

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT for services is entered into this [XX day of MONTH YEAR] (“Effective Date”), by and between Durable Digital Ltd, a registered company of England and Wales having its principal place of business at 8 Elder Street, London, E1 6BT (“Durable”), and [ENTER FULL CLIENT NAME] having its principal place of business at [ENTER ADDRESS] (“Client”).

WHEREAS, Client wishes to retain Durable for the purpose of obtaining certain professional services and products; and

WHEREAS, Durable is willing to perform and provide such professional services and products upon the terms and conditions provided herein;

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, Durable and Client do hereby agree as follows:

### 1.0 Engagement

The Client does hereby engage Durable and Durable does hereby agree to perform on behalf of Client the services more particularly described herein. It is understood by the parties that this Agreement shall govern the relationship between Durable and Client with respect to the rendering of all current and future services performed by Durable, except to the extent modified pursuant to Section 2.0 herein.

### 2.0 Services

**2.1 Scope of Services.** Subject to the prompt payment of fees, Durable will perform and provide services and products (“Services”) as set forth in one or more Statements of Work (“SOW”). Each accepted SOW will be incorporated herein by this reference and be subject to the terms and conditions of this Agreement. A SOW will be, at a minimum, a written document that (a) describes the Services to be performed, (b) specifies the corresponding rate schedule or other fee information, and (c) is signed by authorised representatives of both parties or is issued by one party and signed by the other party. Additional terms and conditions may be included in a SOW as required. To the extent that any term or condition in a SOW is inconsistent with this Agreement, the terms and conditions of the SOW shall prevail and bind the parties.

**2.2 Change Orders.** Changes to a SOW may only be made by (a) a written change order, signed by both parties, which will specify the changes ordered, an increase or decrease in the fees for performance, timing issues, and any changes to other matters as may be affected (“Change Order”); or (b) by a revised or additional SOW. Each accepted Change Order or revised or additional SOW will be incorporated herein by this reference and subject to the terms and conditions of this Agreement.

**2.3 Use of Third Parties.** Durable may retain third parties to furnish products or services to it in connection with its performances of the Services under this

Agreement. Durable will be solely responsible for engaging and directing the work of said third parties. Client shall comply with the relevant terms of any licence or agreement between Durable and any third party as notified to the Client from time to time. Subject to clause 8.3.1, Durable's liability to Client or any other party whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising out of under or in connection with any acts, omissions and or negligence of a third party or the failure of any third party software, product or material including any subsequent effect on the Services or Work Product is hereby excluded. Client shall indemnify and hold harmless Durable in relation to any claim made against Durable by the third party owner of any software where such claim relates to a breach of the licence and/or agreement between Durable and the third party which was caused by the acts, omissions and/or negligence of Client or its representatives.

**2.4 Performance of Services.** Durable will determine the details and means of performing the Services to be performed for Client under Client's general guidance and direction. Services will be performed at such times and at such places as solely determined by Durable.

**2.5 Client Materials.** Client may be required to supply content and materials, including, without limitation, graphics, pictures, audio, video, and text, for Services performed under this Agreement ("Client Materials"). Client's requirement to provide Client Materials, if any, will be included in the relevant SOW. Client will retain ownership of Client Materials. Client grants Durable a non-exclusive, worldwide, perpetual, irrevocable, and fully paid up license to use Client Materials for the purpose of performance of its obligations under this Agreement and for any other purpose determined reasonably necessary by Durable to enable it to fulfil its obligations under this Agreement. Client represents and warrants that it has or will obtain all necessary ownership, licenses, and/or permissions to grant such license and will defend, indemnify, and hold Durable harmless with regard to any third party claim or allegation that the Client Materials or Durable's licensed use of Client Materials infringes or violates any third party rights or violates any law.

**2.6** Durable does not warrant the form or content of the Work Product (as defined below) which is supplied to the Client on the basis of the Client determining whether such Work Product is fit for purpose.

### **3.0 Fees and Payment**

**3.1 Fees and Expenses.** Client will pay Durable all fees set forth in an accepted SOW. If rates are not specified in a SOW, Services performed by Durable on behalf of Client will be undertaken on a time and materials basis at Durable's applicable standard rates. Client will reimburse Durable for all reasonable costs and expenses incurred by Durable in its performance of the Services under this Agreement, including, without limitation, reasonable travel and lodging expenses for Services performed at Client's site.

#### **3.2 Payment**

**3.2.1** Unless otherwise set forth in a specific SOW, Client shall make all

payments under this Agreement in British Pound Sterling (GBP) within thirty (30) calendar days of the date of Durable's invoice.

**3.2.2** In the event that Client wishes to dispute an item or items on an invoice, Client must notify Durable in writing within fourteen (14) calendar days of receipt of that invoice, setting out an explanation of the amount disputed and its reasons. If no notice of dispute is received by Durable within fourteen (14) days after Client's receipt of an invoice, the invoice will be deemed accepted and Client will be obliged to pay the invoice in accordance with its terms. Client must pay all undisputed amounts in accordance with subsection 3.2.1 herein. Disputes shall be resolved promptly and the resolved amount, if any, shall be confirmed by the parties in writing and shall be payable within fourteen (14) calendar days after such resolution. Interest, pursuant to subsection 3.2.3 herein, will accrue from the due date on subsequent payments of amounts withheld or credits on overpayments refunded.

**3.2.3** Client will reimburse Durable for all costs and accrued interest on late payment incurred by Durable (including legal and solicitor fees, collection fees, court costs in connection with any collection efforts related to or arising out of this Agreement.

**3.3 Taxes.** The fees for Services do not include any excise, sales, use, value added, or other taxes, tariffs, or duties that may be applicable to the Services. When Durable has the legal obligation to collect such taxes, tariffs, or duties, the amount of such taxes, tariffs, and duties will be invoiced to Client and Client will pay such amount unless Client provides Durable with a valid tax exemption certificate authorised by the appropriate taxing authority. All payments by Client for invoiced Services will be made free and clear of, and without reduction for, any withholding taxes. Any such taxes that are otherwise imposed on payments to Durable will be Client's sole responsibility.

#### **4.0 Term and Termination**

**4.1 Term.** The term of this Agreement will commence on the Effective Date and will continue in full force and effect until terminated by either party pursuant to the terms of this Agreement.

**4.2 Termination for Convenience.** Either party may terminate this Agreement, or any SOW, upon thirty (30) calendar days' written notice, whereupon this Agreement or (as appropriate) the SOW will terminate on the effective date specified in such notice. Termination of a SOW will not operate to terminate this Agreement, unless this Agreement is also terminated in accordance with its terms. Termination pursuant to this subsection will not relieve Client of its obligation to pay for any Services performed or expenses incurred up to the date of termination.

**4.3 Termination for Cause.** Either party may terminate this Agreement for cause immediately upon written notice if the other party has materially breached any provision of this Agreement and has not cured such breach within thirty (30) calendar days of receipt of written notice from the non-breaching party

describing such breach in reasonable detail and stating the non-breaching party's intent to terminate this Agreement.

- 4.4 Suspension of Services.** Notwithstanding any other provision of this Agreement, Durable may immediately upon written notice, in its sole discretion, suspend Services and the delivery of a deliverable under any SOW if: (a) Client materially breaches any of its obligations under this Agreement including, without limitation, failure by Client to pay any amount owed under this Agreement within thirty (30) calendar days of the date of Durable's invoice therefor pursuant to clause 3.2.1; or (b) Durable determines that Client may be unable to make any scheduled or expected payment.

Any such suspension by Durable will not constitute termination of this Agreement or of any SOWs and Client will continue to be bound by its obligations under this Agreement; will be deemed to modify any SOW deliverable dates outward to the same extent as the period of delayed payment, performance, or other material breach, without penalty to Durable; will entitle Durable to reimbursement by Client for any and all costs and expenses incurred by Durable in connection with any such suspension; and may be cancelled or revoked in Durable's sole discretion.

- 4.5 Effect of Termination.** Upon termination of this Agreement, each SOW will also be terminated and any Services being provided under each SOW will cease on the date of termination. Durable will issue, and Client will pay, an invoice for Services performed up to the date of termination.

- 4.6 Return of Materials.** Upon termination and receipt of final payment of all amounts due, Durable will deliver to Client all work in progress. Uncompleted work in progress will be provided "AS IS" and "WITHOUT WARRANTY," but otherwise subject to the terms and conditions of this Agreement. Upon termination each party will also return promptly or, at the other party's request, destroy all documents and other tangible objects containing or representing Confidential Information (defined below) of the other party except to the extent that such documents must be retained to satisfy auditing or regulatory requirements.

- 4.7 Survival.** The Sections of this Agreement regarding Confidential Information, Ownership Rights, Warranties, Limitation of Liability, Term and Termination, Non-Solicitation, and General Provisions will survive termination, as will accrued rights to payment.

