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Liquidlogic – Custom Cloud Application Support and Development, Project Proposal Terms and Conditions

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Confidentiality / Document control

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Supplier: Liquidlogic Limited
First Floor, Park Central, 40-41 Park End Street, Oxford, OX1 1JD
(Company Number: 04006349)

Customer: **CLIENT NAME**
CLIENT ADDRESS (COMPANIES HOUSE ID)

1. TERMS OF SERVICE

1.1 These Terms of Service govern the overall relationship between the Customer and the Supplier with respect to the Services.

1.2 The Customer is not obliged to purchase any Services from the Supplier, but if it wishes to do so then the Customer and the Supplier shall agree a Statement of Targets (SOT). Each SOT is an "invitation to treat". The Supplier reserves the right to withdraw or amend SOTs (including any pricing) and neither party shall have any rights or obligations in respect of any SOT, including the provision of the Services, unless and until each of the parties has agreed to the SOT in writing.

1.3 Following such agreement in writing by both parties of a SOT, a contract shall be automatically created which comprises the SOT and these Terms of Service (the "Contract").

2. THE SERVICES

2.1 In respect of the SOT the Supplier shall use reasonable endeavours to deliver the Targets within the Constraints and according to the Assumptions to meet the Acceptance Criteria. The Supplier shall report progress regularly to the Customer as mutually agreed.

2.2 For each Target the Supplier shall create one or more Approaches that have the potential to achieve the Target. In respect of each Approach the Supplier shall provide a forecast in terms of the deliverables and estimated costs and may provide risks and expiry date as appropriate for that Approach and shall inform the Customer of any requirements for execution of the Approach and any circumstances in which the Approach may expire. Unless agreed in writing by the Supplier, forecasts shall not be binding.

2.3 On the basis of the reports pursuant to clause 2.1, the Supplier shall, in consultation with the Customer, decide: (a) whether to adopt or abandon the Target; (b) which Target(s) to focus on next.

2.4 On delivery, the Customer, in consultation with the Supplier, may decide to accept the Target. Acceptance of the Target is not to be unreasonably withheld or delayed. The Customer shall be deemed to have accepted the Target delivery if they use it as a live system or have not raised any issues with regards to the Target within thirty (30) days of delivery. On acceptance the Supplier shall give the Customer access to all work products related to the on-going operation and maintenance of the Target delivery.

3. FEES AND PAYMENT ARRANGEMENTS

3.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the fees in the amount and on the dates or with the frequency as set out in the Contract. Payment is due within thirty (30) days from the date of each invoice.

3.2 The Customer shall raise a purchase order for the fees as soon as reasonably practicable and in any event within thirty (30) days of signing the Contract.

3.3 All sums payable under the Contract are exclusive of any taxes, charges or duties to which the supply of goods or services may be subject or give rise.

3.4 The Supplier may suspend the provision of the Services where any undisputed invoice remains unpaid for more than thirty (30) days from the date of such invoice. For the avoidance of doubt the Supplier's right to suspend the Services shall be in addition to the right to claim interest subject to the Late Payment of Commercial Debts (Interest) Act 1998.

4. CUSTOMER RESPONSIBILITIES

4.1 The Customer shall co-operate with the Supplier in its performance of the Services and shall provide such support, facilities and information, including any requirements for execution of the Approaches, as set out in the Targets.

4.2 The Customer shall ensure that the Supplier has access to a representative of the Customer who: (a) can fully articulate the business objectives, expectations and constraints of all stakeholders who have an active interest in the success of the Targets, are actively involved in the Target delivery, or may exert influence over the Target delivery, including the end users, purchasers, managers and executives responsible for the funding of the Target; (b) is fully authorised to make decisions on behalf of all of such persons; (c) provides feedback in a timely manner to reasonable requests from the Supplier and in relation to the Target; and (d) identifies any changes in external factors that will impact on the Target.

4.3 Failure by the Customer to meet any of the Customer Responsibilities set out in this clause 4 shall entitle the Supplier to relief from its performance obligations under this Contract and in such circumstances the Customer shall also be liable to compensate the Supplier for its reasonable and proven expenses which may consist of wasted development effort or duplicated costs associated with the failure to meet the Customer Responsibilities.

5. OWNERSHIP AND LICENSING

5.1 Subject to clause 5.2, all right, title and interest in the Customised Software shall, on the date of the Contract or (if later) on creation of such Intellectual Property Rights, vest in the Customer. The Supplier hereby assigns with full title guarantee by way of present and future assignment to the Customer all right, title and interest in the Customised Software.

5.2 All background and pre-existing Intellectual Property Rights ("Background IPR") is and shall belong to the party owing it and/or its licensors and nothing in this Contract will function to transfer any of either Party's Intellectual Property Rights in respect of the Background IPR.

