



CREATING A BETTER SOCIETY THROUGH
SOFTWARE RESEARCH AND
DEVELOPMENT

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DATED

SERVICES AGREEMENT FOR SOFTWARE RESEARCH AND DEVELOPMENT

between

BITJAM LIMITED

and

This agreement is dated [DATE]

Parties

- (1) BITJAM LIMITED incorporated and registered in England and Wales with company number 07864793 whose registered office is at Unit 14 Sugnall Business Centre, Sugnall ST21 6NF (**Supplier**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Customer**)

BACKGROUND

- (A) The Supplier is in the business of providing software consultancy and development services.
- (B) The Customer agrees to obtain, and the Supplier agrees to provide the Services on the terms set out in this agreement.

Agreed terms

1. Interpretation

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

1.1 Definitions.

- 1 Applicable Laws:** the laws of England and Wales and any other laws or regulations, regulatory policies, statutes, guidelines or industry codes which apply to the provision of the Services from time to time and “Applicable Laws” shall be construed accordingly
- 2 Application:** the application software comprised of the Supplier Software developed for operation on the Operating System.
- 3 Application Delivery Date:** the estimated delivery date specified in the Implementation Plan on which the Supplier will deliver a module of the Application to the Customer.
- 4 Business Day:** any day (other than a Saturday, Sunday or bank or public holiday) on which ordinary banks are open for their full range of normal business in Staffordshire UK;
- 5 Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.
- 6 Change Order:** has the meaning given in clause 12.1.
- 7 Charges:** the sums payable for the Services, as set out in Schedule 2.

- 8 **Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.
- 9 **Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.
- 10 **Customer's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in Schedule 1.
- 11 **Customer Materials:** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 5.1(d).
- 12 **Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
- 13 **Deliverables:** any output of the Services to be provided by the Supplier to the Customer as specified in Schedule 1.
- 14 **Go-Live Date:** the estimated date by which the Supplier will complete the design, build and test of the Application or a module of it as specified in the Implementation Plan.
- 15 **Implementation Plan:** the time schedule and sequence of events for the performance of this agreement set out in Schedule 4, which may be varied in accordance with clause 6.
- 16 **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 17 **Milestones:** a date by which a part of the Services is to be completed, as set out in the Implementation Plan in Schedule 4.
- 18 **Services:** the services as set out in Schedule 1.
- 19 **Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Services including any such items specified in Schedule 1 but excluding any such

items which are the subject of a separate agreement between the parties under which title passes to the Customer.

- 20 UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 21 User Acceptance Certificate:** the certificate to be signed by the Customer under clause 9(1)(a).
- 22 User Acceptance Tests:** the tests of the Application to be agreed in accordance with clause 8.1 and detailed in Schedule 3.
- 23 VAT:** value added tax chargeable in the UK.
- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as [amended, extended or re-enacted from time to time **OR** it is in force as at the date of this agreement].
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made [from time to time **OR** as at the date of this agreement] under that statute or statutory provision.

- 1.11 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies [in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020 **OR** at the date of this agreement].
- 1.12 A reference to writing or written includes email.
- 1.13 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.15 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.16 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Term of Agreement

- 2.1 This agreement shall commence on the date when it has been signed by all the parties and shall continue, unless terminated earlier in accordance with clause 17 (Termination), until [DATE] when it shall terminate automatically without notice.
- 2.2 The Supplier shall provide the Services to the Customer in accordance with this agreement.

3. Supplier's responsibilities

- 3.1 The Supplier shall use reasonable endeavours to supply the Services in accordance with this agreement in all material respects.
- 3.2 The Supplier shall use reasonable endeavours to meet any Milestones specified in Schedule 4 but any such dates shall be estimates only and may change after re-evaluation of the software and any additional requirements given mid contract and time for performance by the Supplier shall not be of the essence of this agreement.

4. Application, Delivery, Installation and Delays

- 4.1 The Supplier shall deliver each module of the Application to the Customer by the applicable Application Delivery Date.
- 4.2 The Supplier shall supply to the Customer, within a reasonable time before any Application Delivery Date, such information and assistance as the Customer may reasonably request.
- 4.3 If any delivery is delayed at the request of the Customer, or because of his acts or omissions, the Implementation Plan shall be amended to take account of such delay in accordance with clause 6.3. If the Supplier can demonstrate that the delay has resulted in an increase in cost to the Supplier of carrying out its obligations under this agreement, the Supplier may, at its sole discretion, notify the Customer that it wishes to increase the Price by an amount not exceeding any such demonstrable cost. The Supplier may invoice the Customer for any additional monies that become payable in this way, within 28 days of demonstrating the increase in costs.

5. Customer's obligations

- 5.1 The Customer shall:
 - (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) appoint a Project Manager for the Services, such person as identified in Schedule 1. That person shall have the authority to contractually bind the Customer on matters relating to the Services (including by signing Change Orders);
 - (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier including any such access as is specified in Schedule 1;
 - (d) provide to the Supplier a response to all correspondence within 48 hours and provide all documents, information, items and materials in any form (whether owned by the Customer or third party) required under Schedule 1 or otherwise reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete within seven days of the Supplier's request;
 - (e) inform the Supplier of all health and safety and security requirements that apply at the Customer's premises;
 - (f) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements;

- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Services are to start;
- (h) maintain the Supplier's Equipment in accordance with the Supplier's instructions from time to time and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation;
- (i) The Customer agrees that any changes to the scope or execution of the Services proposed by the Customer could result in an increase in both cost and time, as set out further in clause 12.

5.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

6. Implementation Plan and Extension of Time

6.1 Both parties shall perform their obligations under this agreement in accordance with the Implementation Plan.

6.2 The Supplier shall complete the work in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to clause 6.3.

6.3 The Supplier shall be given an extension of the timetable of any one or more of the stages in the Implementation Plan if one of more of the following events occurs:

- (a) a variation to the Application is made at the Customer's request under the change control procedures set out in clause 12;
- (b) a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third-party contractors;

(c) a Force Majeure Event occurs as described in clause 19.

6.4 If the Supplier is entitled to an extension of time under clause 6.3, it shall give written notice to the Customer not later than seven days after the beginning of the event. Such notice shall specify the event relied on and, in the case of a Force Majeure Event under clause 19, shall estimate the probable extent of the delay.

6.5 The Project Manager and the Supplier shall use all reasonable commercial endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The Implementation Plan shall be deemed amended accordingly.

7. Project Management

- 7.1 By no later than the date of signing this agreement, the Customer shall notify the Supplier of the name and qualifications of the person appointed as the Project Manager.
- 7.2 The Project Manager shall co-operate with the Supplier and shall attend meetings scheduled by the Supplier at reasonable intervals not less than once a week to advise and assist the Supplier on all matters relating to the Work.
- 7.3 The provision of employees, subcontractors and agents of the Supplier to carry out the Work shall be at the discretion of the Supplier.

8. User Acceptance Tests

- 8.1 By no later than the date of signing this agreement, the Customer shall deliver proposed user acceptance criteria to the Supplier and test data for the User Acceptance Tests for the Application. These criteria and data shall be such as are reasonably required to show that the Application complies with the Customer's requirements. The Supplier shall provide the Customer with reasonable assistance to prepare such user acceptance criteria and test data at the Customer's request and at the Supplier's standard rates then in force. The parties shall use best endeavours to agree the User Acceptance Tests for the Application within five days from the date of delivery to the Supplier of the proposed criteria and data.
- 8.2 The Supplier shall carry out the agreed User Acceptance Tests for each module of the Application seven days before of its Go-Live Date. The Supplier shall give the Customer at least 24 hours' notice of the start of the User Acceptance Tests, and permit the Customer to observe all or any part of the testing.
- 8.3 If any module of the Application fails to pass the User Acceptance Tests, the Customer shall, within three days from the completion of the User Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the Defects and deficiencies, and the relevant test(s) shall be repeated within a reasonable time.
- 8.4 If any module of the Application fails in some material respect to pass any repeated User Acceptance Tests within four weeks from the date of its second submission to the User Acceptance Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion:
 - (a) to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the module of the Application on the same terms and conditions. If the module of the Application fails such further tests then the

Customer may request a repeat test under this clause 8.4(a), to permit installation of the module of the Application subject to such change of acceptance criteria, and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable; or

- (b) if the Supplier is unable to correct material defects within a period of three months from the end of the User Acceptance Tests, to reject the Application as not being in conformity with the agreement, in which event the Customer may terminate this agreement.

9. Acceptance

9.1 Acceptance of the Supplier Software shall be deemed to have occurred on whichever is the earliest of:

- a.) the signing by the Customer of a User Acceptance Certificate for the final module of the Application to pass the User Acceptance Tests;
- b.) the expiry of five days after the completion of all the User Acceptance Tests, unless the Customer has given any written notice under clause 8.3;
- c.) the expiry of ten days after the Go-Live Date of the final module of the Application if the User Acceptance Tests for that module have not started, or have not been pursued with due diligence; or
- d.) the use of the Application by the Customer or any of its Affiliates in the normal course of the Business or the placing of the Application in an App Store.

10. Non-solicitation

10.1 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of six months after the termination or expiry of this agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

10.2 Any consent given by the Supplier in accordance with clause 10.1 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

11. Warranty

11.1 The sole remedy for breach of the warranty under this clause shall be correction of Defects by the Supplier within a reasonable time from notification by the Customer of the Defect that constitutes such breach.

12. Change control

- 12.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Services;
 - (b) the Supplier's existing charges;
 - (c) the timetable of the Services; and
 - (d) any of the terms of this agreement.
- 12.2 If the Supplier wishes to make a change to the Services it shall provide a draft Change Order to the Customer.
- 12.3 If the Customer wishes to make a change to the Services:
- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes; and
 - (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 12.3(a), provide a draft Change Order to the Customer.
- 12.4 If the parties:
- (a) agree to a Change Order, they shall sign it and that Change Order shall amend this agreement; or
 - (b) are unable to agree a Change Order, the Supplier reserves the right at its sole discretion to provide the Customer with the Services as they are at that date and receive full payment and to terminate this agreement.
 - (c) either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 32 (Multi-tiered dispute resolution procedure).
- 12.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 7.3 on a time and materials basis at the Supplier's daily rates specified in Schedule 2.

13. Charges and payment

- 13.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges.

- 13.2 Where the Charges are calculated on a time and materials basis:
- (a) the Supplier's daily fee rates for each individual person as set out in Schedule 2 are calculated on the basis of an eight-hour day, worked during Business Hours;
 - (b) the Supplier shall be entitled to charge an overtime rate of 25% of the daily fee rate set out in Schedule 2 on a pro rata basis for any time worked by individuals whom it engages on the Services outside Business Hours; and
 - (c) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and the Supplier shall indicate the time spent per individual in its invoices.
- 13.3 The Charges exclude the following which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services; and
 - (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost are set out in Schedule 2 **OR** approved by the Customer in advance from time to time.
- 13.4 The Supplier may increase the Charges on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Retail Prices Index **OR** Average Earnings Index in the preceding 12-month period, and the first such increase shall take effect on the first anniversary of the date of this agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index **OR** Average Earnings Index.
- 13.5 The Supplier shall invoice the Customer for the Charges at the intervals specified[, or on the achievement of the Milestones indicated,] in Schedule 2. If no intervals are so specified the Supplier shall invoice the Customer at the end of each month for Services performed during that month.
- 13.6 The Customer shall pay each invoice submitted to it by the Supplier within fourteen days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 13.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:
- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 13.7(a) will accrue each day at 4% a year above the Bank of

England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;

- (b) the Supplier may suspend all or part of the Services until payment has been made in full.

13.8 All sums payable to the Supplier under this agreement:

- (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

14. Intellectual property rights

14.1 In relation to the Deliverables:

- (a) the Supplier shall retain ownership of all Intellectual Property Rights of any software developed.
- (b) the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this agreement to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- (c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 14.1(b).

14.2 In relation to the Customer Materials, the Customer:

- (a) and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.

14.3 The Supplier:

- (a) warrants that the receipt and use of the Services and the Deliverables by the Customer shall not infringe any rights of third parties to the extent that infringement results from copying;
- (b) shall, subject to clause 16 (Limitation of liability), indemnify the Customer in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the

Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and

- (c) shall not be in breach of the warranty at clause 14.3(a), and the Customer shall have no claim under the indemnity at clause 14.3(b), to the extent the infringement arises from:
 - (i) the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;
 - (ii) any modification of the Deliverables or Services, other than by or on behalf of the Supplier; and
 - (iii) compliance with the Customer's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Supplier shall notify the Customer if it knows or suspects that compliance with such specification or instruction may result in infringement.

14.4 The Customer:

- (a) warrants that the receipt and use of the Customer Materials in the performance of this agreement by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

14.5 If either party (**the Indemnifying Party**) is required to indemnify the other party (**the Indemnified Party**) under this clause 14, the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 14.3(b) or clause 14.4(b) (as applicable) (**IPRs Claim**);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying

Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Supplier of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

15. Confidentiality

15.1 Each party undertakes that it shall not at any time during this agreement, and for a period of three years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs except as permitted by clause 15.2.

15.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

16. Limitation of liability

16.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

- 16.2 The restrictions on liability in this clause 16 apply to every liability arising under or in connection with this agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 16.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 16.4 Nothing in this agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 16.5 Subject to clause 16.4, the Supplier's total liability to the Customer shall not exceed £[AMOUNT].
- 16.6 This clause 16.6 sets out specific heads of excluded loss and exceptions from them:
- (a) Subject to clause 16.4, the types of loss listed in clause 16.6(c) are wholly excluded by the parties, but the types of loss and specific losses listed in clause 13.9(d) are not excluded.
 - (b) If any loss falls into one or more of the categories in clause 16.6(c) and also falls into a category, or is specified, in clause 16.6(d), then it is not excluded.
 - (c) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.
 - (d) The following types of loss and specific loss are not excluded:
 - (i) sums paid by the Customer to the Supplier pursuant to this agreement, in respect of any Services not provided in accordance with this agreement;
 - (ii) wasted expenditure;

- (iii) losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include[but not be limited to demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the Customer.

16.7 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 5. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

16.8 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

17. Termination

17.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);

- (f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(c) to clause 14.1(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.2 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than three days after being notified in writing to make such payment; or
- (b) there is a change of Control of the Customer.

18. **Consequences of termination**

18.1 On termination or expiry of this agreement:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;
- (c) the Supplier shall on request return any of the Customer Materials not used up in the provision of the Services; and

- (d) the following clauses shall continue in force: clause 1 (Interpretation), clause 10 (Non-solicitation), clause 14 (Intellectual property rights), clause 15 (Confidentiality), clause 16 (Limitation of liability), clause 18 (Consequences of termination), clause 22 (Waiver), clause 24 (Severance), clause 26 (Conflict), clause 31 (Multi-tiered dispute resolution procedure), clause 32 (Governing law) and clause 33 (Jurisdiction).
- 18.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 19. **Force majeure**
- 19.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
 - (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - (f) collapse of buildings, fire, explosion or accident;
 - (g) [non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - (h) interruption or failure of utility service.
- 19.2 Provided it has complied with clause 19.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party 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.
- 19.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 19.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than seven days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

19.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than twelve weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving fourteen days' written notice to the Affected Party.

20. Assignment and other dealings

- 20.1 This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- 20.2 The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that the Supplier gives prior written notice of such dealing to the Customer.

21. Variation

- 21.1 Subject to clause 12 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. Waiver

- 22.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 22.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 22.3 A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

23. Rights and remedies

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

24. Severance

24.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

24.2 If any provision or part-provision of this agreement is deemed deleted under clause 24.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

25. Entire agreement

25.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

26. Conflict

26.1 If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.

27. No partnership or agency

27.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

27.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

28. Third party rights

- 28.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 28.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

29. Notices

- 29.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the address specified in Schedule 1.
- 29.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 29.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 29.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

30. Counterparts

- 30.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 30.2 Transmission of the executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice

to the validity of the agreement thus made, each party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.

- 30.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

31. Multi-tiered dispute resolution procedure

- 31.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it then, except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the dispute, setting out its nature and full particulars, together with relevant supporting documents. On service of the dispute notice, the representative of the Customer and representative of the Supplier shall attempt in good faith to resolve the dispute;
- (b) Should this not be possible the Customer agrees to pay the contracted price for the Supplier's service to date in exchange for the unfinished project and agrees to sign a non-disclosure agreement.

32. Governing law

- 32.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

33. Jurisdiction

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

This agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME OF
DIRECTOR] for and on
behalf of BITJAM LIMITED

.....
Director

Signed by [NAME OF
DIRECTOR] for and on
behalf of [NAME OF
CUSTOMER]

.....
Director

Schedule 1 **Services Details**

1. Services [LIST SERVICES PROVIDED UNDER THIS AGREEMENT]
2. [Service Levels:]
3. Customer Materials: [SPECIFY]
4. Customer's Equipment: [SPECIFY]
5. Customer resources to be made available: [SPECIFY]
6. Supplier's Equipment: [SPECIFY]
7. Deliverables: [SPECIFY]
8. Customer's Project Manager: [NAME AND TITLE]
9. Customer's email address:
10. Supplier's email address:

Schedule 2 **Charges, costs and payment**

Charges

[DETAILS OF CHARGES].

- **Fixed price:**
- The total charges for the Services are: £[AMOUNT].
- The fixed price is calculated as follows: [INCLUDE CALCULATION METHOD, IF APPROPRIATE].
- **Time and materials:**
- The daily rate for the Supplier: £450.
- The weekend/overtime rate for the Supplier: 25% extra

Payment terms

[PAYMENT TERMS].

Costs: third party materials and services charged in addition

The following materials and services procured from third parties shall be invoiced to the Customer in addition to the Charges: [INSERT DETAILS].

Schedule 3 **User Acceptance Tests**

Schedule 4 **Implementation Plan**

Milestones:

Go-Live Date: