

ORDER FORM

This is a Software Consultancy and Services Agreement between Open Answers Limited incorporated in England and Wales (registered number 02865597 having its registered office at 1-3 Tyburn Lane, Harrow, Middlesex HA1 3AG ('Consultant') and the client specified below ("Client").

The agreement consists of this order form together with the attached terms and conditions.

Client:	Limited
Registered office:	
Trading address:	
Company registration no:	
Client contact name and position:	
Client email:	
Client telephone number:	
Client fax number:	

SIGNED by authorised signatory on behalf of
the Consultant

(Signature)

(Name – please print)

(Position)

(Date)

SIGNED by authorised signatory on behalf of
the Client

(Signature)

(Name – please print)

(Position)

(Date)

TERMS AND CONDITIONS FOR SUPPLY OF SOFTWARE CONSULTANCY AND SERVICES

1. Definitions

1.1 The following terms shall have the following meanings:

‘Additional Services’	any software development or other additional services which the Consultant agrees to provide to the Client (except to the extent that such additional services are covered by a separate agreement between the parties)
‘Client Materials’	all copy, content, graphics, images, software, data and other materials in whatever form provided by the Client to the Consultant in connection with the Services
‘Consulting Services’	consulting services
‘Intellectual Property Rights’	worldwide copyright, design rights, database right, patents and any rights to inventions, know-how, trade and business names, trade secrets, logos and devices, trade and service marks (whether registered or unregistered) and any applications therefor and all rights in confidential information;
‘Personal Data’	as defined in the Data Protection Act 1998
‘Services’	the Consulting Services and the Additional Services
‘Software’	any computer software, in machine readable code, developed by the Developer in connection with the Services but excluding any developer tools
‘SOW’	any statement of work or order form signed by the parties
‘Third Party Software’	any third party software comprised within the Software
‘Work Product’	all copy, content, graphics, images, software, data and other materials in whatever form created by the Consultant in connection with the Services (including the Software)
‘in Writing’	all forms of visible reproduction in permanent form (including email unless otherwise stated)

1.2 Words in the singular include the plural and vice versa. References to a “person” shall include any individual, firm, unincorporated association or body corporate. Any reference in this agreement to any provision of a statute shall be construed as a reference to that provision, as amended, re-enacted or extended at the relevant time. The word “including”, unless the context otherwise requires, shall mean “including without limitation”. The headings in this agreement are for convenience only and shall not affect its interpretation.

2. Services

2.1 The Consultant agrees to supply the Services specified in any SOW or, if no SOW is signed, which the Consultant otherwise agrees to supply to the Client. In the event of any conflict between a SOW and this agreement, the SOW shall prevail. All Services shall be subject to the terms and conditions of this agreement.

3. Client obligations

3.1 The Client shall:

- a) provide reasonable co-operation to the Consultant in supplying the Services; and
- b) promptly provide the Consultant with such information and documents as it may reasonably request for the proper performance of the Services.

4. Fees

4.1 The Client shall pay the fees to the Consultant for the Services on a time and materials basis at the rates specified in any applicable SOW or, if there is no applicable SOW, at the Consultant's then standard rates. The Consultant shall be entitled to increase the fees no more than once per year by no more than the percentage increase in the Retail Prices Index (RPI) over the previous 12 months.

4.2 The Client shall pay any expenses incurred by the Consultant in connection with the provision of the Services, subject to prior approval of the Client in Writing.

4.3 The Client shall pay the fees without any withholding, deduction, counterclaim or setoff.

4.4 The fees payable under this agreement are exclusive of any applicable VAT and other sales tax which shall be payable by the Client at the rate and in the manner prescribed by law against submission of a valid tax invoice.

4.5 The Client shall pay the fees to the Consultant within 30 days of the Consultant's invoice unless otherwise specified in a SOW.

4.6 The Consultant may charge interest to the Client on overdue sums (both before and after judgment) at the rate that would be applicable if the debt were a qualifying debt under the Late Payment of Commercial Debts (Interest) Act 1998.

5. Suspension / Termination

5.1 The Consultant shall be entitled without liability to suspend all or any of the Services if and for so long as any fees payable to the Consultant are overdue.

5.2 For the avoidance of doubt, neither party may terminate a SOW unless expressly stated in the SOW or this agreement.

5.3 Insofar it relates to any applicable SOW, this agreement and the relevant SOW may be terminated forthwith by either party in Writing (not email) if the other:

- a) is in material default of its obligations under this agreement and, where remediable, has failed to substantially remedy the default within 21 days after notice in Writing (not email) is given to the defaulting party specifying the default; or
- b) suffers, or threatens to suffer, any form of insolvency, receivership, administrative receivership, administration or ceases, or threatens to cease, to carry on business.

5.4 Upon the termination of this agreement for any reason accrued rights and liabilities will be unaffected and all clauses which are expressed or clearly intended to survive termination shall survive together with any other provision necessary for the interpretation or enforcement of this agreement.

6. Intellectual Property Rights

6.1 The Consultant shall own the Intellectual Property Rights in the Work Product. In consideration of and subject to payment of the fees relating to the relevant Work Product in full, the Consultant grants to the Client an irrevocable worldwide non-exclusive perpetual royalty-free right and license to use, execute, reproduce, display, perform, distribute (internally and externally), transfer, exploit and make derivative works from the Work Product.

6.2 The Consultant hereby licenses to the Client and/or undertakes to procure for the Client the right to use Third Party Software to the extent necessary for the purposes of the foregoing licence subject to the Client agreeing to be bound by and to comply with any additional Third Party Software terms and conditions notified to it (including if so required the execution of a Third Party Software licence) and subject to the Client paying any applicable third party licence fees.

6.3 All Intellectual Property Rights in the Client Materials shall remain the exclusive property of the Client.

6.4 Each party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other and its successors, assigns, parent, subsidiaries and affiliates, and their respective directors, officers, employees, and agents (collectively, the "Indemnified Party") against all losses, damages, liabilities, and expenses (including reasonable legal fees) arising out of or in connection with any third party claim deriving from (in the case of the Consultant) any claim that the use or possession of the Work Product excluding Third Party Software (in the case of the Consultant) or the Client Materials (in the case of the Client) infringes the Intellectual Property Rights of a third party subject to the following conditions;

- a) the Indemnified Party shall promptly notify the Indemnifying Party in writing of any allegation of infringement of which it is aware and shall not make any admission or compromise without the prior written consent of the Indemnifying Party;

- b) the Indemnified Party, at the request and expense of the Indemnifying Party, shall allow the Indemnifying Party to conduct and/or settle all negotiations and litigations resulting from such a claim subject to the Indemnifying Party taking over such conduct within 10 working days of notification of the claim and provided that the Indemnifying Party diligently pursues settlement of such claim; and
- c) the Indemnified Party shall cooperate reasonably with the Indemnifying Party, at the expense of the Indemnifying Party, in connection with such negotiations or litigation. defence and with the compromise or settlement of any such Proceeding.

6.5 If the Client's use or possession of Software or any part thereof (excluding Third Party Software) in accordance with this agreement is held by a court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property Rights, then the Consultant shall promptly at its expense and at its option:

- a) procure for the Client the right to continue using and possessing the Software or the infringing part; or
- b) modify or replace the Software (or part thereof) without detracting from the overall performance of the Software, so as to avoid the infringement.

7. Warranties

7.1 The Consultant warrants that it will maintain all licences, permits, consents and authorities necessary for it to perform its obligations under this agreement.

7.2 The Consultant warrants that it will use its reasonable endeavours to meet any deadlines specified in a SOW but does not guarantee that they will be achieved.

7.3 The Consultant shall not be liable for breach of warranty in this agreement unless the Client has given the Consultant prompt written notice of the breach and a reasonable opportunity thereafter to rectify the breach at the Consultant's expense.

7.4 The Consultant excludes all conditions, warranties and other terms relating to the Software and the Services, express or implied, that are not expressly stated herein, including but not limited to any implied warranties as to quality, fitness for purpose or ability to achieve a particular result.

7.5 The Client warrants that:

- a) it owns or has obtained all necessary rights, permissions and licences for the use of the Client Materials supplied to Consultant under this agreement;
- b) it will maintain in full and unrestricted force and effect all licences, permits, consents and authorities in the Client Materials or as may otherwise be necessary for Consultant to perform its obligations under this agreement; and

- c) the Client Materials do not and shall not infringe any third party Intellectual Property Rights.

8. Liability

- 8.1 Any provisions in this agreement excluding or limiting liability will apply regardless of the form of action, whether under statute, in contract or tort including negligence or otherwise. Such provisions apply to and may be enforced by the relevant party's directors, officers, employees, subcontractors, agents and affiliated companies as well as to the party itself and those parties will have the benefit of such provisions in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this agreement in any way excludes or restricts either party's liability for negligence causing death or personal injury or for fraudulent misrepresentation or for any liability which may not legally be excluded or limited.
- 8.2 The maximum aggregate liability of either party under or in connection with this agreement (including under any indemnity in this agreement) shall in no circumstances exceed the fees paid to the Consultant in relation to the Services to which the liability relates within the 12 month period preceding the event(s) complained of.
- 8.3 Neither party shall under any circumstances (including under any indemnity in this agreement) be liable for any consequential, indirect or special damages, or for economic losses (including without limit, loss of revenues, profits, contracts, business or anticipated savings), or for damage to or loss of data, or for damage for loss of reputation.

9. Confidentiality

- 9.1 Each party shall keep in confidence any information in any form (including oral) of a confidential nature obtained from the other party in connection with this agreement and shall not without the prior consent in Writing of that other party use that information other than for the purposes of this agreement or disclose it to any person other than its personnel who need to know the information for the purposes of this agreement.
- 9.2 This clause shall not apply to:
 - a) information which becomes public knowledge has been published other than through a breach of this agreement;
 - b) information lawfully in the possession of the recipient before the disclosure took place;
 - c) information obtained from a third party who is free to disclose it; and
 - d) information which a party is requested to disclose and if it did not could be required by law or regulation or competent authority to do so.

10. Data Protection

- 10.1 If the Consultant processes any Personal Data on behalf of the Client:

- a) it shall do so only in accordance with this agreement or the Client's written instructions, and
- b) it will at all times have appropriate technical and organizational measures in place to protect all such Personal Data against unauthorised or unlawful processing, accidental loss, destruction or damage and that, having regard to the state of technological development and the cost of implementing any measures, the measures shall ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and to the nature of the data to be protected.

11. Restrictions

- 11.1 During the period of this agreement and for a period of 12 months afterwards, neither party shall be permitted to solicit the staff, personnel, contractors or sub-contractors of the other party or entice them to transfer their business.

12. Dispute Resolution

- 12.1 If any claim or dispute arises under or in connection with this agreement, the parties will attempt to settle it by good faith negotiation.
- 12.2 If any claim or dispute cannot be settled within 21 days after either party had made a written offer to the other party to negotiate a settlement, the parties shall attempt to resolve it by mediation in good faith in accordance with Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 12.3 If the parties have not settled any claim or dispute by mediation within 42 days from the initiation of the mediation, either party may initiate court proceedings in accordance with this agreement.
- 12.4 Nothing in this clause shall prevent a party from at any time commencing court proceedings relating to any dispute or in relation to any application for emergency or injunctive relief.

13. Notices and Service

- 13.1 Any notice or other information required or authorised by this agreement to be given by any party may be given by hand or sent (by first class pre-paid post or facsimile transmission) to another party at its registered office or such other address as that party may notify to the other party for this purpose from time to time or by email (unless stated otherwise and provided that the email is not returned).
- 13.2 Any notice or other information given by post which is not returned to the sender as undelivered shall be deemed to have been given on the second day after the envelope containing the same was so posted and proof that the envelope containing any such notice or information was properly addressed pre-paid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.

13.3 Any notice or other information sent by facsimile transmission shall be deemed to have been duly sent on the date of transmission, provided that a confirming copy thereof is sent by first class pre-paid post to the other party within 24 hours after transmission.

14. **General**

14.1 This agreement and any document incorporated herein by reference constitute the entire agreement between the parties with respect to its subject matter and supercede any previous communications or agreements between the parties. Both parties acknowledge that there have been no misrepresentations and that neither party has relied on any pre-contractual statements. Liability for misrepresentation (excluding fraudulent misrepresentation) relating to the terms of this agreement is excluded.

14.2 No amendment or variation of this agreement shall be effective unless in writing, expressed to be an amendment to this agreement and signed by a duly authorised representative of each of the parties.

14.3 Neither party may assign the whole or any part of its rights or obligations under this agreement without the prior written consent of the other not to be unreasonably withheld or delayed.

14.4 The failure of a party to exercise or enforce any right under this agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

14.5 If any provision of this agreement is held to be unlawful, void or unenforceable in whole or in part, this agreement shall continue in force in relation to the unaffected provisions and the remainder of the provision in question, and the parties will renegotiate the offending provision in good faith to achieve the same objects.

14.6 Save insofar as expressly provided otherwise in this agreement, no third party may enforce any clause in this agreement under the Contracts (Rights of Third parties) Act 1999.

14.7 The relationship of the parties is that of independent contractors. Except as otherwise stated in this agreement, nothing in this agreement shall constitute the parties as partners, joint venturers or coowners, or constitute any party as the agent, employee or representative of the other(s), or empower any party to act for, bind or otherwise create or assume any obligation on behalf of the other(s), and no party shall hold itself out as having authority to do the same.

14.8 Each party agrees at any time upon the reasonable request of the other to do, execute, acknowledge and/or deliver all such further acts, deeds, documents and/or instruments as may be required to effect any of the transactions contemplated by this agreement.

14.9 This agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

14.10 This agreement shall be governed by and construed in all respects in accordance with the laws of England and each party hereby submits to the exclusive jurisdiction of the English Courts.