5.3 The Customer hereby grants to the Supplier a non-exclusive, non-transferable, royalty-free, perpetual licence to use the Customised Software to fulfil any on-going obligations of the Supplier under this Contract.

5.4 Subject to the licence in clause 5.5, all Intellectual Property Rights in the Supplier Software, any associated Documentation and the Deliverables shall remain in the Supplier or its licensors. However, ownership of the media on which the Documentation and Deliverables are supplied by the Supplier shall vest in the Customer upon acceptance thereof.

5.5 The Supplier hereby grants (or shall procure that the owner of the Intellectual Property Rights therein shall grant) to the Customer a non-exclusive, non-transferable licence to use the Supplier Software, any associated Documentation and the Deliverables as necessary to enable the use of the Customised Software. Such licence is to be royalty free and perpetual with the exception of the Supplier's commercial products.

5.6 Each Party acknowledges that the other may currently or in the future be developing products, concepts, systems or techniques that are similar to or compete with the Customised Software. Nothing in this Contract will prohibit the Parties from developing or having developed for it products, concepts, systems or techniques that are similar or compete with the Customised Software provided that either Party does not use the Confidential Information of the other.

5.7 In respect of: (a) any Third Party Software, the Customer shall, at its own expense, enter into a licence directly with the owner or authorised licensor of such Third Party Software; and (b) any Open Source Software, the Customer shall comply with the terms and conditions of the specific licence under which such Open Source Software is made available; in each case regardless of whether the Supplier has sourced or made such software available to the Customer or the Customer has procured such software itself.

6. REPRESENTATIONS AND WARRANTIES

6.1 Each party represents and warrants to the other party in respect of each Target that it shall perform its obligations in good faith and in a timely and professional manner by using at all times appropriate staff exercising reasonable care and skill.

6.2 The Supplier represents and warrants to the Customer in respect of each Target that: (a) the performance of the Services and the Target delivery will not in any way constitute an infringement or other violation of any Intellectual Property Right of any third party; and (b) the Supplier owns or has obtained valid licences of all Intellectual Property Rights which are necessary to the performance of any of its obligations hereunder.

6.3 Any unauthorised modifications or use of the Software or any installation of the Software otherwise than in accordance with the Supplier's instructions (provided that such instructions are sufficiently detailed to enable any person reasonably skilled in the relevant programming language to follow them) by, or on behalf of, the Customer shall render the Supplier's warranties in clause 6.2 null and void.

6.4 Any Third Party Software and any Open Source Software which is sourced, or made available, by the Supplier may be used according to the terms and conditions of the specific licence under which the relevant software is made available, but is provided "as is" and expressly subject to the disclaimer in clause 6.5. For the avoidance of doubt, the Supplier does not accept any responsibility or liability for any issues or faults that may arise from any Third Party Software or Open Source Software.

6.5 Except as expressly stated in these Terms of Service, all other warranties and conditions, whether expressed or implied by statute, common law or otherwise, are hereby excluded.

7. LIMITATION OF LIABILITY

7.1 Nothing in the Contract excludes or limits the liability of either party (including their employees, agents and subcontractors) for: (a) death or personal injury caused by its negligence; (b) by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; (c) fraud or fraudulent misrepresentation; or (d) any other act or omission, liability which may not be limited under any applicable law.

7.2 Subject to clause 7.1: (a) the total aggregate liability of each party to the other party under or in connection with the Contract, whether arising from tort (including negligence), breach of contract or otherwise, shall in no event exceed 125% of the fees paid and payable by the Customer to the Supplier under the Contract; and (b) neither party shall be liable for any loss of profits, loss of business or goodwill, interruption of business or any type of special, indirect or consequential loss, even if such loss was reasonably foreseeable or such party has been advised of the possibility of incurring the same.

8. DATA PROTECTION

8.1 The parties acknowledge and agree that in relation to Personal or Special Category Data, the Customer is acting as a Data Controller, and, to the extent that the Supplier, as a Data Processor processes such Personal or Special Category Data on behalf of the Customer, the Supplier shall: (a) only process Personal or Special Category Data in accordance with the documented instructions and directions that are received from the Customer in relation to that Processing and to the extent necessary to comply with its obligations under the Contract, unless required to process such Personal or Special Category Data for other purposes by applicable laws or regulatory authorities; (b) have in place, appropriate technical and organisational measures which ensure an appropriate level of security for the Processing of Personal or Special Category Data and protect Personal or Special Category Data against accidental or unlawful destruction or accidental loss or alteration or unauthorised disclosure access or Processing as necessary to comply with the DPA and, as applicable, the Articles of the General Data Protection Regulation as it has effect in the UK (UK GDPR); (c) not transmit or otherwise process Personal or Special Category Data outside the EEA.

8.2 The Supplier will ensure any staff and subcontractors meet UK GDPR requirements for processors and that Supplier staff authorised to process the Personal or Special

Category Data have committed themselves to confidentiality.

8.3 The Supplier, as Data Processor, will assist the Customer, as Data Controller, in fulfilling its obligation to respond to requests for exercising the data subject's rights under UK GDPR.

8.4 Each party will notify the other of any security breach releasing Personal or Special Category Data and assist the other party in fulfilling its own obligations regarding breaches.

8.5 The Supplier, as Data Processor, will return or delete all Personal or Special Category Data to the Customer, as Data Controller, upon request, provided that the Customer, as Data Controller, shall not instruct the Supplier, as Data Processor, to delete data that the Supplier holds on its own behalf as a Data Controller. If the Customer transfers Personal or Special Category Data to the Supplier, the data will be marked as Personal, and the method of transfer will be agreed in advance. In particular the Customer will not email data that it believes to be Personal or Special Category Data to the Supplier, and the Supplier and the Customer will agree on an encrypted, secure method of transferring the Personal or Special Category Data from the Supplier to the Customer.

8.6 The Supplier, as Data Processor, will make available to the Customer, as Data Controller, all information necessary to demonstrate compliance with their obligations under UK GDPR.

8.7 The Customer, as Data Controller, warrants that the instructions for collection or Processing of Personal or Special Category Data are compliant with the UK GDPR.

8.8 The Customer, as Data Controller, provides a general authorisation to the Supplier, as Data Processor, to engage further Data Processors to process Personal or Special Category Data upon and subject to the remaining provisions of this Contract.

9. MUTUAL CONFIDENTIALITY & NON-SOLICITATION

9.1 Neither party shall disclose or allow to be disclosed any confidential information relating to the business or affairs of the other party other than to the extent necessary for the performance of its obligations under the Contract and only to its employees, officers, directors, agents, legal advisors, auditors and sub-contractors who have signed an appropriate undertaking of confidentiality.

9.2 The obligations under clause 9.1 shall not apply to any confidential information which: (a) must be disclosed by law; or (b) was known to the recipient before its receipt from the disclosing party; or (c) is lawfully in the public domain or in the possession of a third party other than by reason of breach of the Contract; or (d) is independently developed without access to the other party's confidential information; or (e) is authorised for release by the written consent of the disclosing party.

9.3 Neither party shall solicit or entice employees of the other party to accept or change employment during the Term of Services and for one year thereafter.

10. TERMINATION

10.1 Either party may terminate the Contract at any time with immediate effect by written notice to the other party if: (a) the other party commits a material breach of any term of the Contract (other than failure to pay any amounts due under the Contract) and, if such breach is capable of remedy, fails to remedy that breach within a period of thirty (30) days of being notified in writing to do so; or (b) an Insolvency Event of the other party occurs; or (c) the other party ceases or threatens to cease to carry on the whole or any material part of its business.

10.2 Upon the expiry or termination of the Contract for any reason: (a) the Supplier shall give the Customer up to date digital copies of the Customised Software and Deliverables that have been delivered to the Customer and digital copies of all test data and test plans, to the extent that the Customer does not already have such copies in its possession; (b) the Customer shall pay the fees to the Supplier for all Services provided until the date of expiry or termination (as applicable) of the Contract; and (c) any and all amounts outstanding and any unpaid amounts due and owed under the Contract shall become immediately due and

payable.

10.3 The Supplier may terminate the Contract for non-payment if the fees set out in this Contract are not paid within 90 days of a valid invoice.

11. GENERAL

11.1 All notices required to be given under the Contract shall be in writing and sent by email to the address of the other party as set out in the Target, or as otherwise notified in accordance with this clause.

11.2 No amendment or variation to these Terms of Service shall be effective unless it is made by a written instrument which expressly purports to amend these Terms of Service and is executed by or on behalf of each party by a duly authorised representative.

11.3 A failure or delay by a party at any time or for any period to enforce any of its rights under the Contract shall not constitute a waiver of such rights or the right at any time subsequently to enforce any provisions of the Contract.

11.4 If any provision of these Terms of Service is found to be invalid, unenforceable or illegal, then such provision shall be severed, and the remainder of the Contract shall continue with full force and effect.

11.5 The Contract is personal to the parties, and neither party shall assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

11.6 Nothing contained in the Contract is intended to, shall be deemed to, or shall create any agency relationship, partnership or joint venture between the parties. Neither party shall have authority to act in the name nor on behalf of nor otherwise to bind the other party in any way, save as specifically provided in these Terms of Service.

