

Development of bespoke software

PART 1

CHESS DIGITAL LIMITED

SERVICES AGREEMENT

between

(1) CHESS DIGITAL LIMITED, a company incorporated in Scotland under registration number SC296800 and whose registered office is at Suite 2/3, 48 West George Street, Glasgow, G2 1BP ("the Company").

And

(2) THE CLIENT, details of which are set out below.

Company Name:	
Business Address:	
Contact and Position:	
Telephone:	
Email:	

WHEREAS:

(A) The Company has experience, skill and expertise in the development of bespoke business solutions and related consultancy and support services.

(B) The Client wishes to engage the Company to provide such services as are described in Recital (A) above.

(C) The Company has agreed to provide such services to the Client subject to the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. AGREEMENT

This Agreement consists of the terms which are set out below together with the terms and conditions contained in the Schedule and the Appendices which are attached.

2. DEFINITIONS

Words and expressions which are defined shall have the meaning set out in the relevant part of the Schedule.

3. SERVICES

The Company shall provide the following Services to the Client in accordance with the terms and conditions set out in the corresponding parts of the Schedule.

SERVICE	THE SCHEDULE	TICK AS APPROPRIATE
Development of Bespoke Software	Part 1	

Support Services	Part 2	
Supply, Installation, Configuration of Equipment and/or Software and Related Consultancy	Part 3	
Hosting Services	Part 4	
Other Services	Part 5	

4. CHARGES

The Client shall pay the Charges to the Company in accordance with the provisions of this Agreement. Details of the Charges are set out in the relevant proposal of services of Scope of Work.

5. COMMENCEMENT DATE AND DURATION

This Agreement shall commence on the date of the last of the parties to agree in writing or email or valid Purchase Order Number from an authorised officer of the Client or to sign the relevant Agreement and shall subsist until terminated in accordance with the provisions of the relevant Schedule(s).

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN CHESS DIGITAL LIMITED AND THE CLIENT

THE SCHEDULE

PART 1

TERMS AND CONDITIONS FOR THE DEVELOPMENT OF BESPOKE CUSTOM SOFTWARE SOLUTIONS

All contracts for the development of bespoke solutions made by Chess Digital, a company incorporated under the laws of Scotland (Company Number SC296800) and having its registered office at Suite 2/3, 48 West George Street, Glasgow, G2 1BP ("the Company") are subject to the following terms and conditions:-

1. INTERPRETATION

1.1. In these terms and conditions, the following words and expressions shall, unless the context otherwise requires, have the following meanings:-

"Acceptance" means the Client's acceptance of the Bespoke Software as set out in Condition 6;

"Acceptance Tests" means as described in Condition 5;

"Account Manager" means the Company's account manager as may be agreed from time to time between the Client and the Company;

"Bespoke Software" means the computer software, applications or programs developed by the Company for the Client pursuant to this Contract;

"Conditions" means these terms and conditions and includes any special terms and conditions agreed in writing between the Client and the Company;

"Confidential Information" means all confidential information and data received by the Client or the Company relating to the other party, including but not limited to business methods, business plans, trade secrets, other party commercial and financial data, Client lists, product lists, lists of suppliers, databases and marketing information;

"Contract" means the contract for the supply of services comprising these Conditions, and any other documents specifically referred to in writing by the Company and the Client as forming part of the contract;

"Charges" means any charges for the provision of the Services set out in the first page of this Contract or as otherwise agreed between the Company and the Client from time to time;

"Client" means the client as described on the front page of this Contract;

"Deliverables" means all computer hardware equipment, products, documents and materials developed or provided by the Company in relation to the Bespoke Software;

"Equipment" means the computer hardware at the Site whether or not such computer hardware is situated at the Site prior to commencement of the Contract, and whether provided for by the Company or not;

"Intellectual Property Rights" means patents, registered trade marks, registered designs (and any applications for any of the foregoing) unregistered trade marks, copyright, design rights, database rights, unregistered design rights, know how, confidential information and any other intellectual or industrial property rights existing anywhere in the world, including any domain name registrations;

"Licence Agreement" shall mean any licence or terms under which the Client is permitted to use Third Party Software;

"Order" means the Client's instruction, e-mail or purchase order for the Services (quoting the Company's relevant Working Document reference numbers and revision numbers);

"Out with service hours" with prior agreement, Chess Digital employees will work out with their standard working hours. Chess Digital charges time and a half, of the normal day rate, for completing evening and weekend work and double the standard day rate on a Sunday.

"Project Manager" means the project manager appointed by each of the Company and the Client for the purposes of managing the relationship between the parties under the Contract;

"Services" means design and development of bespoke software solutions provided by the Company on behalf of the Client;

"Service Hours" means standard working hours that shall not exceed 7 hours each day from Monday to Friday performed between the hours of 09.00 and 17.00 but shall exclude a 1 hour lunch break and public holidays unless otherwise agreed;

"Site" means the premises of the Company or the Client, or any other premises, where the Bespoke Software is to be developed and housed;

"Specification" means the description (if any) of the Services set out or referred to in any document provided by the Client;

"Third Party Licensor" means any third party with which the Client has entered into a License Agreement in terms of which the Client uses software;

"Third Party Software" means the object code form of the computer software, applications or programs used or to be used on the Equipment or which the Company shall make available to the Client during the course of providing the Services, including any improvements of the same developed from time to time, where such software has been created by a Third Party Licensor pursuant to the terms of a License Agreement between the Third Party Licensor and the Client;

"Tools" means any software, specifications, reports, diagrams, instructions, materials or other know-how used by the Company for the purposes of providing the Services to the Client;

"Working Days" means any day except Saturdays, Sundays and public holidays; and

"Working Document" means mean any Installation Scoping Document (ISD), Consultants Proposal Document (CPD), Project Initiation Document (PID), or Work Order detailing work to be completed, which may be paper or electronic format (email).

1.2. In these Conditions references to:-

1.2.1. the singular shall include references to the plural and vice versa; and

1.2.2. any gender shall include references to each other gender.

1.3. Condition headings are for convenience of reference only and shall not affect the construction or interpretation of these Conditions.

1.4. No variation of these Conditions (whether in the Schedule or not) shall be valid unless in writing and signed by an authorised representative of each of the Client and the Company.

1.5. The Conditions shall prevail over any inconsistent terms or conditions contained in or referred to in the Client's Order, or Working Document.

1.6. For the avoidance of doubt the Client's own terms and conditions of Order shall not be incorporated into the Contract.

2. PROVISION OF THE SERVICES

2.1. Unless otherwise agreed between the Company and the Client the Services will be provided during Service Hours at the Site and on any Equipment as specified in the Working Document.

2.2. For the avoidance of doubt the Company shall not be obliged to provide the Services until the Working Document has been signed by both Client and the Company and the Company has received a written Order from the Client.

2.3. The Company's obligation to provide the Services is subject to any applicable Licence Agreements being in force.

2.4. Where the Company has not provided the core, underlying licenses or applications to a Client, the Company will not be liable for any faults, bugs or incidents relating to such core software, and any time and resources that have to be applied by the Company to issues found to be or related to, such core software, will be out of the scope of the Services being provided and subject to separate charges.

2.5. Services bought from the Company must be consumed by the Client within 12 months from the date of signing the Contract. If unused or unallocated after 12 months, the Contract will expire and be rendered null and void.

2.6. The Company will:

2.6.1. use reasonably competent staff in the performance of the Services and perform the Services with reasonable care and skill and if the Company prefers utilise an approved sub-contractor;

2.6.2. use reasonable endeavours to meet a request from the Client for the provision of Services outside of the Service Hours;

2.6.3. use reasonable endeavours to remedy free of charge any faulty work done by the Company provided that the Client notifies the Company in writing of the fault within seven days after the work is carried out;

2.6.4. provide proof of qualifications and experience of proposed personnel on request and to make same subject to interview upon reasonable request from the Client where specialist skills are deemed necessary;

2.6.5. use reasonable endeavours to ensure that personnel assigned to any task remain employed in the performance of that task through to completion and if not possible, use reasonable endeavours to provide a suitable replacement within a reasonable timescale.

2.7. The Company will not be responsible for any delay in the provision of the Services or failure to achieve targets set by the Client arising out of

2.7.1. any breakdown in project management by the Client; or

2.7.2. as a consequence of any breach by the Client of its obligations under these Conditions.

2.7.3. any non acceptance, delay in or non payment by the Client of any charges due under the Contract or as a result of an extension offered.

