

- (b) Either the Supplier, Customer or the Product Owner may, from time to time during the Project Term, request a change to the priority of the Deliverables or request a change to the Project Methodology specified in the relevant Statement of Work. Subject to an agreement in writing between the Supplier and one of the Product Manager or the Customer, such a change may not require a formal Change Request if the Supplier confirms that there would be no impact on the scope or cost of the Project;
 - (c) the Product Owner must submit any other change as part of a Change Request to the Supplier for approval.
- 6.2 The Product Owner and the Project Team shall use all reasonable endeavours to agree the Acceptance Criteria for applicable Deliverables as soon as possible following the Commencement Date for each Project, or as soon as possible after the applicable Deliverable is proposed during the Project.
- 6.3 Once the Deliverables to be included in the Project have been agreed any changes will be subject to a Change Request:
- 6.4 Where the Project Methodology requires, the Supplier shall keep the Customer updated as to its progress in relation to each applicable Deliverable or the progression of Requirements.
- 6.5 The Project shall be complete once all Deliverables are Accepted and/or the Result is deemed to substantially meet the Requirements ("Completion"). Please see clause 15.6 of this Agreement for the Acceptance Testing procedure.
- 6.6 Within five (5) Business Days of Completion, the Supplier shall provide the Customer with written notice of the same and shall deliver any remaining undelivered Deliverables to the Customer (in object code versions only).
- 6.7 The Supplier shall provide the Customer with the outcome of any applicable Acceptance Tests relating to Completion for its review and records.

7. Change Request

If the Product Owner, Customer or the Supplier requests that a new Deliverable or other Requirement be added or removed from or to a Project (a "Change Request"):

- (a) The Supplier shall, in response to such Change Request provide an estimate of any impact on dates and costs in relation to the Project;
- (b) the Product Owner or the Customer may, at its option, then:

- (i) remove from the Project an existing Deliverable or multiple Deliverables where it no longer requires the same and the Supplier confirms that the proposed change is technically viable and would result in a negligible cost impact/change on the Project; or
- (ii) request that the Supplier delivers such new Deliverable(s) as additional Services in accordance with the Rates then in force.

8. Payment

- 8.1 The Services may be performed on a Fixed Fee basis or on a Time and Materials (T&M) and this shall be expressly set out in the applicable Statement of Work.
- 8.2 Where Services are provided on a T&M basis the Supplier shall provide the Services according to its Rates unless otherwise agreed. The Supplier shall provide a non-binding estimate of its anticipated costs in advance of commencing such Services where it is reasonably able to do and shall keep the Customer updated and informed as to its progress and associated costs no less than monthly (and shall submit invoices monthly in arrears, relating to the Services carried out in the immediately preceding month) unless otherwise agreed in the Statement of Work.
- 8.3 Where Services are performed on the basis of a Fixed Fee (including but not limited to Retainer arrangements) then the complete scope of work shall be deemed to be provided in full at the point that the Fixed Fee is agreed or the applicable Statement of Work is signed. The Fixed Fee shall be capped and the cost of the Services shall not exceed the Fixed Fee without the prior written consent of the Customer unless the Customer's scope of requirements is extended. The Customer's scope of requirements shall be deemed to be extended if:
- (a) The Supplier becomes aware of a change in laws or other change in circumstances made by a third party outside of the Supplier's reasonable control which has a direct impact on the Services requested by the Customer;
 - (b) The Customer requests a change that the Supplier can demonstrate or reasonably articulate would result in additional work effort not taken into account by the Fixed Fee;
 - (c) The Customer provides materials not in accordance with any agreed standard or requirements specific by the Supplier from time to time; or
 - (d) The Customer unreasonably delays progress or completion/Acceptance of any element of the Services to such a degree that the Supplier can evidence an increase in costs incurred by it.
- 8.4 The Supplier shall submit invoices in accordance with any specific invoicing terms set out in the applicable Statement of Work which shall be deemed to apply over and above any

conflicting terms set out in this clause 8. An invoice shall be deemed payable regardless of the Customer's failure to specify invoicing requirements in a Statement of Work and any re-submission of an otherwise validly issued invoice by the Supplier shall not be taken to extend any timeframe for payment by the Customer by virtue of such re-issuing.

