

SERVICES AGREEMENT

PART 2 – THE CONDITIONS

1. Definitions and Interpretation

- 1.1. In this agreement, unless the context otherwise requires, the following expressions and the expressions in the Agreement Details have the meanings given to them:

Client Materials: any and all content provided by the Client to HandL for incorporation into the Deliverables.

Confidential Information: in relation to either party, information which is disclosed to that party by the other party pursuant to or in connection with this agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such). Information in the public domain (other than solely by reason of the breach of this agreement by a party to this agreement) is not Confidential Information.

Data Protection Legislation: all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy.

HandL Materials: any and all content provided or created by HandL for incorporation into the Deliverables.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights (including moral rights), trade marks, business names, domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, 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, 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 or protection which either subsist or will subsist now or in the future in any part of the world.

- 1.2. Unless the context otherwise requires, each reference in this agreement to (i) **writing** and any similar expression, includes a reference to email; (ii) to a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time and shall include all subordinate legislation made from time-to-time; and (iii) to **including** or **in particular** and any similar expression or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words.

2. The Services

- 2.1. HandL shall provide the Services in accordance with the Services Specification and use reasonable endeavours to meet the Milestones.
- 2.2. Either party may request or propose amendments to the Services Specification. Any proposed amendments must be made in writing.
- 2.3. Following receipt of a request or proposal under clause 2.2, HandL shall notify the Client in writing of the terms upon which such amendments may be accommodated, including the effect on the Fees and the Services Specification.
- 2.4. Within 14 days of receipt of HandL's notice under clause 2.3, the Client shall notify HandL in writing of its acceptance of HandL's changes to the Fees and Services Specification or shall request a meeting with HandL to discuss the matter.
- 2.5. The Client Materials shall be provided by the Client in accordance with the Services

Specification or as requested by HandL under clause 3.1, as applicable.

- 2.6. Any third-party software to be supplied by HandL shall be supplied in accordance with the applicable software licence agreement and the licence fee payable for such software shall form a part of the Fees.
- 2.7. HandL shall be responsible for organising how and in what order the Services are performed and, where relevant, shall liaise with the Client's representative to ensure that due account is taken of the impact of the timing of the Services to be performed upon the activities of the Client and any other contractors, consultants and similar third parties also engaged by the Client.
- 2.8. Unless agreed otherwise, HandL shall be entitled to apply a suitable credit on the Client's website acknowledging and/or recognising the work done and Service provided by Hand L.
- 2.9. The parties shall comply with their respective obligations in any Schedule to this agreement.

3. The Client's Responsibilities

- 3.1. The Client shall promptly, at HandL's request, provide HandL all information, data, documentation, and Client Materials that HandL reasonably requires to perform its obligations under this agreement.
- 3.2. The Client is responsible for the Client Materials and for the content, accuracy and completeness of them and shall indemnify HandL against any and all damages, losses, and expenses arising as a result of any claims or proceedings on the grounds that the Client Materials contain any material that is unlawful or otherwise offensive (including material that is obscene, pornographic, offensive, defamatory, threatening, incites violence, or that breaches the Intellectual Property Rights of any third party).
- 3.3. The Client acknowledges that HandL's ability to perform its obligations under this agreement in accordance with the Services Specification, is dependent on the Client's full and timely cooperation and the Client hereby agrees to provide that.

4. Project Management and Reporting

- 4.1. Each party's representative shall be responsible for liaising with the other party on all matters under this agreement. Each representative shall have the necessary knowledge and experience of all relevant matters, and (unless notified otherwise) the authority to commit their party.
- 4.2. HandL shall provide reports detailing the progress of the Services regularly or otherwise at such times as are set out in the Services Specification. Such reports shall include any important matters requiring the Client's attention.

5. Fees and Payment

- 5.1. The Client shall pay to HandL the Fees, calculated in accordance with Schedule 2, within 14 days of receipt of HandL's invoice for the same.
- 5.2. Sums invoiced under this agreement shall be exclusive of VAT and the Client shall pay any applicable VAT (or equivalent sales tax) to HandL on receipt of a valid VAT invoice.
- 5.3. If the Client fails to make any payment due to HandL on or by the due date for payment, then, without prejudice to HandL's other rights and remedies, the Client shall pay interest on the overdue sum from the due date for payment until the payment of that overdue sum, whether before or after judgment. Interest shall accrue daily at the rate of 8% per annum above the Bank of England's base rate from time to time, and at 8% per annum for any period when that base rate is below 0%.

6. Intellectual Property

- 6.1. The Client warrants that it has the right to use all Client Materials supplied by them to HandL for the purposes contemplated by this agreement and that, where applicable, all necessary permissions and rights have been obtained. The Client (or the applicable licensors, as appropriate) shall retain ownership of all Client Materials and all Intellectual Property Rights subsisting therein at all times. The Client shall indemnify HandL against all damages, losses, and expenses arising out of any claims or proceedings brought by a third party for the infringement of the third party's Intellectual Property Rights by HandL.
- 6.2. HandL warrants that it has the right to use all HandL Materials supplied by it as part of the Deliverables and that, where applicable, all necessary permissions and rights have been obtained.
- 6.3. HandL shall retain ownership of all Intellectual Property Rights subsisting in the Deliverables until the Fees are paid in full by the Client. On receipt by HandL of all sums due, HandL shall assign the ownership of those Intellectual Property Rights to the Client immediately, and the parties shall execute all documents necessary to give effect to that assignment.
- 6.4. Each party (the **Indemnifier**) shall indemnify the other (the **Indemnified**) against all damages, losses, and expenses arising out of any claims or proceedings brought by a third party for the infringement of the third party's Intellectual Property Rights by:
 - 6.4.1. where HandL is the Indemnifier, any part of the Deliverables created or supplied by HandL; or
 - 6.4.2. where the Client is the Indemnifier, any part of the Client Materials, provided that the Indemnified: (i) promptly notifies the Indemnifier in writing of the claim or proceedings; (ii) makes no admissions or settlements without the Indemnifier's prior written consent; and (iii) provides the Indemnifier with all information and assistance that it may reasonably require.
- 6.5. The indemnity in clause 6.4 shall not apply to the extent that the claims or proceedings in question arise out of the Indemnifier's compliance with any instructions or materials provided by the Indemnified.

7. Warranties

- 7.1. Each party warrants to the other that it has the full power and authority to enter into, and perform its obligations under, this agreement.
- 7.2. HandL shall perform its obligations under this agreement with reasonable care and skill in accordance with generally established and recognised practices and standards prevailing in its industry.
- 7.3. HandL warrants that the Deliverables shall be free of viruses and material defects from the date that acceptance takes place in accordance with the Services Specification and this agreement.
- 7.4. The warranty provided in clause 7.3 shall not apply to the extent that any non-conformity with the Services Specification arises out of modifications made to the Deliverables by the Client or any third-party without the direct involvement of HandL the Developer.

8. Liability

- 8.1. HandL shall not be liable to the Client for any damage to software or hardware, damage to or loss of data, or for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill, or business opportunity, or for any indirect consequential or special loss or damage.

- 8.2. Nothing in this agreement shall limit either party's liability under clause 8.4 and no sums to be paid thereunder or under any indemnity in this agreement shall count towards the cap on liability under clause 8.3.
- 8.3. Subject to clause 8.4, HandL's total liability with respect of any claims under or in connection with this agreement, whether in contract, tort (including negligence), or otherwise based on any events in any calendar year arising out of or in connection with shall not exceed the Cap.
- 8.4. Nothing in this agreement shall limit or exclude either party's liability for death or personal injury caused by that party's negligence or for any other form of liability which cannot be limited or excluded by law.

9. Data Protection

All personal data that the parties may use in connection with this agreement shall be collected, processed, and held in accordance with the provisions of the Data Protection Legislation.