3. THE CLIENT'S DUTIES

3.1. The Client shall:

3.1.1. ensure that any applicable Licence Agreements are valid and in force and permit the Company and its sub-contractors to use, install, and, where necessary, modify, adapt or alter the Third Party Software for the purpose of developing the Bespoke Software;

3.1.2. use only skilled and competent operatives in relation to the Services;

3.1.3. make available all such facilities as the Company shall reasonably require to provide the Services;

3.1.4. ensure that any equipment or software maintained by a third party on behalf of the Client is both working and configured correctly and promptly to allow the Bespoke Software to operate correctly and without the intervention of the Company, otherwise the Company will be entitled to recover any costs associated in such involvement, at normal day rates;

3.1.5. ensure that, where the Company provides access to or installs any version of the Bespoke Software, until this has been Accepted, or until any agreed remaining work has been completed by the Company, the Client will not (unless agreed with the Company in writing in advance) use the Bespoke Software as a live system, nor load or enter live data, nor require the Company to process, restore or otherwise do work on or with such data. Any time or costs incurred by the Company as a result of any such actions will be fully recoverable from the Client, at or before project completion. Further, any live use of the Bespoke Software prior to Acceptance will deem the Bespoke Software, and any work requested or required by the Client to be carried out to the Bespoke Software by the Company, not to be part of the Services and will be provided as Support services in accordance with Part 2 of the Schedule;

3.1.6. ensure that the Client or a Third Party on behalf of the Client will not work on/amend the Bespoke Software before Acceptance, unless agreed in writing in advance by the Company. Where the Client has not secured such agreement from the Company prior to the Client or a Third Party working on/amending the Bespoke Software before Acceptance, this renders any liability of the Company for any aspect of Bespoke Software as invalid, as the Company is not then in control of the application. Further, any work the Company may be asked to, or requires to, undertake, in respect of the related actions or needs of a Third Party will also be out of scope, and chargeable;

3.1.7. not carry out any unauthorised alteration, adaptation or modification of the Bespoke Software ;

3.1.8. permit the Company access to the Client Site and the Equipment during Service Hours;

3.1.9. ensure that all prerequisites set out in the Working Document are carried out prior to the Company commencing work or going onto the Client Site;

3.1.10. ensure that all the requirements of health and safety legislation and procedures are and continue to be met with regard to the Site and the Equipment;

3.1.11. maintain adequate insurance in respect of its potential liability to the personnel performing the Services on behalf of the Company;

- 3.1.12. make available all passwords and/or digital certificates required for the Company to deliver and complete the Services, or supply staff with access to such information at the time the Services are being provided;
- 3.1.13. only dispose of packaging for Deliverables that are accepted as being in full working order.
- 3.2. The Client warrants that:
- 3.2.1. in respect of any Third Party Software:-
- 3.2.1.1. the Client has entered into and has fully complied (and shall at all times fully comply) with the terms of the relevant Licence Agreement; and
- 3.2.1.2. the Company and its sub-contractors are permitted to use, modify, adapt, install and alter the Third Party Software for the purpose of developing the Bespoke Software; or
- 3.2.1.3. consent to such use, modification, adaptation, installation and alteration by the Company has been obtained from the relevant Third Party Licensor.
- 3.2.2. the Equipment and the Third Party Software have been and will be used entirely in accordance with manufacturers' instructions and recommendations and that no unauthorised use, alteration, adaptation, installation or modification has taken place or will take place in breach of the Licence Agreements in place;
- 3.2.3. it has full authority and power to authorise all necessary works required to the Site to be carried out to enable any equipment to be installed and cables laid.
- 3.3. Where personnel are supplied by the Company on a contract basis and are required to work in accordance with instructions given from time to time by or on behalf of the Client, the Client shall:
- 3.3.1. ensure that such instructions are provided with sufficient notice and detail to enable completion to the Client's required standards;
- 3.3.2. approve personnel's leave of absence (which shall not be chargeable), which shall not be unreasonably refused;
- 3.3.3. approve and sign off the personnel's weekly activity reports on a weekly basis.
- 3.4. The Client agrees to provide full responses in the shortest timescales to requests for information and assistance and acknowledges that the Company will not be responsible for problems arising as a result of failure to do so.
- 3.5. Where project management is undertaken by the Client, the Client shall ensure that time scales and targets (including performance-related targets and milestones) it sets are reasonably achieved.
- 3.6. The Client shall at all times perform its obligations hereunder with due skill and care in a timely, professional and reliable manner, use its reasonable endeavours to comply with any agreed timescales, and to respond to Company requests in under 5 Working Days.
- 3.7. The Client shall promptly sign off the task sheet or Working Document upon completion of the detailed schedule of work or in the case of stage projects at intervals as detailed in the relevant document.
- 3.8. The Client hereby warrants, represents and undertakes that in so far as the Client is aware, use by the Company of any information, software, hardware, documentation, drawings, specifications, data or other materials made available by the Client to the Company for the purposes of providing the Services will not infringe the Intellectual Property Rights of any third party.
- 3.9. The Client shall indemnify and hold the Company harmless from any and all loss, costs, damages and expenses arising out of any breach of Condition 3.7.

4. CHARGES

- 4.1. In consideration for providing the Services to the Client, the Client shall pay the Company the charges set out on the front page of this Contract together with the requisite deposit plus any cancellation or additional fees that might arise due to breach of the Conditions by the Client.

4.2. Any fees and charges arising under this Contract are exclusive of VAT and where appropriate the Client must pay VAT to the Company in addition to such fee or charge.

4.3. Service fees and charges will be paid by the Client within 30 days of invoice, or as otherwise stipulated in the Contract, together with VAT at the prevailing rate.

4.4. Invoices will normally be provided within 30 days of the amount becoming due. Reminders and final notices may be issued, however the Company is not obliged to issue these before deeming the Client in breach of these Conditions.

4.5. The Client will in addition to such fees and charges pay interest to the Company upon the amount of any invoice which is overdue from the date of invoice to the date of actual payment at 2% above the base rate of the Royal Bank of Scotland plc per month.

4.6. In the event that there is any dispute concerning a payment due from the Client to the Company it shall be dealt with in accordance with Conditions 13, 14, 16 and 23 except that the meeting shall where practical be between the Chief Executive Officers of each of the Client and the Company.

5. ACCEPTANCE TESTING

5.1. Prior to completion of the development of the Bespoke Software, the Company shall run system testing of the Bespoke Software at its premises on request of the Client. The Company agrees to grant such access to its premises to such representatives of the Client as the Client reasonably requires to be present at the relevant system testing.

5.2. Upon completion of the Bespoke Software and the testing by the Company detailed in Condition 25.1, the Company shall deliver to the Client a CD-ROM, or other suitable media version of the Bespoke Software for installation at the Client's Site by the Client or Company. Once the Bespoke Software has been installed, the Client shall notify the Company and the parties shall work together in good faith to conduct the Acceptance Tests.

5.3. The Acceptance Tests shall take the form to be agreed between the parties in good faith. During a period of fifteen (15) Working Days following the last date of signature of this Contract, the Client shall deliver to the Company proposed acceptance criteria and test data if in scope. If requested by the Client at any time after signature of this Contract, the Company shall provide the Client with reasonable assistance in the preparation of such acceptance criteria and test data. The parties shall use reasonable endeavours to agree the proposed acceptance criteria and test data as soon as possible after the date of delivery to the Company, and once agreed in writing by both parties, such proposed acceptance criteria and test data shall constitute the "Acceptance Tests". If the parties fail to agree on the form of Acceptance Tests within a further period of fifteen (15) Working Days or such other period as may be agreed between the parties, either party may terminate this Contract with immediate effect.

5.4. The Client shall carry out the agreed Acceptance Tests on the Bespoke Software within five (5) Working Days of the Bespoke Software's delivery to the Client or being made available to the Client. The Acceptance Tests shall be started as soon as reasonably possible after installation and shall be run continuously during Service Hours. The Client shall give the Company at least twenty four (24) hours' notice of the start of the Acceptance Tests and permit the other Company to observe all or any part of the testing.

5.5. If the Bespoke Software (or any part thereof) fails to pass the Acceptance Tests, the Client shall, within two (2) days from the completion of the Acceptance Tests or any part of these tests, provide notice to the Company this effect, giving details of such failure(s). The Company shall remedy the defects and deficiencies and the relevant Acceptance Test(s) shall be repeated as soon as reasonably possible.

5.6. If the Bespoke Software (or any part thereof) fails to pass any repeated Acceptance Test(s) within four (4) weeks from the date of the first Acceptance Tests:

5.6.1. the Client may, by written notice to the Company, choose at its sole discretion to fix a new date for carrying out further tests on the Bespoke Software on the same terms and conditions. If the Bespoke Software fails such further tests then the Client may request a repeat test under this Condition 5.6.1 or to proceed under Condition 5.6.2;

5.6.2. following the procedure under Condition 5.6.1 the Client may accept the Bespoke Software subject to, agreement between the parties of amended acceptance criteria and/or test data, amended Specification and/or alteration in the sums payable under this Contract as, after taking into account all the relevant circumstances, is reasonable; or

5.6.3. either party may, terminate this Contract with immediate effect by giving written notice to the other party.