- 8.5 The Customer shall make payment of each such invoice by the due date stated in that invoice or within 14 days of receipt of the invoice. The Customer acknowledges that timely payment of invoices may be required to ensure the smooth delivery of a Project and the Supplier can't be held responsible for delays due to non-payment by the Customer.
- 8.6 The Fees and all other payments specified in each Statement of Work or clause 23 are net of tax. The Customer shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT which the Supplier is obliged to pay and/or collect from the Customer in respect of any supply under the agreement (other than tax on the Supplier's income).
- 8.7 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 23:
- (a) the Customer shall pay interest on the overdue amount at the rate of 4% a year above National Westminster Bank plc'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 Customer shall pay the interest together with the overdue amount; and
 - (b) the Supplier may, without liability to the Customer, suspend the provision of the Services, and the Supplier shall be under no obligation to provide any the Services while the invoice(s) concerned remain unpaid.
- 8.8 The Customer shall not be obliged to pay any charges or fees to the Supplier for any Services performed, unless the applicable charges and fees are either specified in this agreement or have been approved in writing in advance by the Customer. Reasonable out-of-pocket expenses and disbursements, agreed by the parties in writing in advance, may be charged by the Supplier on production of reasonable evidence of expenditure to the Customer.
- 8.9 All invoices issued by the Supplier under or in connection with this agreement shall be accompanied by a sufficiently detailed breakdown of the matters being invoiced and any additional costs authorised under clause 8.8.
- 8.10 The Rates shall be increased in proportion to the increase (if any) in the Index between the Commencement Date and the Index published immediately before the end of each Year.

9. Ownership

- 9.1 The parties acknowledge and agree that the Intellectual Property Rights in the Customer's Materials, and any Customer Software are, and shall remain, the property of the Customer or its respective licensors.
- 9.2 The Customer grants, subject to the terms of this agreement, the Supplier the non-exclusive right to use the Customer's Materials and the Customer Software for the purpose of exercising the Supplier's rights or performing its roles, responsibilities, duties and obligations under this agreement (including those expressed to be on the part of the Project Team) during the Project Term.
- 9.3 The Intellectual Property Rights in the Deliverables and the Software (including all object code and Source Code versions) shall, at the Commencement Date or (if later) on creation of the rights from time to time, vest in the Supplier unless otherwise agreed in writing in the Statement of Work. The Customer assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to the Supplier. If work effort is expressly identified in the Statement of Work as being "Bespoke", in each case, then all Intellectual Property Rights created shall instead be deemed to vest in the Customer.
- 9.4 Where Bespoke services lead to the creation of Intellectual Property Rights vesting in the Customer, the Supplier shall be granted a perpetual license to such inventions and improvements in processes or processing and the like that exist or are contained within such Intellectual Property Rights only to the extent that such Bespoke materials cannot be traced back to the Customer as the source. For the avoidance of doubt, the Supplier shall not be restricted in its use of Bespoke creations to the extent that its own Services can be generally improved by further use of such discoveries, inventions and improvements existing in those Bespoke creations. To the extent that Bespoke creations can be used to identify the Customer, these shall be deemed to be the Confidential Information of the Customer.
- 9.5 Where Bespoke creations result in Bespoke Software being produced for the Customer then, subject to payment of all Fees relating to the Project, the Customer shall be provided with all applicable Bespoke Source Code for such Bespoke Software at Project Completion.
- 9.6 The Customer shall do and execute, or arrange for the doing and executing of, each act, document and thing that the Supplier may consider necessary or desirable to perfect the right, title and interest of the Supplier in and to the Intellectual Property Rights in the Deliverables, including, if this agreement is terminated before Project Completion, any uncompleted Deliverables and the Supplier shall likewise offer the same courtesy to the Customer as applicable to vest ownership in any Bespoke creations to the Customer.
- 9.7 The Customer shall:

- (a) procure the irrevocable waiver of all moral rights in the Deliverables, to the extent permitted by law;
- (b) ensure that records are maintained which are sufficient to provide evidence of the process of independent creation of the Deliverables; and
- (c) be responsible for ensuring that written agreements are entered into with, and adhered to by, employees and subcontractors engaged in the performance of this agreement and that, unless otherwise agreed with the Supplier in writing in advance, the terms of engagement of such employees and subcontractors are consistent with, and enable the Customer fully to comply with, the provisions as to the Deliverables set out in this agreement, including this clause 9.

9.8 The Customer shall use reasonable endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in the Services, Software or the Deliverables and shall promptly report to the Supplier any such infringement that comes to its attention.

10. Licence

10.1 The Supplier grants, subject to the terms of this agreement, the Customer and its Affiliates a perpetual and non-exclusive, non-transferable right (subject to clause 20) to use the Software, Documentation and the Deliverables in or alongside the Customer Systems for any purpose related to the Customer's business operations.

10.2 The Customer may make such copies of the Software and Documentation as are reasonably necessary for use in accordance with this agreement and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Software and Documentation except as strictly required in order to effectively and permanently migrate the Customer Systems from one production environment to another.

