

# **SERVICES AGREEMENT**

**by and between**

**Corporate Document Services Ltd**

**(“CDS”)**

**and**

**CUSTOMER**

**(“CUSTOMER”)**

**for and in connection with**

**THE PROVISION TO CUSTOMER BY CDS OF CERTAIN  
CONSULTANCY, DESIGN AND INTERNET SERVICES**

**(“SERVICES”)**

**Date**

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## SERVICES AGREEMENT

This AGREEMENT is made and entered into effective as of this ..... day of ..... by and between (1) Corporate Document Services Ltd. whose registered office is situated at 7 Eastgate, Leeds, West Yorkshire, LS2 7LY (hereinafter referred to as “CDS”) and (2) CUSTOMER whose registered office is situated at ..... (hereinafter referred to as “CUSTOMER”)

### WHEREAS:

(1) CUSTOMER wishes to have certain consultancy design and technical development services provided in connection with ....., (the “SERVICES” as hereinafter defined); and

(2) CDS represents that it has the appropriate expertise, skills and resources to provide, and is willing to provide, the SERVICES in accordance with the terms and provisions of this AGREEMENT.

(3) CDS understands and agrees that CUSTOMER is not bound to award any additional services to it other than the INITIAL SERVICES as set out in this Agreement.

NOW THEREFORE IN CONSIDERATION OF the mutual promises hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CUSTOMER and CDS agree as follows: -

### 1. DEFINITIONS

The following terms and expressions shall have the meaning respectively assigned to them in this Clause.

1.1. “AFFILIATE” shall mean any subsidiary or holding company of any company or any other subsidiary of such holding company. For the purpose of this definition, “subsidiary” and “holding company” shall have the meaning respectively assigned to them under Section 736, Companies Act, 1985, as amended by Section 144, Companies Act, 1989.

1.2. “AGREEMENT” shall mean this AGREEMENT, as originally executed or as may be formally amended by an instrument in writing signed by both PARTIES and, specifically referring to this AGREEMENT.

1.3. “BACKGROUND IP” shall mean INTELLECTUAL PROPERTY in the ownership of CDS at the Effective Date.

1.4. “FOREGROUND IP” shall mean all and any INTELLECTUAL PROPERTY acquired, generated or derived by CDS in the course of providing the Services to the CUSTOMER.

1.5. "INITIAL SERVICES" shall mean the services comprising the activities to be carried out by CDS as described in Schedule 1.

1.6. "INTELLECTUAL PROPERTY" shall mean inventions and discoveries (whether patentable or not) and other forms of intellectual property (including but not limited to all patents or applications for patents, trade marks and trade names (whether registered or unregistered) copyrights and designs (whether registered or unregistered) and all know-how).

1.7. "PARTY" shall mean either CUSTOMER or CDS as the context may require and "PARTIES" shall mean CUSTOMER and CDS.

1.8. "SERVICES" shall mean the services to be provided by CDS under this AGREEMENT to the CUSTOMER comprising the INITIAL SERVICES, the MAIN SERVICES as outlined in Schedule 2 and as further discussed and agreed by the PARTIES in accordance with Clause 3.1 of this AGREEMENT.

## 2. INITIAL SERVICES

2.1. CDS will use all reasonable endeavours to provide the Initial Services as set out in Schedule 1 to this Agreement in accordance with Clause 4.1.

## 3. MAIN SERVICES

3.1. The parties will discuss in good faith the scope of the Main Services to be provided by CDS and the terms on which the Main Services will be provided.

3.2. Until such time as a written amendment (an "Agreement Amendment") describing the scope of the Main Services and any applicable terms and conditions has been agreed and signed by both parties, CDS shall only be obliged to provide the Initial Services.

3.3. For the avoidance of doubt any description of services or deliverables and/or any pricing schedules contained in Schedules 1 and 2 herein and future proposals for work submitted by CDS are by way of framework or estimation only and shall not be binding upon either party.

## 4. CDS OBLIGATIONS

4.1. CDS will provide and perform the SERVICES

4.1.1. in accordance with this AGREEMENT;

4.1.2. with due care and diligence and with the skill to be reasonably expected of an experienced provider in the type of services to be provided and performed under this AGREEMENT; and

4.1.3. in compliance with all applicable legal obligations.

4.2. For the avoidance of doubt, CDS shall use all reasonable endeavours to comply with any timescales or key dates identified in Schedule 1 or agreed in accordance with Clause 3.1 of this AGREEMENT and time shall not be of the essence in respect of such timescales or dates.

4.3. Save as expressly provided in the foregoing provisions of Sub-Clause 4.1, all other warranties relating to the SERVICES, (whether expressed or implied by law, custom or otherwise) are excluded to the fullest extent permitted by law.