6. ACCEPTANCE OF THE BESPOKE SOFTWARE

6.1. Acceptance of the Bespoke Software shall be deemed to have occurred on whichever is the earliest of:

6.1.1. the signing by the Client of an acceptance certificate for the Bespoke Software following successful completion of the Acceptance Tests; or

6.1.2. the expiry of ten (10) days after the completion of all Acceptance Tests, where the Client has not given any notice under Condition 5.6 above.

6.2. Where Services have been provided to the Client in accordance with this Contract, and the Client has not undertaken any required user testing, preparation of acceptance criteria or test data, acceptance tests, feedback or sign off within a period of fifteen (15) Working Days after expiry of the relevant period provided by this Contract (other than as a consequence of the delay or fault of the Company) the Bespoke Software will be deemed to be accepted.

7. CHANGE CONTROL PROCEDURE

7.1. The Client may, by giving written notice to the Company at any time during the term of this Contract, request a change to the Bespoke Software.

7.2. Within seven (7) days of receipt of such notice, subject to the change being viable, the Company shall, at its rates then in force, prepare for the Client a written quote, chargeable in itself, for any increase or decrease in the sums payable by the Client under this Contract, and of any effect that the requested change would have on the scope of the Services.

7.3. Should the request made not be viable, the Company shall within seven (7) Working days of the request, notify the Client of this, qualifying why and where possible suggest an alternative, also which is chargeable.

7.4. Within seven (7) working days of receipt of the written quote referred to in Condition 7.2, the Client shall inform the Company in writing of whether or not the Client wishes the requested change to be made. If the change is required, the Company shall not make the requested change until the parties have agreed and signed a written agreement specifying, in particular, any changes to the scope of the Services and the charges payable to the Company.

8. MANAGEMENT OF RELATIONSHIP

8.1. The Company shall appoint a Project Manager, and the Company shall procure that the Project Manager shall:-

8.1.1. be responsible for the management of all Services under these Conditions; and

8.1.2. organise and attend regular meetings with the Client's Project Manager as required by the Client from time to time.

8.2. The Client shall appoint a Project Manager and the Client shall procure that he/she shall:-

8.2.1. liaise regularly with the Company's Project Manager; and

8.2.2. attend regular meetings with the Company's Project Manager.

8.3. The Company shall procure that its staff shall, at all times while on the Client's premises, comply with the Client's regulations regarding health, safety, disciplinary and security matters as reasonably notified to them from time to time.

9. INTELLECTUAL PROPERTY RIGHTS

9.1. The Client acknowledges that any and all Intellectual Property Rights in the Tools are owned by and shall remain at all times the exclusive property of the Company.

9.2. The Client will not delete any proprietary marks on any third Party Software.

9.3. If any third party Intellectual Property Rights are used, the Company shall obtain all necessary consents, approvals and licences for the use of the same, and advise the Client of any conditions or terms or costs attached to the same.

9.4. If any part of the Services supplied by the Company to the Client infringes or is alleged to have infringed the Intellectual Property Rights of any third party, the Company will, as soon as is reasonably practicable (unless such material has been obtained from the Client) replace the infringing part or code (as the case may be) at its own expense with non-infringing material.

9.5. Unless otherwise agreed, all Intellectual Property Rights arising from or relating to the Bespoke Software shall remain the exclusive property of the Company.

10. CONFIDENTIALITY

10.1. Each party shall treat the Confidential Information as secret and confidential and, other than as set out in Conditions 10.2 and 10.3, not use, copy or disclose the Confidential Information or any part of the Confidential Information except insofar as may be necessary for the proper fulfilment of its obligation under these Conditions, subject always to the provisions of Condition 10.3.

10.2. The obligations contained in Condition 10.1 shall not apply to information or data which:-

10.2.1. is in or enters the public domain otherwise than by breach of these Conditions;

10.2.2. is known to the recipient prior to its receipt and is at its free disposal;

10.2.3. is received from an independent third party having the right to disclose the same; or

10.2.4. is required to be disclosed by law to any court or other competent authority.

10.3. The Company may summarise its current or past projects for purposes of publicity in various media, unless otherwise agreed in writing with the Client.

10.4. The obligations contained in this Condition 10 shall survive any termination of this Contract for a period of five (5) years.

11. LIMITATION OF LIABILITY

11.1. The express obligations of the Company in condition 2 are, to the fullest extent permitted by law, in lieu of and to the exclusion of any warranty, conditions, term, undertaking or representation of any kind whether express, implied, statutory or otherwise relating to the BESPOKE SOFTWARE or anything supplied or the Services provided (in this CONDITION 11 referred together as "a warranty") including (without limitation) a warranty as to the condition, quality performance or fitness for purpose of any OF the Services or any aspect of them.

11.2. Subject to CONDITION 11.4 the Company will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused whether arising under contract, delict (including negligence) or otherwise including (without limitation) loss of production, loss of or corruption to data, loss of profits, or of contracts, loss of operation time, loss of goodwill or anticipated savings even if the Company has been advised of their possibility.

11.3. subject to condition 11.4 the maximum liability of the company or that of its employees or properly appointed sub-contractors under this contract shall be limited as follows:

11.3.1. for up to £1million in respect of each incident or series of connected incidents giving rise to damage or loss to the Client's tangible property;

11.3.2. in all cases not falling within 11.3.1 £100,000 in aggregate.

11.4. Nothing in these Conditions excludes the liability of the Company:

11.4.1. for death or personal injury caused by the Company's negligence or that of its employees or properly appointed sub-contractors; or

11.4.2. for fraud or fraudulent misrepresentation.

12. CLIENT INDEMNITY

12.1. The Client shall indemnify and hold the Company harmless in respect of any claim, action, proceedings, losses, damages, expenses and costs arising out of or in connection with the Company's use of any Third Party Software in the course of providing the Services provided that:-

12.1.1. the Client is given reasonably prompt notice of such claims;

12.1.2. the Company gives reasonable co-operation to the Client in defending such claims; and

12.1.3. the Client is given sole authority to defend such claims.

12.2. The Client shall defend the Company, its officers, directors, employees and sub-contractors against any claim that the Bespoke Software infringes any Intellectual Property Rights of a Third Party, and shall indemnify the Company for any amounts awarded against the Company in judgment or settlement of such claims, provided that:

12.2.1. the Client is given reasonably prompt notice of such claims;

12.2.2. the Company gives reasonable co-operation to the Client in defending such claims; and

12.2.3. the Client is given sole authority to defend such claims.

12.3. The Client shall indemnify and hold the Company harmless in respect of any claim, action, proceedings, losses or damages, expenses and costs arising out of or in connection with any breach by the Client of this Contract.

12.4. The Client shall reimburse the reasonable costs incurred by the Company in complying with the provision of Conditions 12.1.2 and 12.2.2 above.

13. CANCELLATION AND SUSPENSION OF SERVICES

13.1. The Company reserves the right to suspend provision of the Services in the event that any invoice is overdue, if Condition 2.6 applies, or for health and safety reasons under Condition 3.

13.2. Subject to Condition 13.3, if the Client gives notice in writing cancelling an Order not less than ten days before the Services are due to commence then no charge shall be made by the Company. If the Client gives notice in writing cancelling an order not more than nine days and not less than five days before the Services are due to commence then the Client shall pay the Company one half of the agreed fee or if no fee shall have been agreed one half of the fee that the Company anticipated charging in respect of the Order. In all other cases the Client shall pay the Company the full fees.

13.3. Upon receipt of a valid notice of cancellation the Company shall in its discretion terminate the provisions of the Services.

13.4. The Client shall give the Company a minimum of two Working Days' notice will be required for the postponement of scheduled on-site and off-site Services work, or the Client will be liable to recompense the Company for the notice days at the published rates.

13.5. Once both parties sign the Working Document or Contract then no cancellation of an Order for the Services will be permitted unless the Company agrees in writing.

14. EFFECT OF SUSPENSION OR TERMINATION

Immediately following suspension or termination of the Services (whether partial or in respect of all the Services) the Client shall forthwith pay to the Company all outstanding fees and charges (together with VAT where appropriate) and the quantum meruit amount due in respect of all Services for which no invoice has at the date of suspension been delivered, including any fees and charges payable by instalments. In calculating a quantum meruit charge the Company shall be entitled to take into account any loss of profit suffered by the Company arising out of the suspension or termination as the case may be.

15. SOLICITING OR APPOINTMENT OF STAFF

Whilst the Services are being provided and for a period of six months following the last provision of such Services neither the Client nor the Company shall (whether directly or indirectly) employ or retain the services of any person employed or retained by the other party including sub-contractors where such person has at some time in the

preceding 12 months worked on or been involved in connection with the Services. Unless agreed by both parties before the event has occurred and for the avoidance of doubt the minimum payment to the other party shall be 33% of the person's current annual remuneration or 25% of day rate (7 hours) multiplied by 260.