10.3 The Supplier shall at all times own all copies of all or any part of the Software.

10.4 The Customer shall:

- (a) Promptly review and agree any third party software licensing terms where required;
- (b) ensure that all proprietary notices contained in the Software will be maintained in such copies and will display when the software is run, in the same way as in the case of the Software as supplied by the Supplier; and
- (c) take all reasonable precautions to prevent any unauthorised access to any copy of the Software.

10.5 The Customer shall not:

- (a) sub-license, rent, lend, assign or transfer in any other way this agreement or the Software to any person without the prior written consent of the Supplier; and
- (b) give access to the Software through any network of computers to users who are not employees or agents of the Customer.

10.6 The Customer may use the Software with other software.

10.7 The Customer may make adaptations or variations of the Software.

10.8 The Customer may only disassemble, decompile, reverse translate or in any other manner decode any applicable Bespoke Software, and in such case may do so in any way it deems appropriate.

10.9 If the customer makes any modification to the Software pursuant to sub-clauses 10.6, 10.7 or 10.8 (Modification) above then, to the extent that such Modification has caused any malfunction or defect, the Supplier's warranties shall be null and voided in their entirety unless the Customer has acquired the Supplier's prior written consent to such Modifications. Where the Customer requests the Supplier remedy any defect that is later found to be a result of a Modification the Supplier shall be entitled to recover its reasonable costs of discovery/fix of such defect at its then current standard Rates.

11. Indemnity

11.1 In this clause, a reference to the Software is a reference to the Software in its current state of development at the time when any relevant Claim is made.

11.2 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the use of any Software or receipt of the benefit of any of the Services.

11.3 This indemnity shall not cover the Customer if a claim under it results from the Customer's negligence or wilful misconduct or unauthorised Modification.

11.4 Liability under this indemnity is conditional on the Customer discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (a **Claim**), the Customer shall:

- (a) as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier;
- (c) give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
- (d) be deemed to have given to the Supplier sole authority to avoid, dispute, compromise or defend the Claim.

11.5 The Supplier shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights caused or contributed to by:

- (a) the Customer's use of the Software in combination with software not supplied or approved in writing by the Supplier (other than the operating system of the Customer Systems, provided that the Supplier was notified in writing of the identity and extent of such operating system before this agreement was entered into);
- (b) any unauthorised modification of the Software made by, or on behalf of, the Customer;
- (c) the Customer's use of any version of the Software other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version;
- (d) the Supplier's incorporation into the Software of a feature expressly requested by the Customer and not in accordance with the Agile Process or the Agile Change Control Process; or
- (e) the Supplier's use in connection with the Project of any software, material, information, data, know-how, instructions or scripts provided by the Customer or any of its Affiliates that contain any errors or omissions.

11.6 If use of the Supplier Software or receipt of the benefit of the Services becomes or, in the opinion of qualified legal counsel, is likely to become, the subject of any such claim, the Supplier may:

- (a) replace all or part of the Software with functionally equivalent software or documents without any charge to the Customer;
- (b) modify the Software as necessary to avoid such claim, provided that the Software (as amended) functions in substantially the same way as the Software before modification; and
- (c) procure for the Customer a licence from the relevant claimant to continue using the Software.

11.7 If:

- (a) the Software is determined in a court of law to be infringing;
- (b) the Supplier is advised by a barrister of at least ten years' call that use or possession by the Customer of the Software in accordance with this agreement is likely to constitute infringement of a third party's rights; or
- (c) if an injunction or similar order is granted in connection with any claim within the scope of clause 11.2 which prevents or restricts the use or possession by the Customer of the Software in accordance with this agreement;

and the Supplier is unable, after reasonable endeavours, to procure for the Customer the right to continue using the Software, or to provide the Customer with functionally equivalent non-infringing software, this agreement and the Licence shall be terminated.

11.8 If a payment due from the Supplier under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the payment is the same as it would have been were the payment not subject to tax.

11.9 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

12. Supplier's warranties

12.1 The Supplier warrants that:

- (a) the Deliverables are proprietary to the Supplier and that it has the right to license all UK Intellectual Property Rights in and to the Deliverables to the Customer;
- (b) as far as it is aware use of any of the Deliverables does not infringe the Intellectual Property Rights of any third party;
- (c) the Software will, at Completion, and for one (1) month after that date, perform in all material aspects in accordance with the Software Description;
- (d) it will carry out the Services using reasonable skill and care;
- (e) there has not been included or used any Open-Source Software or anything similar in, or in the development of, the Software nor does any Software operate in such a way that it is compiled with or linked to any Open-Source Software or anything similar which has not been brought to the attention of the Customer;
- (f) the Project Team members will perform their respective roles, responsibilities, obligations and duties expressed to be on their part in this agreement and shall use

all reasonable endeavours to do so within the relevant timescales specified in the relevant Statement of Work or, if none, as soon as reasonably possible; and

- (g) any appointee or replacement Project Team member from time to time will meet the level of dedication and the respective criteria to be reasonably expected in accordance with Good Industry Practice.

