

## XYZ System and Service

# Contract terms and conditions

**CLIENT contract number:** ECM-3069

This Contract is made this                      XX XXXXXX 2019 between: -

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TEXUNA TECHNOLOGIES LTD  
Unit 3 The Wireless Factory, Fleming Way  
Isleworth, London                      [ CLIENT NAME AND ADDRESS].  
TW7 6DB  
United Kingdom.

Hereinafter called                      Hereinafter called  
  
THE CONTRACTOR ('Contractor')                      The CLIENT ('Client')

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It is hereby agreed as follows:

**1.        Scope of Work**

1.1        The Contractor will undertake the development of the [Client system and migrate the historic data] for the Client in accordance with the details and scope of work outlined in:

- (a) the Client's Statement of Requirements contained in the Invitation to Tender, as per Schedule 1; and  
(b) the Contractor's tendered Proposal, as per Schedule 2.

1.2        In accordance with requirements outlined in 1.1 above, the Contractor is being commissioned by the Client to provide the following services;

- [X];
- [Y];
- [Z];
- arrange a managed handover of the new system including training to Client staff; and
- optional annual maintenance and support releases to patch the key software components.

1.3        Where there is any conflict or inconsistency between any of the provisions of this agreement or the documents outlined in 1.1 above, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of this agreement.  
(b) Schedule 1 to this agreement.  
(c) Schedule 2 to this agreement.

**2.        Assignment or Subcontracting**

2.1        The Contractor shall not assign or subcontract the Contract or any rights or obligations thereunder without the previous written consent of the Client.

**3.        Contacts and Staff Log**

3.1        The Client's representative shall be:  
[First name Last name, Role, Address].

3.2 The Contractor's representative shall be:

Patrick Lynch, CEO, Texuna Technologies Ltd, Unit 3 The Wireless Factory, Fleming Way, Isleworth, London, TW7 6DB. Project email is [xyz.mgt@texunatech.com](mailto:xyz.mgt@texunatech.com)

3.3 The Contractor shall maintain a project Organogram and Staff Log with job descriptions for the duration of the contract. The initial Organogram and Staff Log is shown in Schedule 3.

#### **4. Publicity**

4.1 The Contractor shall not, without the Client's prior consent which shall not unreasonably be withheld, communicate by way of Press Release or otherwise to any third party anything which relates to the services provided under this agreement, save as is necessary in the execution thereof.

#### **5. Confidentiality and Intellectual Property Rights**

5.1 Any information gathered during the course of this Contract and not in the public domain remains the property of the Client.

5.2 The information provided in the reports to the Client shall become the Client's property.

5.3 All rights, title and interest, including any Intellectual Property Rights generated by the Contractor (or generated by any of its employees, sub-contractors or agents and subsequently acquired by the Contractor) for the Client, in the performance of the Contract including designs, architectures, logos, trademarks or domain names and/or other names, addresses or brands, databases, reports, manuals and/or other documentation and/or content (whether in hard copy or electronic format), including any preparatory versions of the same shall belong to and be the absolute property of the Client and automatically vest in the Client without further formality on coming into existence. The Contractor shall use its reasonable endeavours to procure that where any Intellectual Property Rights in any logos, trademarks or designs are uniquely and specifically created by third parties on behalf of the Contractor (the "Works"), such third parties shall assign to the Client all rights title and interest in such Works (including all statutory and common law rights attaching thereto) together with any associated goodwill in any of the Works which have been used by the Contractor in the provision of the Service.

5.4 The Client hereby grants to the Contractor at no cost, a royalty free transferable and non-exclusive licence to use, modify, adapt and enhance the Intellectual Property Rights belonging to the Client pursuant to Clauses 5.1 to 5.3 for any purpose in connection with the provision of this Contract except where the Client expressly and reasonably states otherwise. This licence is for the duration of this Contract unless otherwise agreed.

5.5 Nothing in this Clause 5 shall prevent the Contractor from using information in intangible form which is retained by persons involved with the performance of this Contract, including data processing techniques, ideas, methodologies, systems, processes, inventions, algorithms, procedures, techniques, specifications, concepts, ideas, know-how, tutorials and work approaches, and which is gained during the performance of the Contract, in the furtherance of its normal business, to the extent that the use of such information does not relate to a disclosure of confidential or personal information or an infringement by the Contractor (as the case may be) of any other category of Intellectual Property Right.

5.6 Except as set out herein, nothing contained in this Contract is to be construed as granting or conferring any rights by licence or otherwise, expressly, or by implication, for any invention, discovery or improvement made or acquired by either party before or after the date of this Contract relating to either parties' Intellectual Property Rights.

5.7 The Client shall not require the Contractor and the Contractor shall not be obliged to transfer or assign:

- a) copyright in any part of a product of the services that may be owned by a third party or
- b) the Contractor's copyright in its methods of work, working papers, computer programmes, applications, software, platforms, tools, methodologies, skills, experience, expertise and any associated or related information maintained by the Contractor in any form (whether oral, written, visual, electronic or other), all intellectual property rights therein remaining vested in the Contractor.

To the extent that the matters excluded in item (b) above are comprised in or incorporated in or required in connection with a product of the services, the Contractor shall grant to the Client a non-exclusive royalty free license to use the same solely for the purposes contemplated by the Contract and without any entitlement to copies of the same. This licence is for the duration of this Contract unless otherwise agreed. For the purposes of delivering services to the Client or other clients, the Contractor shall be entitled to use, develop or share knowledge, experience and skills of general application gained through performing the services connected to this Contract.

## **6. Timescales and Audit**

- 6.1 The specified work is to be carried out in accordance with a timetable agreed between the Client and the Contractor within the lifespan of this Contract. A full timetable will be agreed between the Client and the Contractor through the project progress meetings. The initial Contract duration is expected to be [a fixed 12 month period] from date of signing for the delivery and handover of the [XYZ system] to the Client. [The initial Contract duration will expire upon the later of the final acceptance and sign-off by the Client's Representative of the delivered services or the first 12 month anniversary]. [Only in the event of a formal contract breach shall the Client be entitled to delay the final acceptance beyond the formal 3 month handover period at the end of the second timebox deliverable]. [Upon expiry of the initial Contract duration the Contract will automatically terminate unless the Client opts for a Contract Extension].
- 6.2 [The Client may opt for a Contract Extension on each 12 month anniversary of the Contract for a further 12 month period upon payment by the Client of an Annual Maintenance Fee to the Contractor. The Contract will automatically terminate at the end of any such extension period unless the Client opts to extend the Contract.]
- 6.3 The Contractor agrees, insofar as it is the receiver and/or transmitter of any sensitive data belonging to the Client for the duration of the contract, to maintain a Log of any and all transfers of sensitive data [substantially in the format provided in Schedule 4].
- 6.4 For the duration of the Contract and for a period of X years thereafter, the Client may conduct or be subject to an audit [for the following purposes:
  - 6.4.1 to review the Contractor's compliance with the Data Protection Act, the Freedom of Information Act and any other legislation applicable to the Scope of Work defined herein;
  - 6.4.2 to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources. ]

The Contractor agrees to respond to any reasonable queries from the Client for the purposes of supporting any such audit within a reasonable timeframe to be agreed between the parties.

## **7. Equality and Diversity**

- 7.1 The contractor will abide by the relevant Equality and Diversity legislation in relation to carrying out the services.

- 7.2 The Contractor shall notify the Client's representative forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the legislation above.
- 7.3 Where in connection with this Contract the Contractor, its agents or sub-contractors, or the Contractor's staff are required to carry out work on the Client's premises or alongside the Client's employees on any other premises, the Contractor shall comply with the Client's own employment policy and codes of practice relating to discrimination and equal opportunities.
- 8. Standards and Data Protection**
- 8.1 The Contractor will maintain for the duration of the Contract a high level of business standards for quality, service and security including its formal accreditation with the British Standards Institute for ISO9001 and ISO/IEC27001.
- 8.2 [The Contractor acknowledges that the Client maintains its own Standards as per Schedule 5 and agrees to meet these standards for the duration of the initial 12 month period, and on a reasonable efforts basis thereafter as part of ongoing maintenance under any subsequent Contract extensions for maintenance purposes.]
- 8.3 [The Contractor acknowledges that the Client maintains its own Security Management Policy, System Level Security Policy, and Baseline Security Requirements (as per Schedule 5) and the Contractor agrees to meet the minimum guidelines and requirements setout therein].
- 8.4 The Contractor shall at all times comply with the relevant Data Protection legislations covering any individual personal data processing to be performed in connection with this Contract.
- 8.5 The Contractor [will have no rights of ownership over any Personal Data collected during the project and ] shall ensure that no Personal Data (including Sensitive Personal Data) is published to ensure the confidentiality of individuals.
- 9. Use and Recovery of Data**
- 9.1 The Contractor shall:
- have no rights of ownership in the Client's data;
  - not use the Client's data except as may be required to fulfil this Contract;
  - not disclose the data to any third party except with the Client's written consent;
  - preserve as far as possible the integrity of the data and prevent its loss.
- 9.2 On expiry of the Contract, or in the event of termination, the Contractor shall return to the Client any data or information provided by the Client or collected by the Contractor on the Client's behalf.
- 10. Freedom of Information**
- 10.1 The Contractor shall notify the Client immediately if it receives any freedom of information requests to allow the Client to process the request.
- 11. Handover and Re-competition**
- 11.1 In the event of termination or expiry of this contract, the Client may wish to receive the equivalent service from a new contractor. The Contractor shall:
- ensure the client has a complete version of the data; and
  - provide the client with all documents, designs created specifically for this contract.

## 12. Bribery

12.1 The Contractor will comply with the relevant Bribery legislations in place.

## 13. Price

13.1 This Contract has been agreed at a fixed price of [GBPXXX,000 sterling] excluding VAT and will be paid against verifiable milestone deliverables [as shown in paragraph 14 below and as detailed in Schedule 6].

13.2 This Contract may be extended [on each 12 month anniversary of the Contract for another 12 month period, upon commitment to pay an additional Annual Maintenance Fee of GBPXX,0000 sterling excluding VAT, subject to revision on an annual basis according to the Retail Price Index. The Annual Maintenance Fee will be invoiced by the Contractor upon acceptance by the Client of the annual maintenance release.

13.3 [The fee for any additional Heightened Level of Service shall be GBPX,000 sterling excluding VAT per month for each additional month required].

13.4 If during the project it becomes necessary to make minor alterations to the original specification, due to unforeseen circumstances, such changes (and the cost impact) should be mutually agreed in writing through a formal Change Control Note before being entered on the project plan. All other terms and conditions should remain as originally agreed. A pro forma Change Control Note to be used to formalise the process is included in Schedule 7.

13.5 For the initial 12 month period of the contract [and for any additional Heightened Level of Service periods] the Contractor agrees not to change its daily rate card used to price any Change Control Note.

## 14. Invoices

The expected invoice schedule is provided below, although exact dates will depend on when the relevant milestones are delivered.

[Table – milestone, description, invoice value, payment date]

Invoices covering work done and time spent are to be forwarded to the Client's representative as per paragraph 3.1.

## 15. Expenses

15.1 Expenses will be paid in accordance with the agreed policies. Any overnight stay close to the client premises shall be subject to a GBPXXX sterling per diem per person per night.

15.2 Any unexpected travel or subsistence expenses incurred by the Contractor in the execution of this Contract must be agreed in advance with the Client's representative and will only be reimbursed in accordance with the Client's own terms and conditions.

## 16. Settlement Terms

16.1 All invoices are payable within 30 days of their receipt.

16.2 Prices are fixed for the duration of the Contract.

## 17. Support and Termination

- 17.1 The Contract will [automatically terminate upon each 12 month anniversary, unless the Client opts to pay an Annual Maintenance Fee to extend the contract for a further 12 months].
- 17.2 Any invoices relating to work already completed up until the date of termination will be payable.
- 17.3 The Contractor hereby warrants that the Services to be delivered are fit for the purpose for which they are intended. [Furthermore the Contractor hereby agrees to a Heightened Level of Service during the initial 3 months starting with the Handover Stage wherein any software bugs brought to its attention by the Client will be resolved through the delivery to the Client of a release package within a one week period, or at the end of the 3 month period where such bugs are not deemed critical by the Client.]
- 17.4 [Should the Client require the further comfort of an extended handover, the Client will have the option to extend the Heightened Level of Service on a rolling month by month basis upon payment of the relevant fee ]
- 17.5 [After the completion of the initial 3 month Handover Stage and whereupon the Client signs a formal 12 month Contract Extension, the Contractor commits to a scheduled annual release package to provide basic maintenance and support for the delivered software system to keep it operational and secure. The Client and Contractor will together agree the schedule of the maintenance release.]
- 17.6 Either party may terminate the Contract forthwith for any serious breach of contract by the other which is not remedied within 60 days of written notification of the breach.

**18. Contract Relief and Force Majeure**

- 18.1 The duration of the Contract may be extended with the written approval of the Client if a Relief Event occurs.
- 18.2 Neither party shall be deemed to be in breach of contract if a Force Majeure event directly causes either party to be unable to comply with all or a material part of its obligations under this Contract.
- 18.3 For the purposes of this Contract Relief Events and Force Majeure events may include but are not limited to;
- fire, explosion, lightning strike, flood, storm, burst pipes, earthquake, riot, civil commotion;
  - failure by a statutory undertaking to provide services;
  - failure or shortage of fuel, power, or transport;
  - blockades or embargoes;
  - strikes, lock-outs and other industrial disputes;
  - war, civil war, armed conflict or terrorism; and
  - nuclear, chemical or biological contamination (unless the source or cause is the result of the Contractor's actions).

**19. Liability**

- 19.1 The Contractor shall be liable for death and personal injury occasioned by his negligence or otherwise, whilst operating on behalf of the Client.
- 19.2 The Contractor shall make good or, at the option of the Client, pay compensation for all damage occurring to the Client's property occasioned by the Contractor, or by his servants, agents or sub-contractors, arising from his or their presence in connection with the Contract.
- 19.3 Subject to Clause 19.1, in no circumstances will either Party be liable to the other Party or any third party for:
- a) Any loss of business, revenue, profits, anticipated savings or goodwill (whether direct or indirect); or

b) For any indirect, special or consequential loss arising out of or in connection with this Contract whether or not that Party had been advised or knew of, the likelihood of that loss or type of loss arising.

20. **General**

20.1 This Contract is governed by [English] Law.

20.2 This Contract and its Schedules 1 through 7 constitute the entire agreement between the parties hereto and supersedes all negotiations, representations or agreements either written or oral preceding the Contract. Wherein the schedules make references to Supplier this will be substituted with Contractor, and references to Authority will be substituted with Client.

20.3 The schedules are:

- Schedule 1 – The Client’s Statement of Requirements;
- Schedule 2 – The Contractor’s tendered Proposal;
- Schedule 3 – The Contractors Organogram and Staff Log;
- Schedule 4 – The Client’s Log of Transfers of Confidential Data;
- Schedule 5 – The Client’s Standards, Security Management Policy, System Level Security Policy, and Baseline Security Standards;
- Schedule 6 – The Contractor’s Price and Milestones;
- Schedule 7 – The Contractor’s Change Control Note.

20.4 The currency of this Contract is [euro] or its legal successor.

20.5 [In entering into this agreement the Client is acting as part of the Crown.]

FOR: CONTRACTOR

FOR: CLIENT

NAME: Patrick Lynch  
TITLE: Director

NAME:  
TITLE:

DATE: .....

DATE: .....