16. Alternative Dispute Resolution

If a dispute arises between the Company and the Client the parties agree first to use their respective best endeavours in good faith to settle the dispute by mediation before having recourse to litigation or some other dispute resolution procedure. A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute. On receipt of such notice the parties must within seven (7) days of receipt convene a meeting between their respective Chief Executive Officers (or nominated deputy) and the other relevant members of management to attempt to resolve the dispute. If the dispute is not resolved within seven (7) days or within such further period as the parties agree, then the dispute is to be referred to a mediation provider appointed by the parties and in default of agreement by the President for the time being of the Law Society of Scotland.

17. SUB-CONTRACTORS

The Company may appoint sub-contractors for the provision of the Services but such appointment shall not relieve the Company from its obligations under these Conditions.

18. ENTIRE AGREEMENT

This Contract and associated Working Documents contain the whole agreement between the parties in respect of the subject matter of this Contract and each of the parties acknowledges that in entering into this Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the agreement or not) relating to the subject matter of this Contract other than as expressly set out in this Contract.

19. FORCE MAJEURE

Neither the Company nor the Client will be liable to the other for any delay in performance or failure to perform its obligations under these Conditions (other than a payment obligation) due to any course outside its reasonable control. Such delay or failure will not constitute a breach of this Contract and the time for performance of the affected obligation will be extended by such period as is reasonable.

20. NOTICES

All notices which are required to be given shall be in writing and shall be sent to the address of the recipient set out on the Order or such other address as the recipient may designate by notice given in accordance with this Condition. Any such notice may be delivered personally by first class pre-paid letter or facsimile transmission and will be deemed to have been received:

20.1. by hand delivery – at the time of delivery;

20.2. by first class post – 48 hours after the date of mailing;

20.3. by facsimile transmission -immediately on transmission within the Service Hours (the hours of any Saturday Sunday or Public Holiday shall be ignored) provided a confirmatory copy is sent by first class prepaid post or by hand by the end of the next business day.

21. WAIVER

No neglect, forbearance, indulgence of, or giving of extra time by the Company in obtaining payment or enforcing these Conditions strictly or at all shall in any way affect the liability of the Client.

22. SEVERABILITY

If any provision of these Conditions shall be held to be invalid, illegal or unenforceable, then both parties shall be relieved of all rights and obligations arising under such provision but only to the extent that such provision is invalid, illegal or unenforceable and such provision shall be modified to the extent necessary to make it valid, legal and enforceable whilst preserving the intent of the parties. All other provisions of this Contract shall be regarded as fully valid and enforceable unless otherwise proved.

23. DURATION AND TERMINATION

23.1. This Contract shall commence on the date of the last of the parties to sign the front page of this Contract, or on the date the client provides a valid Purchase Order, or a letter or email to the company from an authorised signatory, accepting the related proposal, and shall, subject to provisions on termination contained in Condition 23.2 below continue until the date of Acceptance of the Bespoke Software in accordance with Condition 6 above

23.2. Each party shall be entitled forthwith to terminate this Contract by written notice to the other if:

23.2.1. the other party commits any material breach of any of the provisions of this Contract and, in the case of a breach which is capable of remedy fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or

23.2.2. an encumbrancer takes possession or a receiver, administrative receiver or a judicial factor is appointed over any of the property or assets of the other party; or

23.2.3. the other party becomes insolvent or apparently insolvent or makes any voluntary arrangement with its creditors generally, or becomes subject to an administration order; or

23.2.4. the other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom is solvent and effectively agrees to be bound by or assume the obligations imposed on the other party under this Contract); or

23.2.5. anything analogous to any of the foregoing under the laws of any jurisdiction outwith Scotland occurs in relation to the other party; or

23.2.6. the other party ceases, or threatens to cease, to carry on business.

23.3. For the purpose of Condition 23.2.1 a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

23.4. Termination of the Contract for whatever reason shall not affect the accrued rights of the parties under these Conditions arising out of this Contract as at the date of termination and, in particular but without limitation, the right to recover damages from the other; nor shall termination affect the continuance in force of any provision contained within this Contract which is expressly or by implication intended to continue in force on or after such termination. Conditions 8 (Intellectual Property Rights), 10 (Confidentiality), 11 (Limitation of Liability) and 12 (Client Indemnity) shall survive termination and/or expiry of the Contract and remain in full force and effect.

24. JURISDICTION

This Contract shall be governed by the laws of Scotland and the parties submit to the non-exclusive jurisdiction of the Scottish Courts.

Support services

PART 2

CHESS DIGITAL LIMITED

SERVICES AGREEMENT

between

PUBLIC

(1) CHESS DIGITAL LIMITED, a company incorporated in Scotland under registration number SC296800 and whose registered office is at Suite 2/3, 48 West George Street, Glasgow, G2 1BP ("the Company").

And

(2) THE CLIENT, details of which are set out below.

Company Name:	
Business Address:	
Contact and Position:	
Telephone:	
Email:	

WHEREAS:

(A) The Company has experience, skill and expertise in the development of bespoke business solutions and related consultancy and support services.

(B) The Client wishes to engage the Company to provide such services as are described in Recital (A) above.

(C) The Company has agreed to provide such services to the Client subject to the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. AGREEMENT

This Agreement consists of the terms which are set out below together with the terms and conditions contained in the Schedule and the Appendices which are attached.

2. DEFINITIONS

Words and expressions which are defined shall have the meaning set out in the relevant part of the Schedule.

3. SERVICES

The Company shall provide the following Services to the Client in accordance with the terms and conditions set out in the corresponding parts of the Schedule.

SERVICE	THE SCHEDULE	TICK AS APPROPRIATE
Development of Bespoke Software	Part 1	
Support Services	Part 2	
Supply, Installation, Configuration of Equipment and/or Software and Related Consultancy	Part 3	
Hosting Services	Part 4	

Other Services	Part 5	
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4. CHARGES

The Client shall pay the Charges to the Company in accordance with the provisions of this Agreement. Details of the Charges are set out below.

CHARGES

Chess Digital will provide __ Months of priority support (as below) at a cost £__ Per Month, as a __ month agreement totalling £____ plus VAT

This package entitles the client to _ Hours Priority Response per Calendar month; once these initial hours are exhausted additional time will be charged at the rate of £__ per hour rounded up to the nearest __ Minutes.

5. COMMENCEMENT DATE AND DURATION

The commencement date is _____.

This Agreement shall commence on the date above

or on a date agreed by the the parties to sign this Agreement and shall subsist until terminated in accordance with the provisions of the relevant Schedule(s).

SIGNED for and on behalf of

CHESS DIGITAL LIMITED

at on the

day of ____ in the presence of:-

Signed on behalf of THE CLIENT

at on the

day of ____ in the presence of:-

Authorised Signature.....

Full Name.....

Authorised Signature.....

Full Name.....

Address.....

Address.....

.....

.....

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN CHESS DIGITAL LIMITED AND THE CLIENT

THE SCHEDULE

PART 2

TERMS AND CONDITIONS FOR THE PROVISION OF SUPPORT SERVICES

All contracts for the provision of support services made by Chess Digital, a company incorporated under the laws of Scotland (Company Number SC296800) and having its registered office at Suite 2/3, 48 West George Street, Glasgow, G2 1BP ("the Company") are subject to the following terms and conditions:-

1. INTERPRETATION

1.1. In these terms and conditions, the following words and expressions shall, unless the context otherwise requires, have the following meanings:-

"Account Manager" means the Company's account manager as may be agreed from time to time between the Client and the Company;

"Time-Bank" means a set number of Incidents or Manday Units which are purchased and consumed by the Client, depending on the type of issue or incident arising during the Support Period;

"Bespoke Software" means the computer software, applications, programs, configuration and code specifically developed or produced by the Company for the Client;

"Conditions" means these terms and conditions and includes any special terms and conditions agreed in writing between the Client and the Company;

"Confidential Information" means all confidential information and data received by the Client or the Company relating to the other party, including but not limited to business methods, business plans, trade secrets, other party commercial and financial data, client lists, product lists, lists of suppliers, databases and marketing information;

"Contract" means the contract for the supply of services comprising these Conditions, and any other documents specifically referred to in writing by the Company and the Client as forming part of the contract;

"Charges" means any charges for the provision of the Services set out in the first page of this Contract or as otherwise agreed between the Company and the Client from time to time;

"Client" means the client as described on the front page of this Contract;

"Equipment" means the computer hardware at the Site whether or not such computer hardware is situated at the Site prior to commencement of the Contract, and whether provided for by the Company or not;

"Foundation Systems" means any software not written by the Company but which is used by the Company in the development or provision of any Bespoke Software or is in the possession of the Client including, and for example, Microsoft Project Server, Sharepoint, Infopath, Internet Information Server ("IIS"), .NET and SQL Server;

"Incident" means any ticket/support call relating to an error or issue requiring support and relating only to the Bespoke Software and/or the system being supported;

"Intellectual Property Rights" means patents, registered trade marks, registered designs (and any applications for any of the foregoing) unregistered trade marks, copyright, design rights, database rights, unregistered design rights, know how, confidential information and any other intellectual or industrial property rights existing anywhere in the world, including any domain name registrations;

"Licence Agreement" shall mean any licence or terms under which the Client is permitted to use Third Party Software;

"Manday Unit" means any errors or other issues requiring support other than in relation to the Bespoke Software;

"Order" means the Client's instruction, e-mail or purchase order for the Services (quoting the Company's relevant Working Document reference numbers and revision numbers);

"Out with service hours" with prior agreement, Chess Digital employees will work out with their standard working hours. Chess Digital charges time and a half, of the normal day rate, for completing evening and weekend work and double the standard day rate on a Sunday.