- 5.0 Confidential Information.** During the course of performing Services under this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"), including, without limitation: (a) source code, object code, documentation, specifications, databases, system design, file layouts, tool combinations, development methods; (b) information relating to the business or financial affairs of each of the parties, which may incorporate business methods, marketing strategies, pricing, competitor information, product development strategies and methods, customer lists, financial results, personnel, and research and development; and (c) information received from others, both written and oral, that each party is obligated to treat as confidential.

Confidential Information shall not include any information that: (a) is already known by the recipient party or its affiliates, free of any obligation to keep it confidential; (b) is or becomes publicly known through no wrongful act of the receiving party or its affiliates; (c) is received by the receiving party from a third party without any restriction on confidentiality; (d) is independently developed by the receiving party or its affiliates; (e) is disclosed to third parties by the disclosing party without any obligation of confidentiality; or (f) is approved for release by prior written authorisation of the non-disclosing party.

The parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret, when applicable, any portion of the other party's Confidential Information by preventing any unauthorised copying, use, distribution, installation, or transfer of possession of such information. Each party agrees to maintain at least the same procedures regarding Confidential Information that it maintains with respect to its own Confidential Information. Each party may use the Confidential Information received from the other party only in connection with fulfilling its obligations under this Agreement. The parties further agree that termination of this Agreement, for any reason, shall not minimize or relieve either party of their obligations as set forth in this section for a period of two (2) years following the date of termination of this Agreement. Each of the parties shall return all copies of Confidential Information upon request of the other party.

## **6.0 Ownership Rights**

**6.1 Work Product.** Upon payment of amounts due to Durable with regard to each SOW, Durable will be deemed to grant to Client a non-exclusive, non-transferable, non-sub-licensable, fully paid up license to use, modify, adapt, and otherwise exploit the Work Product (defined below) solely for use with the deliverable under such Statement of Work and derivatives of such deliverables in the Territory. Durable agrees to provide the documents necessary or useful to vest in Client its Work Product licenses under this Agreement. Except as expressly stated in this Agreement, each party retains its own rights. No rights are created or transferred by implication. Durable retains the right to use and display in any medium any element of the Services provided hereunder as examples of its work. The Intellectual Property Rights of whatever nature in the Work Product or any other material supplied by Durable to Client or created by Durable are, and shall remain at all times, the property of Durable.

**6.2 Intellectual Property Rights.** Means patents, rights to Inventions, copyright and related rights, trade marks, service names, trade names and domain names, rights in get-up, goodwill, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, design rights, rights in computer software, database rights, rights in data, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property 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 may now or in the future subsist in any part of the world.

**6.3 Territory** means [INSERT LIMITED AREA PER 6.1 OR "worldwide." ]

**6.4 Work Product** means source code, object code, data, and works of authorship associated with the Work Product produced by Durable as part of the Services and all Intellectual Property Rights connected with the same.

**6.5 Background Technology** Without limitation Durable will retain all worldwide right, title, and interest in and to all of: (a) its pre-existing know-how, methodologies, processes, programs, materials, designs, ideas, creations, software development tools, supplies, proprietary information, works of authorship, files, technology, scripting, and programming, including, without limitation, those items that are utilized by Durable in providing the Services under this Agreement; (b) all improvements and derivatives of the foregoing; and (c) all Intellectual Property Rights in the foregoing (the “Background Technology”). Upon Client’s payment of fees due for Services rendered, Durable hereby grants to Client a royalty-free, non-exclusive, non-transferable (except as specifically provided in subsection 11.1 herein), and perpetual right and license to use, copy, or otherwise exploit the Background Technology as specifically used in the Services performed under the SOW (but not for resale or for the purpose of creating additional websites, products, applications, or other programs separable from the performed Services as they may be modified, used, copied, or exploited).

**6.6 Third-Party Software.** Except as otherwise provided in this Agreement, all third party software is subject to the ownership stipulations of the individual and separate agreements of each third party vendor. Durable shall not be responsible in any way for Client’s third party vendor agreements. Client shall comply with the relevant terms of any licence or agreement between Durable and any third party. Subject to clause 8.3.1, Durable’s liability whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising out of under or in connection with any acts, omissions and or negligence of a third party or the failure of any third party software including any subsequent effect on the Services or Work Product is hereby excluded. Client shall indemnify and hold harmless Durable in relation to any claim made against Durable by the third party owner of any software where such claim relates to a breach of the licence or agreement between Durable and the third party which was caused by the acts, omissions and/or negligence of Client or its representatives.

## **7.0 Client Obligations**

**7.1** During the term of this Agreement, Client shall not, without Durable's prior written approval, allow any person other than a representative of Durable to modify, repair, or maintain any part of the Work Product, Background Technology, or other material supplied to Client.

**7.2** Client shall appoint a customer representative to serve as primary contact with Durable for the purpose of the provision of the Services and shall notify Durable of the names of those individuals promptly on their appointment.

**7.3** Client shall comply, as soon as reasonably practicable, with all Durable's reasonable requests for information or assistance to enable Durable to perform

the Services.

- 7.4** Client shall promptly, when requested by Durable, give Durable full and complete access to all information and data that is required to provide the Services.
- 7.5** Client shall be solely responsible on an ongoing basis for checking the accuracy and completeness of the data which is used by Durable to perform the Services and shall promptly provide to Durable in writing details of any inaccuracies or omissions of which it becomes aware.
- 7.6** Both parties will comply with the Data Protection Legislation (all applicable data protection legislation, laws and regulations (including, without limitation, the Data Protection Act 1998 (DPA))) and Client warrants and represents that use of the data and provision of the Service by Durable shall not cause any breaches of the Data Protection Legislation or other applicable law.
- 7.7** Client warrants and represents that it has all necessary licences and consents in place in relation to the supply to and use by Durable of all information data to be used in connection with the Services.

## **8.0 Warranty and Disclaimers**

**8.1 Warranty.** To the best of its knowledge (but without an obligation to make any investigation), Durable's Contribution (as defined below) does not and will not infringe or violate any Intellectual Property Rights. "Durable's Contribution" means the products produced by Durable as part of the Services performed hereunder except for Client Materials and Third Party Materials (as defined below).

**8.2 Disclaimer.** Except as expressly stated in this Agreement, Durable disclaims all warranties, express or implied, including, without limitation, implied warranties of title, non-infringement, and merchantability or fitness for any particular purpose.

### **8.3 Limitation of Liability.**

8.3.1 Nothing in this Agreement shall limit or exclude either party's liability for:

8.3.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents, or subcontractors;

8.3.1.2 fraud or fraudulent misrepresentation; or

8.3.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

8.3.2 Subject to clause 8.3.1, neither party to this Agreement shall have any liability to the other party, whether in contract, tort (including

negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of data, loss of business, or for any indirect or consequential loss arising under or in connection with this Agreement.

8.3.3 Subject to clause 8.3.1, Durable's total liability to Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this framework Agreement shall be limited to the total amount of fees paid to Durable by Client under the SOW and/or Change Order in which the Service at issue in the claim was performed.

8.3.4 This clause 8.3 shall survive termination of this Agreement.

**8.4 Third-Party Materials.** Durable may, pursuant to the terms of a SOW, incorporate third party software, code, content, or materials (collectively, "Third Party Materials") in completing Services under this Agreement. Durable makes no warranty with regard to Third Party Materials. Client's sole and exclusive rights and remedies with respect to Third Party Materials, including remedies in the event the presence of such Third Party Material gives rise to an intellectual property infringement claim, will be against the third party vendor of such materials and not against Durable.

**9.0 Independent Contractor.** The parties agree that Durable is acting, in performance of this Agreement, as an independent contractor. The parties agree that the individuals supplied by Durable to provide the Services under this Agreement, including, without limitation, agents, employees, sub-consultants, or representatives ("Personnel"), are not Client's employees or agents. Durable will be solely responsible for the payment of compensation and any benefits to its Personnel, and the Personnel will not be entitled to the provision of any Client employee benefits. Durable shall be solely responsible for the acts of its Personnel during the performance of this Agreement. Nothing in this Agreement shall be considered to create the relation of employer and employee or principal and agent between the parties hereto. Durable shall have the sole judgment of the means, mode, or manner of the actual performance of its Personnel under this Agreement.

**10.0 Non-Solicitation.** Client agrees not to solicit to hire, hire, or otherwise obtain the services of, or to assist any third party to solicit to hire, hire, or otherwise obtain the services of, any Durable Personnel assigned by Durable to work under any SOW for the duration of the Services under such SOW and for a period of one (1) calendar year thereafter.

## **11.0 General Provisions**

**11.1 Assignment.** Durable reserves the right to assign all or part of this Agreement at any time, subject to providing Client with written notice at least thirty (30) calendar days prior to such assignment. Client shall not assign all or part of this Agreement without the prior written consent of Durable. This Agreement will be binding on, and inure to the benefit of, the parties and their successors and permitted assigns.