## 5. ASSIGNMENT AND SUB-CONTRACTING

5.1. Neither PARTY shall assign this AGREEMENT or any part of it or any benefit or interest in or under it to any person whatsoever without the prior written consent of the other PARTY, such consent shall not be unreasonably withheld or delayed.

5.2. CDS shall not sub-contract the whole of the SERVICES and shall not sub-contract any part of the SERVICES without the prior written consent of CUSTOMER, such consent not being unreasonably withheld or delayed.

5.3. CDS shall be responsible for all work, acts, omissions and defaults of any party to whom any part of the SERVICES is sub-contracted by CDS as if they were work, acts, omissions or defaults of CDS.

## 6. FORCE MAJEURE

6.1. Neither PARTY shall be liable to the other PARTY for any failure or delay in the performance of any of its obligations under this AGREEMENT if and to the extent such failure or delay arises from any cause or circumstances outside the reasonable control and without the fault or negligence of such PARTY and which, by the exercise of reasonable diligence the said PARTY is unable to provide against.

6.2. Subject to and without limiting the provisions of Sub-Clause 6.1, examples of the causes and circumstances referred to therein include, but not limited to, war, hostilities, official strikes, lock-outs, official industrial action, acts of government, terrorism, flood and any natural disaster.

## 7. OWNERSHIP AND RIGHTS OF USE

7.1(a). Legal and beneficial title to all BACKGROUND IP shall belong to and remain vested in CDS (or, where appropriate, in a third party licensor). In consideration of the fees due under this Agreement, CDS grants to CUSTOMER a royalty-free, non-exclusive, non-transferable, irrevocable licence to use the BACKGROUND IP solely for CUSTOMER's internal business purposes and in connection with the receipt of the Services under this Agreement for so long as CDS provides the Services to CUSTOMER. Maintenance or

support of such software or other licensed property shall be subject to, and contingent on, separate agreement between the parties.

7.1(b) All FOREGROUND IP shall vest in and be owned absolutely by CUSTOMER upon full payment by CUSTOMER of all monies due and owing under this Agreement.

7.1(c) In consideration of the payment of all sums owing under this Agreement by CUSTOMER to CDS, CDS assigns and where practicable shall procure the assignment to CUSTOMER of all FOREGROUND IP.

7.1(d) CUSTOMER grants to CDS a non-exclusive, royalty-free licence to use CUSTOMER trade marks and logos and any other materials supplied by CUSTOMER for the purposes of providing the Services.

7.1(e) CUSTOMER acknowledges that any BACKGROUND IP shall be licensed to CUSTOMER only for use in connection with this Agreement. Under no circumstances shall such licence include any licence or right of access in relation to any source code of such programs except as may be agreed in writing with CDS. The IP in such source code shall remain the property of CDS or the relevant third party owner as the case may be. CUSTOMER shall not be entitled (save to the extent permitted by law) to copy, adapt, reverse compile, decode or otherwise translate any such program.

7.1(f) Each party at their respective expense shall do all further acts and deeds and execute all such further documents and instruments as may from time to time be required to give effect to the ownership or licence of IP as envisaged by this Clause 7.1.

7.2. CUSTOMER shall retain all rights of title to, copyright in and ownership of all items provided to CDS under this AGREEMENT.

7.3. CDS acknowledges and agrees that no work done or method employed by it in the provision and performance of the SERVICES or any item provided by it as part thereof or as a result thereof or any use made by CUSTOMER or any of its AFFILIATES of any such item provided by CDS under this AGREEMENT shall infringe any third party intellectual property right protected by law, including without limitation any letters patent, registered design, trade mark, copyright or design right.

## 8. CONFIDENTIALITY

8.1. Each PARTY (the "RECEIVING PARTY") shall treat as confidential any information it acquires from or which is provided to it under or in connection with this AGREEMENT by the other PARTY (the "DISCLOSING PARTY") which is identified by the DISCLOSING PARTY as confidential or which by its very nature is confidential and during a period of five years from the date of this AGREEMENT shall not disclose to, place at the disposal of or use for the benefit of or on behalf of any third party or enable any third party to use, peruse

or copy such confidential information or any part thereof without the prior specific written consent of the DISCLOSING PARTY.

8.2. CDS shall not use the Confidential Information of the CUSTOMER for any purpose other than the execution of the Services.