"Project Manager" means the project manager appointed by each of the Company and the Client for the purposes of managing the relationship between the parties under the Contract;

"Services" means the support services described in Condition 2;

"Service Hours" means standard working hours that shall not exceed 7 hours each day from Monday to Friday performed between the hours of 09.00 and 17.00 but shall exclude a 1 hour lunch break and public holidays unless otherwise agreed;

"Site" means the premises of the Company or the Client, or any other premises;

"Specification" means the description (if any) of the Services set out or referred to in any document provided by the Client;

"Software" means the Bespoke Software, the Foundation Systems and the Third Party Software;

"Support Period" means a period of one (1) year from the date of the last party to sign this Contract;

"System" means the Client's operating systems comprising the Equipment and the Software;

"Third Party Licensor" means any third party with which the Client has entered into a License Agreement in terms of which the Client uses software;

"Third Party Software" means the object code form of the computer software, applications or programs used or to be used on the Equipment, including any improvements of the same developed from time to time, where such software has been created by a Third Party Licensor pursuant to the terms of a License Agreement between the Third Party Licensor and the Client;

"Tools" means any software, specifications, reports, diagrams, instructions, materials or other know-how used by the Company for the purposes of providing the Services to the Client;

"Unit" means an Incident or Manday Unit within a Bank;

"Working Days" means any day except Saturdays, Sundays and public holidays; and

"Working Document" means mean any Installation Scoping Document (ISD), Consultants Proposal Document (CPD), Project Initiation Document (PID), or Work Order detailing work to be completed, which may be paper or electronic format (email).

1.2. In these Conditions references to:-

1.2.1. the singular shall include references to the plural and vice versa; and

1.2.2. any gender shall include references to each other gender.

1.3. Condition headings are for convenience of reference only and shall not affect the construction or interpretation of these Conditions.

1.4. No variation of these Conditions (whether in the Schedule or not) shall be valid unless in writing signed by an authorised representative of each of the Client and the Company.

1.5. The Conditions shall prevail over any inconsistent terms or conditions contained in or referred to in the Client's Order, or Working Document.

1.6. For the avoidance of doubt the Client's own terms and conditions of Order shall not be incorporated into the Contract.

2. PROVISION OF THE SERVICES

2.1. The Company will provide the following support models to the Client:-

2.1.1. Model A – Incident base model used for addressing issues and errors only in the Bespoke Software

Under Model A an Incident Unit will be consumed when an Incident is logged and closed off.

2.1.2. Model B – Manday base model used for addressing and correcting issues and errors in any software other than the Bespoke Software including for example the Foundation Systems or any Third Party Software

Under Model B a Manday Unit is consumed when time is spent and logged against related work.

2.2. Support shall be provided through a process of consumption of either an Incident or a Manday Unit from the Bank, depending on whether the support is Model A or Model B. The Bank may be consumed as a mix of Incidents or Manday Units or by all of one Model.

2.3. If during the provision of the Services issues arise or are found to be related to other software or underlying Third Party Software or Foundation Systems, infrastructure or hardware not provided by us, these will be regarded as out of scope of Incidents and will be addressed where practicable by Model B.

2.4. The Company shall provide the Client with technical advice by telephone, fax or e-mail during Service Hours on any Working Day. Such advice will be made available by contacting the Company's helpdesk by the following means:

Telephone	0141 889 3088
Email	support@chessdigital.co.uk

2.5. After an incident is logged on the Company's fault report systems and its category determined, the Company will use all reasonable endeavours to respond within 30 minutes and will endeavour to provide any telephone support within 2 Service Hours. If the fault cannot be fixed during the first telephone conversation then the Company will provide support in accordance with the response times set out below.

2.6. The Company shall provide support to the Client in accordance with the following timescales:

Fault Category	Description	Response Times	Target for clearing outstanding Faults
Critical	Complete system failure or software corrupted so seriously that the System is made inoperable.	2 Service Hours	4 hours from the time the fault is logged
Major	Problems resulting in one or more modules not being able to perform normal function.	4 Service Hours	No longer than 1 Working Day from the time the fault is logged..

Medium	Problems with one module which have no further effect elsewhere on the System.	8 Service Hours	5 Working Days from the time the fault is logged.
Minor	Small faults – which do not threaten the operation of the System.		10 Working Days from the time the fault is logged or on the next planned upgrade. This applies only to Model A and does not apply to Model B.
Amendments	To be determined on an individual basis subject to Change Control procedure under these Conditions.	N/A	On the next planned upgrade

Please note that "Response" refers to all and any action by the Company in response to the communication from the Client whether by telephone, fax, email or site visit. All Response Times are based on responding during Service Hours during Working Days only.

2.7. For the avoidance of doubt the Company shall not be obliged to provide the Services until the Working Document has been signed by both Client and the Company and the Company has received a written Order from the Client.

2.8. The Company's obligation to provide the Services is subject to any applicable Licence Agreements being in force.

2.9. Where the Company has not provided the core, underlying licences or applications to a Client, the Company will not be liable for any faults, bugs or incidents relating to such core software, and any time and resources that have to be applied by the Company to issues found to be or related to, such core software, will be out of the scope of the Services being provided and subject to separate charges.

2.10. Services bought from the Company for and under an annual must be consumed by the Client within the Support Period, or will become null at the renewal/expiry date.. No Services will be provided after expiry of the Support Period in respect of any unused or unallocated work from the period ended.

2.11. The Company will:

2.11.1. use reasonably competent staff in the performance of the Services and perform the Services with reasonable care and skill and if the Company prefers utilise an approved sub-contractor;

2.11.2. use reasonable endeavours to meet any request from the Client for the provision of Services out of the Service Hours;

2.11.3. use reasonable endeavours to remedy free of charge any faulty work done by the Company provided that the Client notifies the Company in writing of the fault within seven days after the work is carried out;

2.11.4. provide proof of qualifications and experience of proposed personnel and to make same subject to interview upon reasonable request from the Client where specialist skills are deemed necessary;

2.11.5. use reasonable endeavours to ensure that personnel assigned to any task remain employed in the performance of that task through to completion and if not possible, use reasonable endeavours to provide a suitable replacement within a reasonable timescale.

2.12. The Company will not be responsible for any delay in the provision of the Services or failure to achieve targets set by the Client arising out of

2.12.1. any breakdown in project management by the Client; or

2.12.2. as a consequence of any breach by the Client of its obligations under these Conditions;

2.12.3. any non acceptance, delay in or non payment by the Client of any charges due under the Contract or as a result of an extension offered.

2.13. The Company shall have no obligation to provide support to the Client if faults arise from:-

2.13.1. misuse, incorrect use of or damage to the Software from whatever cause, including failure or fluctuation or electrical power;

2.13.2. failure to maintain the necessary environmental conditions for use of the Software;

2.13.3. use of the Software in combination with any equipment or software not provided or designated by the Company or any fault in any such equipment or software;

2.13.4. relocation of the Software by any person other than the Company or a person acting under the Company's instructions;

2.13.5. any breach of the Client's obligations under this Contract or having the Software maintained by a third party;

2.13.6. operator error, hosting or infrastructure where not provided by the Company or in the scope of the Services provided.

Any time required to be spent and issues that are found to be related to any of the above issues will be debited from the Bank or at the Company's then standard normal rates if preferred by the Client.

3. THE CLIENT'S DUTIES

3.1. The Client shall:

3.1.1. ensure that any applicable Licence Agreements are valid and in force and permit the Company and its sub-contractors to use, install, and, where necessary, modify, adapt or alter the Third Party Software for the purpose of providing the Services;

3.1.2. use only skilled and competent operatives in relation to the Services;

3.1.3. make available all such facilities as the Company shall reasonably require to provide the Services;

3.1.4. ensure that any equipment or software maintained by a third party on behalf of the Client is both working and configured correctly and promptly to allow the Software to operate correctly and without the intervention of the Company, otherwise the Company will be entitled to recover any costs associated in such involvement, at normal day rates;

3.1.5. not carry out any unauthorised alteration, adaptation or modification of the Software;

3.1.6. permit the Company access to the Site and the Equipment during Service Hours;

3.1.7. ensure that all prerequisites set out in the Working Document are carried out prior to providing the Services;

3.1.8. ensure that all the requirements of health and safety legislation and procedures are and continue to be met with regard to the Site and the Equipment;

3.1.9. maintain adequate insurance in respect of its potential liability to the personnel performing the Services on behalf of the Company;

3.1.10. make available all passwords and/or digital certificates required for the Company to deliver and complete the Services, or supply staff with access to such information at the time the Services are being provided;

3.2. The Client warrants that:

3.2.1. in respect of any Third Party Software:-

3.2.1.1. the Client has entered into and has fully complied (and shall at all times fully comply) with the terms of the relevant Licence Agreement; and

3.2.1.2. the Company and its sub-contractors are permitted to use, modify, adapt, install and alter the Third Party Software for the purpose of providing the Services; or

3.2.1.3. consent to such use, modification, adaptation, installation and alteration by the Company has been obtained from the relevant Third Party Licensor.

3.2.2. the Equipment and the Third Party Software have been and will be used entirely in accordance with manufacturers' instructions and recommendations and that no unauthorised use, alteration, adaptation, installation or modification has taken place or will take place in breach of the Licence Agreements in place;

3.2.3. it has full authority and power to authorise all necessary works required to the Site to be carried out to enable any equipment to be installed and cables laid.

3.3. Where personnel are supplied by the Company on a contract basis and are required to work in accordance with instructions given from time to time by or on behalf of the Client, the Client shall:

3.3.1. ensure that such instructions are provided with sufficient notice and detail to enable completion to the Client's required standards;

3.3.2. approve personnel's leave of absence (which shall not be chargeable), which shall not be unreasonably refused;

3.3.3. approve and signoff the personnel's weekly activity reports on a weekly basis.

3.4. The Client agrees to provide full responses in the shortest timescales to requests for information and assistance and acknowledges that the Company will not be responsible for problems arising as a result of failure to do so.

3.5. Where project management is undertaken by the Client, the Client shall ensure that time scales and targets (including performance-related targets and milestones) it sets are reasonably achieved.

3.6. The Client shall at all times perform its obligations hereunder with due skill and care in a timely, professional and reliable manner and use its reasonable endeavours to comply with any agreed timescales.

3.7. The Client shall promptly sign off the task sheet or Working Document upon completion of the detailed schedule of work or in the case of stage projects at intervals as detailed in the relevant document.

3.8. The Client hereby warrants, represents and undertakes that in so far as the Client is aware, use by the Company of any information, software, hardware, documentation, drawings, specifications, data or other materials made available by the Client to the Company for the purposes of providing the Services will not infringe the Intellectual Property Rights of any third party.

3.9. The Client shall indemnify and hold the Company harmless from any and all loss, costs, damages and expenses arising out of any breach of Condition 3.7.

4. CHARGES

4.1. In consideration for providing the Services to the Client, the Client shall pay the Company the fee set out on the front page of this Contract. The Client shall also pay any cancellation or additional fees that might arise due to breach of the Conditions by the Client. Such fee shall be paid immediately upon signature of this Contract by the Client in advance of providing the Services.

4.2. Any fees and charges arising under this Contract are exclusive of VAT and where appropriate the Client must pay VAT to the Company in addition to such fee or charge.

4.3. Any invoices issued will be paid within 30 days of issue. Reminders and final notices may be issued, however the Company is not obliged to issue these before deeming the Client in breach of these Conditions.

4.4. The Client will in addition to such fees and charges pay interest to the Company upon the amount of any invoice which is overdue from the date of invoice to the date of actual payment at 2% above the base rate of the Royal Bank of Scotland plc per month.

4.5. In consideration of payment of the fee, the Client shall be entitled to consume a set number of support Units from the Bank which can either be under Model A or Model B or a combination of both Models.

4.6. If the initial agreed number of Units is consumed by the Client during the Support Period, additional Units may be purchased to top up the Bank as required. Additional units may be purchased in blocks of 5 at a cost of £3,500 plus VAT for each block of 5.

5. OPERATION OF THE BANK

5.1. Incidents and/or Manday Support Units will be consumed at a minimum of one per month, unless otherwise agreed in writing, whether or not an actual support incident or Unit has been logged. Such Unit will cover the project management and housekeeping work component provided by the Company if this amounts up to one Manday Unit for the relevant month. If the time consumed is over one Unit then this will be logged and debited in addition.

5.2. Any actual time spent by the Company will be logged in 30 minute minimum blocks. The Company shall aim for no more than one Manday Unit per month for project management and housekeeping activities but if additional project management or administration is required or requested by the Client, this will be logged for communication in the next monthly report.

5.3. If a number of Units are not consumed, the Client may elect to request systems development or amendment work on the basis of one day of development consuming 2 Units. If the Client elects to convert Incidents to development days, a bank of one Unit per month should be retained throughout the Support Period. No more than two development days per month are permissible although this may be increased at the sole discretion of the Company. A maximum of 80% of all Units may be converted to development days. Development days can only be during Working Days and provided that at least 14 days' prior written notice is given. If development is requested during the final three months of the Support Period, at least 28 days' prior written notice must be given for consuming any remaining Units.

5.4. All Units must be consumed within the Support Period or they will be forfeited.

5.5. If a number of Incidents or Manday Units occur within the same month, the standard service Unit consumption will form part of the total used. So for example if two Units are consumed via Incidents or Manday Units occurring within a month, the total deduction will be two Units.

5.6. If the Client is requested to investigate an issue, up to one half of a Unit will be deemed to be consumed from the Bank. The Company shall notify the Client whether the output is to be under Model A in which case an Incident Unit will be used from the Bank or a Model B issue in which case a Manday Unit will be deemed to be consumed.

6. CHANGE CONTROL PROCEDURE

6.1. The Client may, by giving written notice to the Company at any time during the term of this Contract, request a change to the Services.

6.2. Within seven (7) days of receipt of such notice, subject to the change being viable, the Company shall, at its rates then in force, prepare for the Client a written quote for any increase or decrease in the sums payable by the Client under this Contract, and of any effect that the requested change would have on the scope of the Services.

6.3. Should the request made not be viable, the Company shall within seven (7) working days of the request, notify the Client of this, qualifying why and where possible suggest an alternative.

6.4. Within seven (7) working days of receipt of the written quote referred to in Condition 7.2, the Client shall inform the Company in writing of whether or not the Client wishes the requested change to be made. If the change is required, the Company shall not make the requested change until the parties have agreed and signed a written agreement specifying, in particular, any changes to the scope of the Services and the charges payable to the Company.

7. MANAGEMENT OF RELATIONSHIP

7.1. The Company shall appoint a Project Manager and the Company shall procure that the Project Manager shall:-

7.1.1. be responsible for the management of all Services under these Conditions; and

7.1.2. organise and attend regular meetings with the Client's Project Manager as required by the Client from time to time.

7.2. The Client shall appoint a Project Manager and the Client shall procure that he/she shall:-

7.2.1. liaise regularly with the Company's Project Manager; and

7.2.2. attend regular meetings with the Company's Project Manager.

7.3. The Company shall procure that its staff shall, at all times while on the Client's premises, comply with the Client's regulations regarding health, safety, disciplinary and security matters as reasonably notified to them from time to time.

8. INTELLECTUAL PROPERTY RIGHTS

8.1. The Client acknowledges that any and all Intellectual Property Rights in the Tools are owned by and shall remain at all times the exclusive property of the Company.

8.2. No title or rights of ownership, copyright or any other Intellectual Property Rights in the Software is or will be transferred to the Client.

8.3. The Client will not delete any proprietary marks on the Software.

8.4. If any third party Intellectual Property Rights are used, the Company shall obtain all necessary consents, approvals and licences for the use of the same, and advise the Client of any conditions or terms or costs attached to the same.

8.5. If any part of the Services supplied by the Company to the Client infringes or is alleged to have infringed the Intellectual Property Rights of any third party, the Company will, as soon as it reasonably practicable (unless such material has been obtained from the Client) replace the infringing part or code (as the case may be) at its own expense with non-infringing material.

9. CONFIDENTIALITY

9.1. Each party shall treat the Confidential Information as secret and confidential and, other than as set out in Conditions 9.1, 9.2 and 9.3, not use, copy or disclose the Confidential Information or any part of the Confidential Information except insofar as may be necessary for the proper fulfilment of its obligation under these Conditions, subject always to the provisions of Condition 9.3.

9.2. The obligations contained in Condition 9.1 shall not apply to information or data which:-

9.2.1. is in or enters the public domain otherwise than by breach of these Conditions;

9.2.2. is known to the recipient prior to its receipt and is at its free disposal;

9.2.3. is received from an independent third party having the right to disclose the same; or

9.2.4. is required to be disclosed by law to any court or other competent authority.

9.3. The Company may summarise its current or past projects for purposes of publicity in various media, unless otherwise agreed in writing with the Client.

9.4. The obligations contained in this Condition 9 shall survive any termination of this Contract for a period of five (5) years.

10. LIMITATION OF LIABILITY

10.1. THE EXPRESS OBLIGATIONS OF THE COMPANY IN CONDITION 2 ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, IN LIEU OF AND TO THE EXCLUSION OF ANY WARRANTY, CONDITIONS, TERM, UNDERTAKING OR REPRESENTATION OF ANY KIND WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE RELATING TO THE BESPOKE SOFTWARE OR ANYTHING SUPPLIED OR THE SERVICES OR OTHER SERVICES PROVIDED (IN THIS CONDITION 10 REFERRED TOGETHER AS "A WARRANTY") INCLUDING (WITHOUT LIMITATION) A WARRANTY AS TO

THE CONDITION, QUALITY PERFORMANCE OR FITNESS FOR PURPOSE OF ANY OF THE SERVICES OR OTHER SERVICES OR ANY ASPECT OF THEM.

10.2. SUBJECT TO CONDITION 10.4 THE COMPANY WILL NOT BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL LOSS, DAMAGE, COST OR EXPENSE OF ANY KIND WHATEVER AND HOWEVER CAUSED WHETHER ARISING UNDER CONTRACT, DELICT (INCLUDING NEGLIGENCE) OR OTHERWISE INCLUDING (WITHOUT LIMITATION) LOSS OF PRODUCTION, LOSS OF OR CORRUPTION TO DATA, LOSS OF PROFITS, OR OF CONTRACTS, LOSS OF OPERATION TIME, LOSS OF GOODWILL OR ANTICIPATED SAVINGS EVEN IF THE COMPANY HAS BEEN ADVISED OF THEIR POSSIBILITY.

10.3. SUBJECT TO CONDITION 10.4 THE MAXIMUM LIABILITY OF THE COMPANY OR THAT OF ITS EMPLOYEES OR PROPERLY APPOINTED SUB-CONTRACTORS UNDER THIS CONTRACT SHALL BE LIMITED AS FOLLOWS:

10.3.1. FOR UP TO £1MILLION IN RESPECT OF EACH INCIDENT OR SERIES OF CONNECTED INCIDENTS GIVING RISE TO DAMAGE OR LOSS TO THE CLIENT'S TANGIBLE PROPERTY;

10.3.2. IN ALL CASES NOT FALLING WITHIN 10.3.1 £100,000 IN AGGREGATE.

10.4. Nothing in these Conditions excludes the liability of the Company:

10.4.1. for death or personal injury caused by the Company's negligence or that of its employees or properly appointed sub-contractors; or

10.4.2. for fraud or fraudulent misrepresentation.

11. CLIENT INDEMNITY

11.1. The Client shall indemnify and hold the Company harmless in respect of any claim, action, proceedings, losses, damages, expenses and costs arising out of or in connection with the Company's use of any Third Party Software in the course of providing the Services provided that:-

11.1.1. the Client is given reasonably prompt notice of such claims;

11.1.2. the Company gives reasonable co-operation to the Client in defending such claims; and

11.1.3. the Client is given sole authority to defend such claims.

11.2. The Client shall indemnify and hold the Company harmless in respect of any claim, action, proceedings, losses or damages, expenses and costs arising out of or in connection with any breach by the Client of this Contract.

11.3. The Client shall reimburse the reasonable costs incurred by the Company in complying with the provision of Conditions 11.1.2 and 11.2.2 above.

12. CANCELLATION AND SUSPENSION OF SERVICES

12.1. The Company reserves the right to suspend provision of the Services in the event that any invoice is overdue, if Condition 2.6 applies, or for health and safety reasons under Condition 3.

12.2. Subject to Condition 12.3, if the Client gives notice in writing cancelling an Order not less than ten days before the Services are due to commence then no charge shall be made by the Company. If the Client gives notice in writing cancelling an order not more than nine days and not less than five days before the Services are due to commence then the Client shall pay the Company one half of the agreed fee or if no fee shall have been agreed one half of the fee that the Company anticipated charging in respect of the Order. In all other cases the Client shall pay the Company the full fees.

12.3. Upon receipt of a valid notice of cancellation the Company shall at its discretion terminate the provision of the Services.

12.4. The Client shall give the Company a minimum of two Working Days' notice will be required for the postponement of scheduled on-site and off-site Services work, or the Client will be liable to recompense the Company for the notice days at the published rates.

12.5. Once both parties sign the Working Document or Contract then no cancellation of an Order for the Services will be permitted unless the Company agrees in writing.

13. EFFECT OF SUSPENSION OR TERMINATION

Immediately following suspension or termination of the Services (whether partial or in respect of all the Services) the Client shall forthwith pay to the Company all outstanding fees and charges (together with VAT where appropriate) and the quantum meruit amount due in respect of all Services for which no invoice has at the date of suspension been delivered, including any fees and charges payable by instalments. In calculating a quantum meruit charge the Company shall be entitled to take into account any loss of profit suffered by the Company arising out of the suspension or termination as the case may be.

14. SOLICITING OR APPOINTMENT OF STAFF

Whilst the Services are being provided and for a period of six months following the last provision of such Services neither the Client nor the Company shall (whether directly or indirectly) employ or retain the services of any person employed or retained by the other party including sub-contractors where such person has at some time in the preceding 12 months worked on or been involved in connection with the Services. Unless agreed by both parties before the event has occurred and for the avoidance of doubt the minimum payment to the other party shall be 33% of the person's current annual remuneration or 25% of day rate (7 hours) multiplied by 260.

15. Alternative Dispute Resolution

If a dispute arises between the Company and the Client the parties agree first to use their respective best endeavours in good faith to settle the dispute by mediation before having recourse to litigation or some other dispute resolution procedure. A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute. On receipt of such notice the parties must within seven (7) days of receipt convene a meeting between their respective Chief Executive Officers (or nominated deputy) and the other relevant members of management to attempt to resolve the dispute. If the dispute is not resolved within seven (7) days or within such further period as the parties agree, then the dispute is to be referred to a mediation provider appointed by the parties and in default of agreement by the President for the time being of the Law Society of Scotland.

16. SUB-CONTRACTORS

The Company may appoint sub-contractors for the provision of the Services but such appointment shall not relieve the Company from its obligations under these Conditions.

17. ENTIRE AGREEMENT

This Contract and associated Working Documents contain the whole agreement between the parties in respect of the subject matter of this Contract and each of the parties acknowledges that in entering into this Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the agreement or not) relating to the subject matter of this Contract other than as expressly set out in this Contract.

18. FORCE MAJEURE

Neither the Company nor the Client will be liable to the other for any delay in performance or failure to perform its obligations under these Conditions (other than a payment obligation) due to any course outside its reasonable control. Such delay or failure will not constitute a breach of this Contract and the time for performance of the affected obligation will be extended by such period as is reasonable.

19. NOTICES

All notices which are required to be given shall be in writing and shall be sent to the address of the recipient set out on the Order or such other address as the recipient may designate by notice given in accordance with this Condition. Any such notice may be delivered personally by first class pre-paid letter or facsimile transmission and will be deemed to have been received:

19.1. by hand delivery – at the time of delivery;

19.2. by first class post – 48 hours after the date of mailing;

19.3. by facsimile transmission -immediately on transmission within the Service Hours (the hours of any Saturday Sunday or Public Holiday shall be ignored) provided a confirmatory copy is sent by first class prepaid post or by hand by the end of the next business day.

20. WAIVER

No neglect forbearance indulgence of or giving of extra time by the Company in obtaining payment or enforcing these Conditions strictly or at all shall in any way affect the liability of the Client.

21. SEVERABILITY

If any provision of these Conditions shall be held to be invalid, illegal or unenforceable, then both parties shall be relieved of all rights and obligations arising under such provision but only to the extent that such provision is invalid, illegal or unenforceable and such provision shall be modified to the extent necessary to make it valid, legal and enforceable whilst preserving the intent of the parties. All other provisions of this Contract shall be regarded as fully valid and enforceable unless otherwise proved.

22. DURATION AND TERMINATION

22.1. This Contract shall commence on the date of the last of the parties to sign the front page of this Contract and shall, subject to provisions on termination contained in Condition 22.2 below continue the Support Period and hereafter may be extended subject to the agreement of both parties.