- 11.2 No Third Party Beneficiary.** A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 11.3 Applicable Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
- 11.4 No Waiver.** Failure or delay of a party to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of either party to declare one breach or default does not act as a waiver of that party's right to declare another breach or default.
- 11.5 Attorneys' Fees.** In the event of any default under this Agreement, the substantially defaulting party agrees to pay the substantially non-defaulting party's reasonable expenses, which the latter incurs by reason thereof, including but not limited to reasonable attorney's fees, whether with respect to the investigation of such default or the determination of the application or the pursuit of remedies with respect thereto, or in legal proceedings, or otherwise. The term "legal proceedings" as used in this paragraph shall include all litigation, arbitration, administrative, bankruptcy, and judicial proceedings, including appeals therefrom.
- 11.6 Severability.** Each and every provision of this Agreement shall be deemed to be severable. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provision were not a part of this Agreement.
- 11.7 Force Majeure.** Neither party will be responsible for any delay or failure in performance caused by or resulting from Force Majeure, which shall include but not be limited to events that are unpredictable, unforeseeable, and beyond the parties' control, such as acts of God, any extreme weather, flood, landslide, earthquake, natural disaster, storm, lightning, fire, epidemic or pandemic, acts of terrorism, outbreak of military hostilities (whether or not war is declared), riot, explosions, strikes or other labour unrest, power surge, power cut or loss of utility services, any labour or trade dispute, strikes, industrial action or lockouts, civil disturbance or riots, civil war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, sabotage, expropriation by governmental authorities, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition[, or failing to grant a necessary licence or consent, non-performance by suppliers or subcontractors, interruption or failure of utility service or other act or any event that is outside the reasonable control of the concerned party ("Force Majeure"). The party affected by Force Majeure shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

- 11.8 Amendments.** This Agreement may not be modified or amended except by writing signed by all parties hereto.
- 11.9 Data Protection.** Client hereby agrees that Durable, its affiliates, or subcontractors, may process personal data provided by Client for performing its obligations under this Agreement for accounting, client management, and fraud management purposes and allow Durable to promote and sell its products and services. Client shall ensure it obtains all similar data protection consents needed from its employees and contractors and others whose personal data it supplies to Durable to give effect to this clause and hold Durable harmless for any loss arising from breach by Client of this provision. Such processing may also include transferring Client personal data to other Related Companies worldwide and its storage in a centralised database. For the purpose of this clause, "Related Companies" shall mean any holding company from time to time of Durable and/or any subsidiary from time to time of Durable or any such holding company. Durable will not sell such Client personal data to other parties. However, upon request of a judicial or administrative authority, and in case of an alleged infringement of intellectual property rights, it is hereby agreed that such personal data can be communicated by Durable to the requesting party.
- 11.10 Notices.** All notices, payments, and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed with postage prepaid to the address included in the signature block below, or to such other person or place as one party shall furnish to the other in writing. Notices and payments shall be deemed given upon personal delivery or, if mailed, upon the earlier of actual receipt or three (3) business days after the date of mailing.
- 11.11 Headings.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation of this Agreement.
- 11.12 Counterparts.** This Agreement may be executed in multiple counterparts, each being deemed an original and this being one of the counterparts.
- 11.13 Entire Agreement.** This Agreement, including any SOWs and any supplemental Change Orders and SOWs attached hereto, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, negotiations, representations, or agreements, either verbal or written, between the parties hereto concerning the subject matter of this Agreement.
- 11.14 Independent Counsel.** Client acknowledges that the drafter of this Agreement is Durable's legal representative to whom Client does not look to for any legal counselling or legal advice with regard to this transaction. Client further acknowledges that it has been advised to consult with independent legal counsel and has had an opportunity to do so. By signing this Agreement, Client acknowledges that it has consulted with independent legal counsel of its

choice or has knowingly waived the right to do so. There shall be no presumption of draftsmanship in favour of or implied against any party hereto.

**11.15 Authority.** Each individual executing this Agreement on behalf of Durable and Client represents and warrants that such individuals are duly authorised to execute and deliver this Agreement on behalf of Durable or Client.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

**Signed on behalf of Durable Digital Ltd.:**

**[NAME]** \_\_\_\_\_  
**[TITLE]**

**Signed on behalf of [FULL CLIENT NAME]:**

**[NAME]** \_\_\_\_\_  
**[TITLE]**