- 12.2 The sole remedies for breach of the warranties in clause 12.1(a) and clause 12.1(b) are set out in clause 11.
- 12.3 Time shall not be of the essence in relation to any timeframe, deadline or implementation plan milestone agreed under this agreement or a Statement of Work from time to time.
- 12.4 The warranties set out in clause 12.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this agreement.
- 12.5 The Supplier does not warrant that the Software will operate uninterrupted or error-free.
- 12.6 The Supplier shall not in any circumstances be liable under the warranties in clause 12.1(c) if it can demonstrate that any failure of the Software to comply with such warranties was caused or contributed to by any Relief Event.
- 12.7 Save in respect of any specific warranties given elsewhere in this agreement, the Supplier does not warrant or guarantee that the Deliverables, or any applicable Services, when taken in whole or in part, will:
 - (a) comply with Cybersecurity Requirements, or
 - (b) contain no Vulnerabilities,

and it shall be the Customer's sole responsibility to ensure that the Requirements and/or the Project Vision detail all of the Customer's cybersecurity requirements, including any requirements that might be imposed on the Customer's business, operations or systems as part of any Cybersecurity Requirements, in sufficient detail so they can be implemented by the Supplier as part of the Deliverables to the extent reasonably applicable and relevant to the Project.

13. Customer's warranties and Indemnity

- 13.1 The Customer acknowledges and agrees that:
 - (a) the co-operation and effective and prompt communication and support of the Customer and specifically its employees with knowledge relevant to the Project are crucial to the overall and timely success of the Project;

- (b) some development effort may not be used or may be used in a different way from the way in which it was originally intended, owing to lack of detailed due diligence, design and scoping before commencement of the Services inherent in more agile development processes; and
- (c) where the Customer cannot provide certainty of its objectives to the extent required to establish fixed Deliverables, where the Customer instead requests the Supplier to use its independent and professional judgement in determining how to produce a Result to substantially achieve such less defined Requirements, the Supplier is not committing to deliver any Result which exactly matches the Requirements.

13.2 The Customer warrants that during the Project Term:

- (a) the Product Owner will:
 - (i) perform the role, responsibilities, obligations and duties expressed to be on the Product Owner's part in this agreement within the relevant specified timescales specified in the Statement of Work or, if none, as soon as reasonably possible; and
 - (ii) meet the level of dedication, or provide Services up to the amount of work effort over time, as expressly specified in the relevant Statement of Work; and
- (b) the Customer will provide adequate and appropriately skilled, skilled and qualified resources to facilitate any Acceptance Tests applicable to the Customer where indicated in a Statement of Work.

13.3 Breach of clause 13.2 or clause 14 shall be deemed material breach of this agreement by the Customer for the purpose of clause 23.2(b).

13.4 The Customer shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Customer Materials infringe any rights of a third party or are otherwise illegally provided in any way.

14. Further obligations

14.1 The Customer shall:

- (a) Be responsible for the accuracy and completeness of the Customer Materials;
- (b) Be responsible for ensuring meaningful and timely participation of its employees and agents as part of the Services as required from time to time;
- (c) comply with the terms of any applicable third party licences which either form part of the existing Customer Software or as may be incorporated into the Software by

the Supplier, provided that the Supplier brings the existence of such third party software to the attention of the Customer during the Project;

- (d) Inform the Supplier of any relevant Customer Software forming part of the Customer Systems and any modifications (including add-on packages where applicable) to the standard deployment of third-party software products forming part of the Customer Software which may be involved in the Project work in any way;
- (e) obtain any required and relevant legal or other professional advice relating to its deployment of the Project services or any Consulting advice provided and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, the Project Team and the Project Participants to perform their respective roles, responsibilities, obligations and duties under this agreement including as regards any modification or other bespoke development of the Customer Software;
- (f) ensure that the Customer Systems, and all network connections and telecommunications links from the Customer Systems to the Supplier's systems and/or data centres and any other applicable hardware complies with the relevant specifications provided by the Supplier from time to time or if no specification is provided then such items must comply with and shall be assumed to match applicable industry norms or original manufacturer specifications; and
- (g) use all reasonable endeavours not to introduce Viruses into the Supplier network and information systems.

15. Service Specific Terms

15.1 The following specific terms and conditions set out in this clause shall apply in addition to the other terms of this Agreement where applicable, including but not limited to those set out in clause 12 above and any other general dependencies specified herein, when those specific services are provided as part of the Services. These specific services may include:

- (a) **Hosting Services:** where the Supplier hosts any data or content, including but not limited to websites, on more than just a temporary basis, where such hosting is managed directly by the Supplier and not by the Customer. Where Hosting Services are supplied then clause 15.2 below shall also apply.
- (b) **Marketing Services:** including but not limited to management of Pay Per Click accounts (PPC), Search Engine Optimisation (SEO) and any other Services which are described as Marketing Services in the Statement of Work. Where Marketing Services are provided then clause 15.3 below shall also apply.
- (c) **Consulting Services:** advice provided by the Supplier as defined in clause 1.1 above. Where Consulting Services are provided then clause 15.4 below shall also apply.

- (d) **Retainer Services:** means Services including but not limited to ongoing support and advice which may include any Services or element of Services that the Supplier generally provides from time to time where a monthly pool of hours are made available for the Customer to draw down upon in order to instruct the Supplier to perform such Services. Where Retainer Services are provided then clause 15.5 below shall also apply.
- (e) **Acceptance Testing of Deliverables:** For the avoidance of any doubt, the Result of any Requirements based Services shall not be subject to Acceptance Testing. Where the Services include Deliverables in relation to which the parties have agreed specific Acceptance Criteria then the Completion and Acceptance of those Deliverables shall require the Acceptance Tests to be carried out. The process of Acceptance Testing is set out in clause 15.6 below and shall be deemed to be incorporated by reference into any Statement of Work requiring Acceptance Testing. The relevant Statement of Work may modify the process for Acceptance Testing as set out in this agreement where the provisions to be overridden are expressly called out in the Statement of Work.

15.2 Hosting Services.

- (a) Where the Supplier has developed a website for the Customer, the Supplier warrants that the site shall materially comply with any agreed written specification for a period of 30 days following the website being made live/public.
- (b) The Supplier shall pass through the benefit of any third-party hosting provider warranties or service levels that the Supplier has the benefit of relating to the Hosting Services from time to time and does not provide any other warranty as to the Uptime of the website other than those provided by its third-party Hosting Services providers.
- (c) The Supplier shall provide details of such warranties and any available service levels to the Customer upon request.
- (d) The Supplier shall ensure that any third-party hosting services provider is subject to a written agreement providing for substantially similar obligations of data protection compliance and confidentiality as set out in this Agreement.
- (e) The Customer's attention is drawn in particular to the liability provisions set out under clause 16.4 below as they relate to Hosting Services.
- (f) The Supplier reserves the right to remove any Customer Materials from the relevant website where it reasonably believes that the same constitutes "Inappropriate Content", including but not limited to illegal content, or as the same is morally objectionable to the Supplier acting reasonably.

15.3 Marketing Services.

- (a) The Supplier cannot guarantee any performance related results in relation to SEO as the rankings of search results are dependent upon third party algorithms which are outside of the reasonable control of the Supplier.
- (b) Where SEO targets are agreed between the parties from time to time these shall be indicative and for guidance purposes only and the Customer acknowledges the reason why results cannot be guaranteed.
- (c) The Customer shall provide prompt approval as may be required for any lists of key words or other requirements specified by the Supplier for SEO Services from time to time.
- (d) Where PPC Services are provided the Supplier may assume control of certain accounts on behalf of the Customer in order to manage such services effectively. Upon termination of this Agreement and conditional upon full payment of any outstanding Fees due to the Supplier the Supplier shall transfer control of any such PPC accounts back to the Customer within a reasonable time following such termination.
- (e) The Customer shall retain all right and title to, but shall grant the Supplier a limited license to make such use of, the Customer Materials as are required by the Supplier in order to provide the Marketing Services in the manner requested by the Customer from time to time. The Supplier shall take into account and act in accordance with any branding guidelines provided to the Supplier as part of the Customer Materials when making use of any logo, brand, trademark or other marks of the Customer.

15.4 Consulting Services

- (a) The Supplier provides all Consulting Services using reasonable care and skill in accordance with Good Industry Practice, however, such Consulting Services should not be relied upon by the Customer in place of proper and professional legal, IT security, due diligence or regulatory advice that may apply to the Customer's business from time to time including but not limited to Applicable Laws.
- (b) The Supplier's advice or recommendations shall be considered guidance only and the Customer acknowledges and accepts that it should not place legal reliance upon such advice or take any action to its detriment without acquiring its own independent professional advice.
- (c) Where guidance is provided in relation to the security of any IT systems as part of the Consultancy Services, this advice shall be based upon the information provided by the Customer and the Supplier shall not conduct any audit of such materials to establish the veracity of that information. The Supplier shall produce a report setting out in high level terms areas which it believes the Customer should take action, including but not limited to recommendations to the Customer in

relation to the areas of its business where the instruction of professional IT security consultants would appear to present the best value-added approach in its reasonable opinion.