8.3. The provisions of Sub-Clause 8.1 shall not apply to information which

8.3.1. prior to it being acquired hereunder is part of the public domain or at any time thereafter becomes part of the public domain other than as a result of breach by the RECEIVING PARTY of its confidentiality obligations under this Clause 8; or

8.3.2. was independently received by the RECEIVING PARTY from a third party whose possession is lawful and who has the full right to disclose and who did not receive it either directly or indirectly from the DISCLOSING PARTY or any of its AFFILIATES; or

8.3.3. was developed independently by employees of the RECEIVING PARTY without the benefit of the Confidential Information supplied by the DISCLOSING PARTY; or

8.3.4. was known to the RECEIVING PARTY prior to receipt of Confidential Information of the DISCLOSING PARTY, as evidenced by reasonable written records; or

8.3.5. is required to be disclosed in order to comply with the requirements of any court order or any law, rule or regulation of any governmental body having jurisdiction or of any relevant stock exchange, provided the RECEIVING PARTY first gives reasonable advance notice to the DISCLOSING PARTY and reasonably cooperates with the DISCLOSING PARTY to secure confidential protection of such Confidential Information.

## 9. REMUNERATION, INVOICING AND PAYMENT

9.1. The remuneration of CDS for the provision, performance and completion of the INITIAL SERVICES shall subject to the provisions of Sub-Clause 9.2 be calculated and determined at the daily rates in Schedule 3 and in accordance with other details as set out in Schedule 3 of this Agreement.

9.2. Except for reasonable travel and subsistence costs, CUSTOMER shall in no event be liable to pay to CDS for or in connection with the provision, performance and completion of the INITIAL SERVICES any amount in excess of the Initial Services total sum specified in Schedule 1 of this Agreement hereof unless prior to incurring such additional amount, CDS shall have obtained CUSTOMER's written agreement thereof.

9.3. The remuneration of CDS for the provision, performance and completion of the MAIN SERVICES shall be negotiated and agreed in accordance with Clause 3.1 of this AGREEMENT having due regard to the daily rates and estimated total development costs as set out in Schedules 2 and 3 of this AGREEMENT provided that any such costs or rates

are estimates only for the purpose of such negotiations and are subject to variables including but not limited to:

9.3.1. the deliverables to be provided by CDS; and

9.3.2. the timescale within which any deliverables will be provided.

9.4. Invoices for the SERVICES shall be raised by CDS either:

9.4.1 monthly in arrears; or

9.4.2 at stages during the project in accordance with the invoice schedule agreed by CUSTOMER at the outset of the project.

9.4.3 The amount of each correctly raised invoice shall become due for payment within thirty days from receipt thereof by CUSTOMER.

9.5. All sums that become due for payment to CDS under this AGREEMENT are exclusive of Value Added Tax which shall be payable by CUSTOMER to CDS at the rate and in the manner prescribed by law from time to time as an addition to such sums.

9.6. If any amount payable to CDS by CUSTOMER under this AGREEMENT is left outstanding beyond the due date for payment, CDS may, without prejudice to its other rights charge interest pursuant to the Late Payments of Commercial Debts (Interest) Act 1998. In addition should CDS incur any costs in collecting payment of an overdue account, all such costs will be charged to CUSTOMER, who will not have discharged their liability to CDS until such costs are paid.



## 10. TERMINATION

10.1. Either party may terminate this AGREEMENT by giving the other party at least 3 months notice in writing.

10.2. CUSTOMER and CDS shall each have the right by giving notice in writing to the other PARTY to terminate all or any part of the SERVICES or this AGREEMENT at such time or times as the notifying PARTY may consider necessary for any of the following reasons: -

10.2.1. in the event of any material breach of this AGREEMENT by the other PARTY which such other PARTY fails to remedy within fourteen days from receipt of earlier notice in writing from the notifying PARTY giving details of the breach, provided such breach subsists at the time the termination notice is issued;

10.2.2. in the event of any persistent breach of this AGREEMENT by the other PARTY which such other PARTY fails to remedy within fourteen days from receipt of earlier notice in writing from the notifying PARTY giving details of the breach, provided such breach subsists at the time the termination notice is issued;

10.2.3. in the event of the other PARTY becoming bankrupt or making a composition or arrangement with its creditors or a winding-up order of the other PARTY being made (except for the purposes of amalgamation or reconstruction while solvent), a resolution for its voluntary winding-up passed or a provisional Liquidator, Receiver, Administrator or Manager of its business or undertaking appointed or presenting a petition or having a petition presented applying for an administration order to be made pursuant to Section 9 of the Insolvency Act 1986.

## 11. LIMITATION OF LIABILITY

11.1. Nothing contained in this AGREEMENT shall exclude or limit the liability of either PARTY for death or personal injury resulting from its negligence or the negligence of its employees, its agents and/or sub-contractors.

11.2. Subject always to the provisions of Sub-Clause 11.1 the aggregate liability of either PARTY, howsoever arising out of or in connection with this AGREEMENT (whether in contract, tort or otherwise at law) in respect of direct loss or damage to the tangible property of the other PARTY howsoever caused shall be limited to £1,000,000 (one million pounds sterling) per occurrence or series of occurrences arising from a common cause.

11.3. Without prejudice to the provisions of Sub-Clauses 11.1 and 11.2 but subject always to the provisions of Sub-Clause 11.4 the aggregate liability of either PARTY to the other PARTY, howsoever arising out of or in connection with this AGREEMENT (whether in contract, tort or otherwise at law), shall to the maximum extent permitted by law be limited in respect of each claim or series of claims arising from the same cause to (i) twice

the total remuneration for the SERVICES payable to CDS under this AGREEMENT, or (ii) £200,000 (two hundred thousand pounds sterling), whichever is the greater amount.

11.4. Except only for any such liability arising from breach of Sub-Clause 7.3 and/or Clause 8, in no event will either PARTY be liable to the other PARTY (whether in contract, tort or otherwise at law) for any business interruption, loss of profits, loss of contracts, loss of revenue, loss of goodwill, loss of anticipated savings or any special, indirect or consequential loss (whether or not foreseeable), suffered or incurred by the other PARTY, howsoever arising out of or in connection with the SERVICES or the provision thereof or this AGREEMENT.

## 12. GENERAL LEGAL PROVISIONS

12.1. Nothing contained in this AGREEMENT shall be construed as creating a joint venture, a legal partnership, or a relationship of principal and agent between CUSTOMER and CDS.

12.2. In the event that any one or more of the provisions contained in this AGREEMENT shall, for any reason, be held by any competent authority to be invalid, illegal or unenforceable in any respect, in whole or in part, such invalidity, illegality or unenforceability shall not affect any of the other provisions of this AGREEMENT or the remainder of the provision in question and this AGREEMENT shall be construed as if such invalid, illegal or unenforceable provision or invalid, illegal or unenforceable part thereof had never been contained herein.

12.3. Failure or delay in the prompt enforcement of any right hereunder shall in no way be construed as a waiver of such right. No right or remedy of a PARTY shall be deemed waived except pursuant to a written waiver executed by a PARTY against whom the waiver is to be enforced. Waiver of any provision of this AGREEMENT on any occasion shall not be construed as a waiver of any other provision or that provision on any other occasion.

12.4. The provisions of Clauses 7, 8, 11 and 12 shall survive termination of the SERVICES or termination of this AGREEMENT for any reason whatsoever.

12.5. This AGREEMENT (including the Schedules) constitutes the entire agreement between the PARTIES with respect to the SERVICES and supersedes all prior negotiations, representations or agreements related to this AGREEMENT, either written or oral. No amendment to this AGREEMENT shall be effective unless set out in a formal instrument in writing signed by both PARTIES, specifically referring to this AGREEMENT.

12.6 The Schedule(s) attached hereto are part of this Agreement. In the event of a contradiction between this Agreement and its Schedule(s), the provisions of this Agreement shall prevail.

12.7. This AGREEMENT shall be construed, take effect and be governed in all respects in accordance with English Law excluding those conflict of law rules and choice of law principles which would deem otherwise and shall be subject to the exclusive jurisdiction of the English Courts, save that any judgement, declaration, award or order obtained in the English Courts may be enforced in any jurisdiction.

IN WITNESS WHEREOF, CUSTOMER and CDS has caused this AGREEMENT to be signed and executed on their behalf by their duly authorised representatives, in two original counterparts (one for each of the PARTIES) as of the day and year first above written.

Signed for and on behalf of

Corporate Document Services Ltd

Signature:

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Name:

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Position/Title:

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Signed for and on behalf of

CUSTOMER

Signature:

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Name:

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Position/Title:

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Signature:

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Name:

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Position/Title:

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Signature:

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Name:

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Position/Title:

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## **SCHEDULE 1**

### **INITIAL SERVICES**

The INITIAL SERVICES will comprise the fixed services, software and consultancy sessions involving CUSTOMER representatives and key members of the CDS project team as part of the Analysis and Design Phases.

## **SCHEDULE 2**

### **MAIN SERVICES**

MAIN SERVICES comprise future phases of design, technical development and associated Internet Services that may be required by CUSTOMER. Future phases of work will be discussed and agreed by CUSTOMER and CDS, and confirmed in a proposal of works submitted by CDS. These phases may require further analysis to identify the requirements in more detail. The estimated costs provided for these later phases are therefore indicative only.

## SCHEDULE 3

### DAY RATES

Day Rates for CDS Consultants and Technical Staff are as follows:

Staff	Day rate ex VAT
Web Designer/Developer	
Senior Web Designer/Senior Web Developer/Application Specialist	
Project Manager	
Consultant	

The above rates apply to work undertaken during normal office hours (9am-5pm).

For the avoidance of doubt all prices are exclusive of VAT.

### Travel & Subsistence

Travel and subsistence costs incurred by CDS staff in connection with the delivery of the work will apply for fuel, standard class fares and standard class accommodation.