10. Confidentiality

- 10.1. Each party undertakes that, except as provided by this clause 10 or as authorised in writing by the other party, it shall, at all times during the term of this agreement and for 5 years after its termination or expiry keep confidential all Confidential Information and not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this agreement.
- 10.2. Either party may disclose any Confidential Information to (i) any sub-contractor or supplier of that party; (ii) any governmental or other authority or regulatory body; or (iii) any employee or officer of that party, to the extent only as is necessary for the purposes contemplated by this agreement or as required by law.

11. Expiry and termination

- 11.1. Save as provided below, this agreement shall end on completion of the provision of the Services by HandL.
- 11.2. Without prejudice to any other rights or remedies which may be available to it, either party may terminate this agreement on giving the other not less than 30 days' written notice or otherwise with immediate effect by written notice to the other party if:
 - 11.2.1. any sum owing to that party by the other party under any of the provisions of this agreement is not paid within 14 days of the due date for payment;
 - 11.2.2. the other party commits any other material breach of any of the provisions of this agreement and, if the breach is capable of remedy, fails to remedy it within 30 days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 11.2.3. an encumbrancer takes possession, or where the other party is a company, a receiver is appointed, of any of the property or assets of that other party;
 - 11.2.4. the other party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 11.2.5. the other party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction);
 - 11.2.6. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other party; and
 - 11.2.7. that other party ceases, or threatens to cease, to carry on business.

- 11.3. On the termination or expiry of this agreement:
- 11.3.1. any licences from one party to the other under this agreement shall terminate immediately;
 - 11.3.2. any sum owing by either party to the other under this agreement shall become immediately due and payable;
 - 11.3.3. HandL shall be entitled to invoice for a reasonable sum representing the value of work done but not invoiced up to the day of expiry or termination; and
 - 11.3.4. each party shall return the Materials (and any copies of any of them) of the other without delay.
- 11.4. The termination or expiry of this agreement shall be without prejudice to any rights, remedies, obligations, or liabilities which have already accrued to either of the parties under this agreement. Any provision of this agreement that either expressly or impliedly survives the expiry termination of this agreement shall remain in full force and effect.

12. Force Majeure

- 12.1. Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party (**force majeure**).
- 12.2. If either party cannot perform their obligations as a result of force majeure, the affected party shall be entitled to a reasonable extension of the time for performing those obligations.
- 12.3. If either party cannot perform its obligations as a result of force majeure for a continuous period of 30 days, the other party may at its discretion terminate this agreement by written notice at the end of that period.
- 12.4. If the agreement is terminated under clause 12.3, the parties shall agree upon a fair and reasonable payment for all work completed up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of this agreement.

13. General

- 13.1. No failure or delay by either party in exercising any of its rights under this agreement shall be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of this agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 13.2. Each party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this agreement into full force and effect.
- 13.3. Subject to any provisions to the contrary each party to this agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this agreement.
- 13.4. Nothing in this agreement shall constitute or be deemed to constitute a partnership, joint venture, agency, or other fiduciary relationship between the parties other than the contractual relationship expressly provided for in this agreement.
- 13.5. This agreement may be entered into in any number of separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.
- 13.6. If one or more of the provisions of this agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the

remainder of this agreement. The remainder of this agreement shall be valid and enforceable.

- 13.7. Neither party may assign, mortgage, charge (otherwise than by floating charge), sub-licence, or otherwise delegate any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder without the written consent of the other party (such consent not to be unreasonably withheld) provided that HandL shall be entitled to perform any of its obligations through suitably qualified and skilled sub-contractors.
- 13.8. Unless expressly stated otherwise, no part of this agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.
- 13.9. This agreement contains the entire agreement between the parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 13.10. Each party acknowledges that, in entering into this agreement, it does not rely on any representation, warranty, assurance or other provision (made innocently or negligently) except as expressly provided in this agreement.
- 13.11. All notices under this agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the party giving the notice. Notices shall be deemed to have been duly given:
 - 13.11.1. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 13.11.2. when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
 - 13.11.3. on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 13.11.4. on the tenth business day following mailing, if mailed by airmail, postage prepaid.In each case notices shall be addressed to the most recent address or e-mail address notified to the other party.
- 13.12. This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales. Any dispute, controversy, proceedings or claim between the parties relating to this agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