- (d) For the avoidance of any doubt, the Supplier's Consulting Services shall not include any penetration testing or any certified audit or other assessment identifying all Cybersecurity Requirements or Latent Vulnerabilities which may be present. The Suppliers services shall not include any ongoing management of the Customer's security systems or processes nor any ongoing intrusion detection or similar monitoring services unless expressly set out in the Statement of Work.

15.5 Retainer Services

- (a) Retainer Services involving or requesting any change to existing Services shall follow the Agile process unless otherwise agreed and the applicable Resource Allowance available shall be calculated based on the Customers monthly allowance as set out in the Retainer. Retainer Services shall be provided on a Fixed Fee basis unless otherwise agreed in the applicable Statement of Work.
- (b) For each Retainer the Customer shall be entitled to request Services on an ad-hoc basis to direct resources of the Supplier to perform Services according to its directions from time to time up to the amount of work effort provided for within each monthly period (the "Resource Allowance").
- (c) Where the Customer does not make use of the full amount of their Retainer Allowance, there will be no roll-over into any future monthly periods and the Retainer Allowance shall reset upon the expiry of each monthly period.
- (d) The Customer acknowledges and accepts that the Retainer Allowance does not provide for urgent response times and the Retainer Services to be drawn down from the Retainer Allowance each month should generally be agreed at least two (2) weeks prior to such Retainer Services commencing.

15.6 Acceptance Testing (Procedure)

- (a) No later than 30 days from the Commencement Date of a Statement of Work, the parties shall agree the Acceptance Criteria or a further schedule for making such determination where applicable. These criteria and data shall be such as are reasonably required to show that the relevant Deliverable complies with the Acceptance Criteria. The parties shall provide reasonable assistance to the other in preparation of any Acceptance Criteria as required. The parties shall use best endeavours to agree the Acceptance Tests for the System within ten days from the date of delivery from one party to the other of the proposed Acceptance Criteria and other relevant data.

- (b) Within ten days of delivery of the relevant Deliverable, the Acceptance Tests shall be carried out. The Acceptance Tests shall be started as soon as reasonably possible after installation or delivery and shall be run continuously during Normal Working Hours. The Supplier shall carry out the agreed Acceptance Tests for the Deliverable unless the Customer notifies the Supplier, not later than five days after the relevant delivery date, that it will carry out the Acceptance Tests. The party carrying out the Acceptance Tests shall give the other party at least 24 hours' notice of the start of the Acceptance Tests and permit the other party to observe all or any part of the testing.
- (c) If the Deliverable fails to pass the Acceptance Tests, the Customer shall, within five (5) days from the completion of the Acceptance Tests, or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- (d) If the Deliverable fails in some material respect to pass any repeated Acceptance Tests within four weeks from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion:
 - (i) to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the Deliverable on the same terms and conditions. If the Deliverable fails such further tests then the Customer may request a repeat test under this clause 15.6; or
 - (ii) to accept the Deliverable subject to such change of Acceptance Criteria, amendment of the Technical or other applicable Specification and/or reduction in the Price/Fee as, after taking into account all the relevant circumstances, is reasonable; or
 - (iii) if the Supplier is unable to correct material defects within a period of three (3) months from the commencement of Acceptance Tests under Clause 12.2, to reject the Deliverable as not being in conformity with the Statement of Work, in which event the Customer may terminate the part of the Statement of Work relating to such Deliverable.
- (e) Acceptance of Deliverables
 - (i) Acceptance of the Deliverable shall be deemed to have occurred on whichever is the earliest of:
 - (A) the signing by the Customer of an Acceptance certificate for the Deliverable which has passed the Acceptance Tests;
 - (B) the expiry of five days after the completion of all the Acceptance Tests under a Statement of Work, or in relation to the Milestone

identified in that Statement of Work, unless the Customer has given any written notice under clause 15.6 (c) above;

- (C) the expiry of ten days after the date of delivery of the final Deliverable if the Acceptance Tests for that module have not started, or have not been pursued with due diligence, unless such failure results from the Supplier's failure to co-operate in the performance of the Acceptance Tests; or
- (D) the use of the Deliverable by the Customer in the normal course of its business such as in a live or customer facing capacity or environment whether for profit purposes or not.

16. Limitation of liability

16.1 The Customer acknowledges and agrees that, except as expressly provided in this agreement, the Customer assumes sole responsibility for:

- (a) results obtained from the use of the Services, Software and the Documents by the Customer, and for conclusions drawn from such use;
- (b) procuring and maintaining the Customer Systems, and all network connections and telecommunications links from the Customer Systems to the Supplier's systems and data centres;
- (c) all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the Customer's or its agents' or contractors' (including any existing service provider's) network connections, telecommunications links or facilities, including the internet and acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and
- (d) loss or damage arising from or relating to any Relief Event.

16.2 Neither party excludes or limits liability to the other party for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence;
- (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any matter for which it would be unlawful for the parties to exclude liability.

16.3 Subject to clause 16.2, neither party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, data, reputation or goodwill;
- (b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (c) any loss or liability (whether direct or indirect) under or in relation to any other contract.

16.4 Clause 16.3 shall not prevent claims that fall within the scope of clause 16.5, for:

- (a) Damages or other compensation, including any applicable service level credits recovered by the Supplier from third-party Hosting Services providers following data loss not being a breach of clause 21 or clause 22;
- (b) Loss of or disclosure of data in breach of any applicable duty of confidentiality pursuant to clause 21 or a breach of the duties arising pursuant to applicable Data Protection Legislation as set out under clause 22.
- (c) direct financial loss that are not excluded under any of the categories set out in clause 16.3(a) to clause 16.3(c); or
- (d) tangible property or physical damage.

16.5 Subject to clause 16.2, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall be limited to 100% of the amount of the Fees.

17. Relief Events

Subject to clause 16.2, and notwithstanding any other provision of this agreement, the Supplier shall have no liability for failure to perform the Services or its other obligations under this agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

18. Insurance

On execution of this agreement, the Supplier shall provide to the Customer written confirmation from its insurers that it has in force an insurance policy sufficient to provide cover as required by law or in respect of any foreseeable liability which may arise in connection with this agreement.

19. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate this agreement by giving thirty (30) days' written notice to the affected party.

20. Assignment and other dealings

20.1 Subject to the further provisions of this clause 20, neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

20.2 Either party (**Party 1**) may, after having given prior written notice to the other party (**Party 2**), assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with its rights under this agreement to any person to which it transfers that part of its Business to which this agreement relates, provided that the assignee undertakes in writing to Party 2 to be bound by the obligations of Party 1 under this agreement.

21. Confidentiality

21.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its **Representatives**) to the other party and that party's Representatives whether before or after the date of this agreement in connection with the Project, concerning:

- (a) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any Affiliate of the disclosing party); and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any Affiliate of the disclosing party);
- (b) any information or materials developed by the parties in the course of carrying out or in connection with this agreement, including the Deliverables (including the Source Code in the Software); and
- (c) any information detailed in a Statement of Work.

- 21.2 The provisions of this clause shall not apply to any Confidential Information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
 - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
 - (d) the parties agree in writing is not confidential or may be disclosed; or
 - (e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 21.3 Each party shall keep the other party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising its rights or performing its roles, responsibilities, duties and obligations under this agreement (**Permitted Purpose**); or
 - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 21.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 21.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including any relevant securities exchanges) or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
- 21.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

21.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this agreement.

21.8 On termination of this agreement, each party shall, subject to clause 24.3:

- (a) return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
- (b) (in the case of electronic data) delete all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (and any electronic data shall be considered deleted, for the purposes of this clause 21.8, and clause 22.4(f) where it has been put beyond use by the deleting party); and
- (c) certify in writing to the other party that it has complied with the requirements of this clause,

provided that, in each case above, a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority and the provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 24.3(b),

21.9 Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

21.10 The provisions of this clause 21 shall survive for a period of [five] years from termination of this agreement.

22. Data protection

22.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This *clause 21* is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

22.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor. 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 and categories of data subject.

22.3 Without prejudice to the generality of clause 22.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.

22.4 Without prejudice to the generality of clause 22.1, 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 only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer 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 Customer with respect to the processing of the personal data;
- (d) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach;

- (f) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Laws to store the personal data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 22 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

22.5 The Customer consents to the Supplier appointing IT services consultants who perform similar services as the Services who may be required to provide the Services from time to time as third-party processors of personal data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 22 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 22.

22.6 Either party may, at any time on not less than 30 days' notice, revise this clause 22 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

23. Termination

23.1 Without affecting any other right or remedy available to it, the Customer may terminate this agreement, without liability to the Supplier in respect of such termination other than as set out in this clause but without prejudice to clause 24.2(a), on giving not less than 30 days' written notice to the Supplier, provided that on any such termination it shall be obliged to pay termination compensation to the Supplier, calculated as the reasonable losses which the Supplier contractually or otherwise irreversibly committed and is not reasonably able to recoup, using its reasonable endeavours to attempt to mitigate its losses by asking for refunds and acting as though such losses were its own to bear. The Supplier shall provide a breakdown of all such termination compensation on request by the Customer.