11.7 Neither party shall be liable for delay or failure to perform any of its obligations under the Contract to the extent that such delay or failure is caused by circumstances beyond its reasonable control, including a national emergency or war. If the Supplier does not achieve the Target Delivery due to any breach of the obligations of the Customer under these Terms of Service or any SOT, or any default, act, omission, negligence or delay of the Customer then the Supplier shall be entitled to reasonable and proven additional expenses and to relief from liability, termination and deduction under this Contract. The Supplier is also entitled to additional time to meet the Target Delivery.

11.8 No third party shall have any rights under, or be able to enforce, all or any part of the Contract.

11.9 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract. Nothing in this clause 11.9 shall limit or exclude any liability for fraud.

11.10 The Contract shall be governed by English law in every respect including its formation. The parties irrevocably submit to the exclusive jurisdiction of the courts of England regarding any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

12. DEFINITIONS

12.1 In these Terms of Service:

Approach means an approach which may be used by the Supplier to achieve a Target Outcome;

Constraints means the constraints which impose restrictions on the SOT as set out in the SOT or Overall Constraints;

Contract means the contract comprising a SOT and these Terms of Service;

Customised Software means any new computer programs and any enhancements to existing computer programs which are to be developed by the Supplier under the Contract;

DPA means the Data Protection Act 2018;

Deliverable means a tangible object that is to be delivered to the Customer as part of the Target Delivery and which may take the form of a report, a document or any other material;

Documentation means all documents and other written material describing, explaining or assisting in the use of the Software, including user manuals relating to the Software;

UK GDPR means the European Union General Data Protection Regulation 2016/679 as it has effect in the UK.

Insolvency Event occurs with respect to a party if (a) the party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (b) a proposal is made with (or for the benefit of) the creditors of the party to reschedule any of its debts or to enter into any compromise or scheme of arrangement with its creditors (except for the purpose of a bona fide scheme for a solvent amalgamation or reconstruction); (c) 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 the party (except for the purpose of a bona fide scheme for a solvent amalgamation or reconstruction); (d) a court application or order is made or a notice of intention is given, for the appointment of an administrator, an administrative receiver or a receiver over the party; or an administrator, an administrative receiver or a receiver is appointed over the party; (e) a creditor or encumbrancer of the party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, any part of the party's assets and such attachment or process is not discharged within fourteen (14) days; or (f) any event occurs which is the equivalent of or similar to (a) to (e) in any jurisdiction to which the party is subject;

Intellectual Property Rights means all patents, trademarks, service marks, copyright and related rights, domain names, rights in get-up, design rights, database rights, topography rights, and all other similar proprietary rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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;

Open Source Software means any software licensed under any form of open source licence meeting the Open Source Initiative's Open Source Definition (<http://www.opensource.org/docs/definition.php>) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at <http://www.gnu.org/licenses/gpl.html>), or anything similar, included or used in, or in the development of, the Software, or with which the Software is compiled or to which it is linked;

Services means the services to be performed by the Supplier under the Contract;

Software means the computer programs to be supplied by the Supplier in the course of the performance of the Services, and shall comprise the Supplier Software, the Customised Software, the Third Party Software, the Open Source Software and the Tools;

SOT means a statement of targets as agreed by the parties in accordance with clauses 1.1, 1.2 and 1.3;

Supplier Software means the computer programs which are to be supplied by the Supplier under the Contract, and in which the Intellectual Property Rights are owned by the Supplier;

Target Delivery means what the Supplier actually delivers, and such delivery may include Software, Deliverables and/or Documentation;

Target Outcome means the outcome-based business results, aligned with the business objectives, that the Customer wishes to achieve;

Terms of Service means these terms of service;

Third Party Software means the computer programs, which are to be supplied by the Supplier under the Contract, and in which the Intellectual Property Rights are owned by third parties;

12.2 In interpreting the obligations under the Contract, they should be construed such that the Customer is responsible for the domain expertise and the Supplier is responsible for the technical expertise.

12.3 The following expressions shall be construed as follows: (a) the terms "Data Controller", "Data Processor", "Personal Data", "Special Category Data" and "Processing" have the meaning given to those terms in the UK GDPR, or where any Act is silent as to such terms, as generally and readily understood and accepted within the software community; (b) any phrase introduced by the term "including" shall be construed as illustrative and shall not limit the sense of the words proceeding such term.

12.4 In interpreting the Contract (unless the context requires otherwise) any reference to any statute or statutory provision including any subordinate legislation includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

Signed on behalf of **CLIENT NAME**

_____ Date _____

Name:

Position:

Signed on behalf of **Liquidlogic Limited**

_____ Date _____

Name:

Position: