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CONSULTANT (COMPAN

Y DEVELOPER'S AGREEMENT

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THIS AGREEMENT is made the
BETWEEN:

- (1) <<Name of Developer>> a <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<insert Address>> (“the Developer”)
- (2) <<Name of Client>> [a <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of] <<insert Address>> (“the Client”)

WHEREAS:

- (1) At all material times the Developer has been carrying on the business of providing software development services to businesses;
- (2) At all material times the Client has been carrying on the business of <<insert description>> and wishes to acquire the services of the Developer;
- (3) The Developer hereby agrees to provide such services to the Client subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. **Definitions and Interpretation**

1.1 In this Agreement, unless otherwise requires, the following expressions have the following meanings:

“**Business Day**”

means any day other than Saturday or Sunday) on which the relevant premises are open for their full range of services at <<insert location>>;

[“**Client’s Materials**”]

means the materials set out in Schedule 2 which the Client has provided to the Developer for use in the development of the Software;]

“**Confidential Information**”

means information of any kind, whether or not in writing, whether by the other Party pursuant to, or in connection with, this Agreement (whether orally or in writing, in any medium, and whether or not the information is expressly stated to be confidential or otherwise);

“**Data Protection Legislation**”

means the Data Protection Act 1998 and any subordinate legislation in force from time to time which is applicable to data protection and includes, but is not limited to, the UK GDPR (the Regulation of the General Data Protection Act 2018 (679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of the European Union (Withdrawal) Act 2018 (and regulations made under that Act) and the Privacy and Electronic Communications Regulations 2003 as amended;

[“**Fee**”]

means the fee payable to the Developer for the provision of the Services as set out in Clause 5;]

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2. **Engagement of the Developer**

2.1 The Client hereby authorises the Developer to carry out and complete the development of the Software.

2.2 [The Client shall provide the Client's Materials to the Developer by <<insert date>> ("the Delivery Date"). If that the Client fails to deliver the Client's Materials by the Completion Date and the milestone dates set out in the Schedule, the dates shall increment by one Business Day for each day that the Client's Materials is delayed.]

2.3 The Developer shall complete the Software by <<insert date>> ("the Completion Date").

2.4 Prior to the Completion Date, the Developer shall [use reasonable endeavours to] comply with the following milestones:

2.4.1 Initial plan and design to be submitted to the Client for discussion and/or approval by <<insert date>>.

2.4.2 Design ideas to be submitted to the Client for selection and/or approval by <<insert date>>.

2.4.3 Development to commence by <<insert date>> and to be presented to the Client on the following dates: <<insert date>>, <<insert date>>;

2.4.4 Alpha testing to commence by <<insert date>>;

2.4.5 Beta testing to commence by <<insert date>>;

2.4.6 The Software to be submitted to the Client for acceptance testing by <<insert date>>.

2.4.7 <<insert additional milestones as required>>.

2.5 The Developer acknowledges that the Client has a legitimate commercial interest in the Software and that the Client should have the Software completed by the Completion Date and that the Client should be entitled to a refund if it is not so completed. Accordingly, in the event that the Developer fails to complete the Work by the Completion Date, a sum of <<insert sum>>] OR [a sum of <<insert sum>>] shall be deducted as liquidated damages from the amount payable to the Developer for each Business Day after the Completion Date without prejudice to any right to claim damages in addition.

2.6 The Developer shall complete the Software and shall ensure that the Software is performed competently and with reasonable care.

2.7 The Developer shall rectify any rectification of any unsatisfactory work at its own expense.

3. **Nature of Engagement**

3.1 The Developer shall act as an independent contractor and the Developer's Work shall be performed using methods and those of any Consultant(s) engaged by the Developer to develop the Software. The Developer shall at all times be exclusively for the Client's benefit and control. The Client shall not seek to supervise, control or direct the Developer or any Consultants nor shall the Client have any right to claim damages in addition to any right to claim damages in addition.

3.2 Subject to the provisions of clause 2.5, the Developer shall at all times be exclusively responsible for the completion of the Software and how and in what order the Developer shall be entitled to organise, where, when and how the Software is to be developed but shall liaise with the Client (or

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AND/OR

[In consideration of the following Milestone

- 5.1.1 The sum of
- 5.1.2 The sum of
- 5.1.3 The sum of
- 5.1.4 The sum of
- 5.1.5 The sum of
- 5.1.6 The sum of
- 5.1.7 The sum of
- 5.1.8 <<insert ad

5.2 Payment of the [Initial Milestone Payment] shall be made only following completion of the Work and shall be made within <<insert period>> of the date of the Developer's invoice for the same.

Any sums which remain due under Clause 5, the interest at the rate of <<insert rate>> per annum above the base lending rate of <<insert rate>> per annum shall accrue on a daily basis from the date of the invoice until payment of the overdue sum or after judgment. Any interest due shall be payable with the overdue sum.

- 5.3 All payments made shall be expressly exclusive of any value added tax charge.
- 5.4 No further payments shall be made by the Client for the Software over and above those set out in this Clause 5 and, without limitation, no payment shall be made for any expenses incurred by the Developer for the Work and the Software.

6. Intellectual Property

6.1 Upon receipt in full of the Software, all sums due under Clause 5, the copyright and any other Intellectual Property Rights subsisting in the Software shall be deemed to have been assigned to the Client and the Developer shall be deemed to have assigned to the Client all Intellectual Property Rights in respect of the Software arising under the Copyright, Designs and Patents Act 1988.

6.2 Following the assignment of the Intellectual Property Rights in the Software to the Client, the Client shall be free to use the Software for any purpose not limited to, the purpose for which the Software was originally developed.

6.3 [The copyright and other Intellectual Property Rights in the Client's Materials shall remain, the property of the Client at all times (subject to the Client's Materials) and the Client may make any part of the Client's Materials that are necessary for the operation of the Software available to the Client at any time, subject to the Client's Materials. Nothing in this Agreement shall operate to bestow upon the Client any Intellectual Property Rights in the Client's Materials save

are itself the Client shall make the following Milestone Payments:

- 5.1.1 Delivery of the initial planning;
- 5.1.2 Delivery of the design ideas;
- 5.1.3 Delivery of each development report;
- 5.1.4 Completion of alpha testing;
- 5.1.5 Completion of beta testing;
- 5.1.6 On delivery of the Software for acceptance testing;
- 5.1.7 Completion of the Work and delivery of the Software;
- 5.1.8 <<insert ad required>>]

Initial Milestone Payment] shall be made only following completion of the Work and shall be made within <<insert period>> of the date of the Developer's invoice for the same.

Any sums which remain due under Clause 5, the interest at the rate of <<insert rate>> per annum above the base lending rate of <<insert rate>> per annum shall accrue on a daily basis from the date of the invoice until payment of the overdue sum or after judgment. Any interest due shall be payable with the overdue sum.

All payments made shall be expressly exclusive of any value added tax charge.

No further payments shall be made by the Client for the Work and the Software over and above those set out in this Clause 5 and, without limitation, no payment shall be made for any expenses incurred by the Developer for the Work and the Software.

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s envisioned by this Agreement.]

7. **Developer's Warranties a**

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7.1 Any Consultant(s) r
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of any other Consultant(s) engaged
skill and experience to carry out the

7.2 The Developer sha
that the Software
copyright, other Int
rights of publicity, o

reasonable endeavours to ensure
Developer and shall not infringe any
s, moral rights, rights of privacy,
ever of any person.

7.3 The Developer he
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pursuant to the law
Convention and/or t

copyright in the Software shall,
protection be valid and subsisting
[and the provisions of the Berne
Convention].

7.4 The Developer sha
dispose of any rig
Materials or the So
enter into any agree
rights under this
performance of his

transfer, encumber or otherwise
other rights in or to the Client's
to this Agreement, and shall not
which might conflict with the Client's
interfere with the Developer's
reement.

7.5 Subject to the pro
proceedings, claim
generality of this pr
client basis) again
the Client's use, po
with this Agreement
Rights belonging to
and against the san

7.7, in the event of any actions,
including, without prejudice to the
of the Client on a solicitor and own-
nds that the Developer's Work or
ship of the Software in accordance
ement of any Intellectual Property
per shall indemnify the Client from

7.6 Subject to the pro
proceedings, claim
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use or possession o
Work in accordance
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indemnify the Deve

7.7, in the event of any actions,
including, without prejudice to the
of the Developer on a solicitor and
the grounds that the Developer's
for the purposes of carrying out the
constitutes the infringement of any
a third party, the Client shall
e same.

7.7 The indemnities se
indemnified Party:

5 and 7.6 shall apply only if the

7.7.1 notifies the
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mediately in writing upon becoming
g, claim, demand or costs;

7.7.2 makes no a
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ements without the indemnifying

7.7.3 makes all re
request;

ble to the indemnifying Party upon

7.7.4 provides all
request; and

to the indemnifying Party upon

7.7.5 allows the
litigation and

complete control over any relevant

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8. **Client's Warranties**

8.1 The Client shall use the Client's Materials shall not infringe any rights of privacy, or any other rights of any person.

8.2 The Client hereby warrants that all Intellectual Property Rights in the Client's Materials shall, throughout the full term of this Agreement, be valid and subsisting and protected by law [and the provisions of the Berne Convention and/or the Paris Convention].

8.3 The Client shall not assign, license, sublicense, encumber or otherwise dispose of any rights of copyright in or to the Client's Materials or Software except pursuant to this Agreement.

8.4 The Client shall not enter into any agreement or arrangement which might conflict with the Developer's obligations under this Agreement or might interfere with the Developer's obligations under this Agreement.

9. **Liability**

9.1 This Clause 9 sets out the liability of the Parties to each other for any breach of this Agreement, for any breach of the Work and Software, any misrepresentation, statement of fact, negligence and breach of this Agreement.

9.2 Subject to sub-Clause 9.5, the Parties shall be liable to the other, whether in contract, tort (including negligence), or for breach of statutory duty or misrepresentation, for any loss of goodwill, loss of business opportunity, loss of profit, or any special, indirect or consequential damage or loss suffered by the other Party that arises out of or in connection with this Agreement.

9.3 Nothing in this Agreement shall limit the liability of either Party to the other for fraud or fraudulent misrepresentation, death or personal injury.

9.4 Nothing in this Agreement shall limit the liability of either Party under or in respect of the provisions of Clause 7.

9.5 Without prejudice to sub-Clauses 9.2 or 9.3, the total liability of either Party arising out of or in connection with this Agreement (whether in contract, including negligence), restitution, for tort (including negligence), or otherwise) shall be limited to the amount of [Fee] C [Payments] paid or payable by the Client under this Agreement or £ <<insert sum>> whichever is greater.

10. **Confidentiality**

10.1 Both Parties understand and agree that any information disclosed to them by the other Party, whether provided by sub-Clause 10.2 or as authorised in writing, shall at all times during the continuance of this Agreement, and for the period of <<insert period>>] after its termination:

10.1.1 keep confidential;

10.1.2 not disclose to any other party;

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10.1.3 not use any Confidential Information for any purpose other than as contemplated in this Agreement.

10.1.4 not make any Confidential Information available in any way or part with possession of any Confidential Information.

10.1.5 ensure that any Confidential Information disclosed by its directors, officers, employees, agents, consultants or subcontractors does not do any act which, if done by that Party, would be in breach of the provisions of this Clause 10.

10.2 Subject to sub-Clause 10.3, Confidential Information may be disclosed to the other Party, but may disclose any Confidential Information to:

10.2.1 any Consultant or subcontractor of the other Party;

10.2.2 any of their directors, officers, employees, agents, consultants, or suppliers;

10.2.3 any government authority, regulatory body, or other body;

10.2.4 any of their directors, officers, employees, agents, consultants, or subcontractors or those of any party described in sub-Clause 10.2.3.

10.3 Disclosure under sub-Clause 10.2 may be made only to the extent that is necessary for the performance of this Agreement, or as required by law. In each case, the disclosing Party must first inform the recipient that the Confidential Information is being disclosed. Unless the recipient is a body described in sub-Clause 10.2.3, the disclosing Party must ensure that the recipient is an authorised employee or officer of such a body, the disclosing Party must obtain and submit to the other Party a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.

10.4 Either Party may use Confidential Information for any purpose, or disclose it to any other party, if the Confidential Information is or becomes public knowledge through no fault of that Party.

10.5 When using or disclosing Confidential Information under sub-Clause 10.4, the disclosing Party must ensure that it does not disclose any part of that Confidential Information which is not public knowledge.

10.6 The provisions of this Clause 10 shall continue in force in accordance with their terms, notwithstanding the termination or expiry of this Agreement for any reason.

11. **[Data Protection]**

11.1 All personal data that the other Party will be collected, processed, and held in accordance with the provisions of the Data Protection Legislation and the Client's and Consultant's Privacy Policy.

11.2 For complete details of the collection, processing, storage, and retention of personal data, the other Party is not limited to, the purpose(s) for which personal data is collected, the legal bases for using it, details of the processing activities, the ways in which the other Party exercises them, and personal data is shared, the other Party should refer to the Developer's Privacy Notice.

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12. **[Data Processing**

12.1 In this Clause 12 a
controller”, “data p
meaning defined in

personal data”, “data subject”, “data
al data breach” shall have the
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12.2 [All personal data t
subject to this Agree
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personal data is pro

Developer on behalf of the Client,
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the Parties shall enter before any

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12.2 [Both Parties shall
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provisions of this A
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those obligations.

the data protection requirements set
her this Clause 12 nor any other
either Party of any obligations set
shall not remove or replace any of

12.3 For the purposes of
this Agreement, the
“Data Controller”.

islation and for this Clause 12 and
“Data Processor” and the Client is the

12.4 The type(s) of pe
processing, and the
to this Agreement.

pe, nature and purpose of the
ing shall be set out in Schedule 4

12.5 The Data Controlle
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Processor for the pu

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chedule 4 to this Agreement.

12.6 The Data Processo
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ations under this Agreement:

12.6.1 Process the
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the written instructions of the Data
or is otherwise required to process
Data Processor shall promptly notify
sing unless prohibited from doing

12.6.2 Ensure tha
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Data Contr
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able technical and organisational
(Data Controller) to protect the
or unlawful processing, accidental
measures shall be proportionate to
ch events, taking into account the
ogy and the cost of implementing
aken shall be agreed between the
essor and set out in Schedule 4 to

12.6.3 Ensure tha
processing
that person

to the personal data (whether for
) is contractually obliged to keep

12.6.4 Not transfe
written co
conditions

tside of the UK without the prior
troller and only if the following

12.6.4.1 T

/or the Data Processor has/have
ards for the transfer of personal

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12.6.4.2 Assist the Data Controller to have enforceable rights and

12.6.4.3 The Data Processor complies with its obligations under the Data Protection Act 1998, providing an adequate level of protection for the personal data so transferred; and

12.6.4.4 The Data Processor complies with all reasonable requirements for the protection of the personal data by the Data Controller with respect to the processing of the personal data.

12.6.5 Assist the Data Controller, at the Data Controller's cost, in responding to any requests from data subjects and in ensuring its compliance with the Data Protection Legislation with respect to data security, breach assessments, and consultations with supervisory authorities (including, but not limited to, the Information Commissioner's Office);

12.6.6 Notify the Data Controller of any undue delay of a personal data breach;

12.6.7 On the Data Controller's instruction, delete (or otherwise dispose of) the personal data and any and all copies thereof to the Data Controller or as required by law; and

12.6.8 Maintain complete and accurate records of all processing activities and technical measures implemented necessary to demonstrate compliance with Clause 12 and to allow for audits by any party designated by the Data Controller.

12.7 [The Data Processor shall comply with any of its obligations with respect to the processing of personal data under Clause 12.]

OR

12.7 [The Data Processor shall not transfer any of its obligations to a sub-processor with respect to the processing of personal data under this Clause 12 without the prior written consent of the Data Controller (such consent not to be unreasonably withheld) and that the Data Processor appoints a sub-processor, the

12.7.1 Enter into a written agreement with the sub-processor, which shall impose upon the sub-processor the same obligations as are imposed upon the Data Processor under Clause 12 and which shall permit the Data Controller to enforce those obligations against the sub-processor;

12.7.2 Ensure that the sub-processor complies fully with its obligations under the Data Protection Legislation.]

12.8 Either Party may, at any time, terminate this Agreement by giving the other Party <<insert period, e.g. 30 calendar days'>> notice, and the other Party shall, upon receipt of such notice, replace the processing clauses or similar terms that form part of this Agreement with the terms of the new scheme. Such terms shall apply from the date of replacement.

13. Termination

13.1 Either Party may terminate this Agreement at any time without notice and without giving any reason.

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16. **Severance**

The Parties agree that, if the Agreement is found to be otherwise unenforceable, that / those provisions shall be deemed severed and the remainder of this Agreement shall remain enforceable.

or more of the provisions of this Agreement is found to be otherwise unenforceable, that / those provisions shall be deemed severed and the remainder of this Agreement shall remain enforceable.

17. **Notices**

17.1 All notices under this Agreement shall be given in writing and be deemed duly given if signed by, or on behalf of, an authorised officer of the Party giving the notice.

writing and be deemed duly given if signed by, or on behalf of, an authorised officer of the Party giving the notice.

17.2 Notices shall be deemed to have been given:

given:

17.2.1 when delivered in person to the recipient or registered office of the recipient;

by a carrier or other messenger (including a courier) during business hours of the recipient; or

17.2.2 when sent by post, or by any other means of communication, and a return receipt is generated;

and a return receipt is generated;

17.2.3 on the fifth business day after the date of posting by ordinary mail.

by ordinary mail, if mailed by national or international registered mail.

In each case notice shall be deemed to have been given to the most recent address or e-mail address notified to the Party.

to the most recent address or e-mail address notified to the Party.

18. **Alternative Dispute Resolution**

18.1 Any dispute or claim arising out of or in connection with the Agreement or its subject matter shall be referred to a single arbitrator to be appointed by the Parties, or if they cannot agree, then the President of the Institution, who shall confer all the powers conferred upon arbitrators by the Arbitration Act 1996.

any dispute or claim arising out of or in connection with the Agreement or its subject matter shall be referred to a single arbitrator to be appointed by the Parties, or if they cannot agree, then the President of the Institution, who shall confer all the powers conferred upon arbitrators by the Arbitration Act 1996.

18.2 The Parties hereby agree that the award of the Arbitrator shall [not] be final and binding on both Parties.

of the Arbitrator shall [not] be final and binding on both Parties.

19. **Law and Jurisdiction**

19.1 This Agreement (including any dispute or claim arising out of or in connection with it) shall be governed by, and construed in accordance with, the law of England and Wales.

all matters and obligations arising out of or in connection with the Agreement shall be governed by, and construed in accordance with, the law of England and Wales.

19.2 Subject to the provisions of this Agreement, any dispute, controversy, proceedings or claim between the Parties arising out of or in connection with this Agreement (including any non-contractual matters) shall fall within the jurisdiction of the courts of England and Wales.

any dispute, controversy, proceedings or claim arising out of or in connection with this Agreement (including any non-contractual matters) shall fall within the jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF this Agreement has been executed and before written.

has been executed the day and year first

SIGNED by

<<Name of person signing for the Party>>
DIRECTOR
for and on behalf of <<Developer's name>>

In the presence of
<<Name & Address of Witness>>

SIGNED by

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<<Name and Title of person signing
for and on behalf of <<Client's Name>>

In the presence of
<<Name & Address of Witness>>

The Software

<<Insert full details of the Software <<Name of the Developer>>

Client's Materials

<<Insert full details of the Client's Materials to the Developer>>

Name of any named Consultant

<<Insert full name of any Consultant <<Name of the Developer>>

Pursuant to Clause 12.4, the following details of the type(s) of personal data, the scope, nature and purpose of the processing and the processing:

<<Insert full details>>]

[Pursuant to Clause 12.6.2, the following details of the technical and organisational measures agreed:

<<Insert full details>>]]

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