23.2 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 fails to pay any amount due under this agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified to make such payment;

- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of any 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 its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 23.2(c) to clause 23.2(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (l) any warranty given by the other party in this agreement is found to be materially untrue or misleading.

23.3 Without affecting any other right or remedy available to it, the Customer may terminate this agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of clause 12.1.

24. Consequences of termination

- 24.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 24.2 On termination or expiry of this agreement for any reason:
- (a) 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, shall not be affected;
 - (b) all licences granted under this agreement, including the Licence, shall immediately terminate, except for any rights granted under clause 24.3(b), provided that the Licence shall continue for the life of the relevant Intellectual Property Rights in the case of automatic termination under clause 2; and
 - (c) subject to clause 24.3 and without prejudice to clause 22, each party shall return and make no further use of any equipment, property, Documents and other items (and all copies of them) belonging to the other party.
- 24.3 If the Customer terminates this agreement, or any Project, under clause 19 or clause 23:
- (a) the Supplier shall deliver to the Customer, as is relevant in the circumstances for each Project:
 - (i) the Software and Deliverables (but in an object code version only) in their current state of development (**Deliverables to date**); and
 - (ii) the part of any Acceptance Criteria for incomplete Deliverables ready for the Customer's review and approval in accordance with any applicable modified or reduced Acceptance Tests remaining to be carried out, if requested within five Business Days of the date of such termination; and
 - (b) the Customer may, without prejudice to the generality of clause 22:
 - (i) exercise the Licence in respect of the Deliverables to date;
 - (ii) retain such of the Supplier's Confidential Information as is incorporated in the Deliverables and use the same for the Permitted Purpose; and
 - (iii) retain and use such of the Supplier's Confidential Information as is reasonably necessary for the Customer to use the Deliverables for the Permitted Purpose.

25. Announcements

No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

26. Entire agreement

26.1 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.

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

27. Conflict

If there is an inconsistency between any of the provisions of this agreement and any part of a Statement of Work, except where expressly stated to the contrary in this agreement, the provisions of this agreement shall prevail in preference to the Statement of Work.

28. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

29. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

30. Rights and remedies

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

31. Severance

- 31.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 31.2 If any provision or part-provision of this agreement is deemed deleted under clause 31.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

32. Non Solicitation

- 32.1 Neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Customer) in the receipt of the Services at any time during any Project or engagement or for a further period of 6 months after the later of termination of this agreement or any other services other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- 32.2 If either party commits any breach of this clause 32, the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

33. No employment, partnership or agency

- 33.1 Nothing in this agreement is intended to, or shall be deemed to, establish any employment relationship or transfer of employee, 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, except for any commitments made by the Product Owner on behalf of the Customer or by any Project Team on behalf of the Supplier in accordance with the express provisions of this agreement.
- 33.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

34. Notices

- 34.1 Any notice or other communication given to a party under or in connection with any Project shall be in writing and shall be addressed to the contact expressly named in the relevant Statement of Work.
- 34.2 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be addressed to the following contacts as may be

updated by the parties by notice from time to time or otherwise as expressly set out in a Statement of Work:

- (a) Supplier contact: **Gareth Murphy** - gareth.murphy@fluiditconsulting.co.uk
- (b) Customer contact: The **Product Owner** as set out in the Statement of Work unless otherwise agreed.

34.3 A notice given under this agreement is not valid if sent by fax.

35. Third-party rights

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

36. Governing law

36.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

37. Dispute Resolution Procedure

37.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) We will try to sort things out between us, acting reasonably, within the first five (5) Business Days and the complaining party (the Supplier's project manager or the Product Owner as appropriate) should submit a Dispute Notice setting out the issues with enough detail as would be required by a reasonably competent professional to understand the nature of the Dispute;
- (b) if the for any reason we are unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Directors or other appropriate senior stakeholders with authority to negotiate and approve any agreed resolution, who shall attempt in good faith to resolve the Dispute; and
- (c) if the escalation above does not result in the Dispute being resolved within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR Notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to

CEDR Solve. The mediation will start not later than 28 days after the date of the ADR Notice.

- 37.2 The commencement of mediation shall not prevent the parties commencing or continuing proceedings in relation to the Dispute under clause 36.1 which clause shall apply at all times.

This agreement has been entered into on the Commencement Date.

Schedule 1 Pro-Forma Statement of Work

Schedule 2 PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. Processing by the Supplier
2. Scope
 - 2.1 Nature
 - 2.2 Purpose for processing
 - 2.3 Duration of the processing