22.2. Each party shall be entitled forthwith to terminate this Contract by written notice to the other if:

22.2.1. the other party commits any material breach of any of the provisions of this Contract and, in the case of a breach which is capable of remedy fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or

22.2.2. an encumbrancer takes possession or a receiver, administrative receiver or a judicial factor is appointed over any of the property or assets of the other party; or

22.2.3. the other party becomes insolvent or apparently insolvent or makes any voluntary arrangement with its creditors generally, or becomes subject to an administration order; or

22.2.4. the other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom is solvent and effectively agrees to be bound by or assume the obligations imposed on the other party under this Contract); or

22.2.5. anything analogous to any of the foregoing under the laws of any jurisdiction outwith Scotland occurs in relation to the other party; or

22.2.6. the other party ceases, or threatens to cease, to carry on business.

22.3. For the purpose of Condition 23.2.1 a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

22.4. Either party may terminate provision of the Services during the Support Period without cause by giving at least three (3) months' written notice to the other party.

22.5. Upon termination of the Contract, the Client shall within fourteen (14) days cease all use of any Company Software related to the Services and not owned by the Client and return the Company Software (and all copies of the whole or any part thereof) to the Company, or if requested by the Company shall destroy all copies of the same.

22.6. Termination of the Contract for whatever reason shall not affect the accrued rights of the parties under these Conditions arising out of this Contract as at the date of termination and, in particular but without limitation, the right to recover damages from the other; nor shall termination affect the continuance in force of any provision contained within this Contract which is expressly or by implication intended to continue in force on or after such termination. Conditions 8 (Intellectual Property Rights), 9 (Confidentiality), 10 (Limitation of Liability) and 11 (Client Indemnity) shall survive termination and/or expiry of the Contract and remain in full force and effect.

23. JURISDICTION

This Contract shall be governed by the laws of Scotland and the parties submit to the non-exclusive jurisdiction of the Scottish Courts.

Supply, installation, configuration of equipment and/or software and related consultancy.

PART 3

CHESS DIGITAL LIMITED

SERVICES AGREEMENT

between

(1) CHESS DIGITAL LIMITED, a company incorporated in Scotland under registration number SC296800 and whose registered office is at Suite 2/3, 48 West George Street, Glasgow, G2 1BP ("the Company").

And

(2) THE CLIENT, details of which are set out below.

Company Name:	
Business Address:	
Contact and Position:	

Telephone:	
Email:	

WHEREAS:

(A) The Company has experience, skill and expertise in the development of bespoke business solutions and related consultancy and support services.

(B) The Client wishes to engage the Company to provide such services as are described in Recital (A) above.

(C) The Company has agreed to provide such services to the Client subject to the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. AGREEMENT

This Agreement consists of the terms which are set out below together with the terms and conditions contained in the Schedule and the Appendices which are attached.

2. DEFINITIONS

Words and expressions which are defined shall have the meaning set out in the relevant part of the Schedule.

3. SERVICES

The Company shall provide the following Services to the Client in accordance with the terms and conditions set out in the corresponding parts of the Schedule.

SERVICE	THE SCHEDULE	TICK AS APPROPRIATE
Development of Bespoke Software	Part 1	
Support Services	Part 2	
Supply, Installation, Configuration of Equipment and/or Software and Related Consultancy	Part 3	
Hosting Services	Part 4	
Other Services	Part 5	

4. CHARGES

The Client shall pay the Charges to the Company in accordance with the provisions of this Agreement. Details of the Charges are set out below.

CHARGES

5. COMMENCEMENT DATE AND DURATION

This Agreement shall commence on the date of the last of the parties to sign this Agreement and shall subsist until terminated in accordance with the provisions of the relevant Schedule(s).

<p>SIGNED for and on behalf of CHESS DIGITAL LIMITED at on the day of ___ in the presence of: Authorised Signature..... Full Name..... Address.....</p>	<p>Signed on behalf of THE CLIENT at on the day of ___ in the presence of: Authorised Signature..... Full Name..... Address.....</p>
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THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN CHESS DIGITAL LIMITED AND THE CLIENT

THE SCHEDULE

PART 3

TERMS AND CONDITIONS FOR INSTALLATION AND CONFIGURATION SERVICES AND RELATED PROFESSIONAL SERVICES CONSULTANCY

All contracts for the provision of installation, configuration and related consultancy services made by Chess Digital, a company incorporated under the laws of Scotland (Company Number SC296800) and having its registered office at Suite 2/3, 48 West George Street, Glasgow, G2 1BP ("the Company") are subject to the following terms and conditions:-

1. INTERPRETATION

1.1. In these terms and conditions, the following words and expressions shall, unless the context otherwise requires, have the following meanings:

"Account Manager" means the Company's account manager as may be agreed from time to time between the Client and the Company.

"Bespoke Software" means any computer software, applications or programs which have been developed by the Company for the Client.

"Conditions" means these terms and conditions and includes any special terms and conditions agreed in writing between the Client and the Company.

"Confidential Information" means all confidential information and data received by the Client or the Company relating to the other party, including but not limited to business methods, business plans, trade secrets, other party commercial and financial data, Client lists, product lists, lists of suppliers, databases and marketing information.

"Contract" means the contract for the supply of services comprising these Conditions, and any other documents specifically referred to in writing by the Company and the Client as forming part of the contract.

"Charges" means any charges for the provision of the Services set out in the first page of this Contract or as otherwise agreed between the Company and the Client from time to time.

"Client" means the client as described on the front page of this Contract.

"Deliverables" means all computer hardware equipment, products, documents and materials developed or provided by the Company in relation to the provision of the Services.

"Equipment" means the computer hardware at the Site whether or not such computer hardware is situated at the Site prior to commencement of the Contract, and whether provided for by the Company or not.

"Intellectual Property Rights" means patents, registered trademarks, registered designs (and any applications for any of the foregoing) unregistered trademarks, copyright, design rights, database rights, unregistered design rights, know how, confidential information and any other intellectual or industrial property rights existing anywhere in the world, including any domain name registrations.

"Licence Agreement" shall mean any licence or terms under which the Client is permitted to use Third Party Software.

"Order" means the Client's instruction, e-mail or purchase order for the Services (quoting the Company's relevant Working Document reference numbers and revision numbers).

"Out with service hours" with prior agreement, Chess Digital employees will work out with their standard working hours. Chess Digital charges time and a half, of the normal day rate, for completing evening and weekend work and double the standard day rate on a Sunday.

"Project Manager" means the project manager appointed by each of the Company and the Client for the purposes of managing the relationship between the parties under the Contract.

"Services" means installation, configuration and related consultancy services provided by the Company on behalf of the Client.

"Service Hours" means standard working hours that shall not exceed 7 hours each day from Monday to Friday performed between the hours of 09.00 and 17.00 but shall exclude a 1 hour lunch break and public holidays unless otherwise agreed.

"Site" means the premises of the Company or the Client, or any other premises, where the Services are to be provided.

"Software" means the Bespoke Software and the Third Party Software.

"Specification" means the description (if any) of the Services set out or referred to in any Working Document.

"Systems" means Equipment, Bespoke Software, Third Party Software or any other software owned or used by the Client in relation to which any Services are to be provided by the Company.

"Third Party Licensor" means any third party with which the Client has entered into a Licence Agreement in terms of which the Client uses software.

"Third Party Software" means the object code form of the computer software, applications or programs used or to be used on the Equipment or which the Company shall make available to the Client during the course of providing the Services, including any improvements of the same developed from time to time, where such software has been created by a Third Party Licensor pursuant to the terms of a Licence Agreement between the Third Party Licensor and the Client.

"Tools" means any software, specifications, reports, diagrams, instructions, materials or other know-how used by the Company for the purposes of providing the Services to the Client.

"Working Days" means any day except Saturdays, Sundays and public holidays.

"Working Document" means mean any Installation Scoping Document (ISD), Consultants Proposal Document (CPD), Project Initiation Document (PID), or Work Order detailing work to be completed, which may be paper or electronic format (email).

1.2. In these Conditions references to:

1.2.1. The singular shall include references to the plural and vice versa; and

1.2.2. Any gender shall include references to each other gender.

1.3. Condition headings are for convenience of reference only and shall not affect the construction or interpretation of these Conditions.

1.4. No variation of these Conditions (whether in the Schedule or not) shall be valid unless in writing and signed by an authorised representative of each of the Client and the Company.

1.5. The Conditions shall prevail over any inconsistent terms or conditions contained in or referred to in the Client's Order, or Working Document.

1.6. For the avoidance of doubt the Client's own terms and conditions of Order shall not be incorporated into the Contract.

2. PROVISION OF THE SERVICES

2.1. Unless otherwise agreed between the Company and the Client the Services will be provided during Service Hours at the Site and on any Equipment as specified in the Working Document.

2.2. For the avoidance of doubt the Company shall not be obliged to provide the Services until the Working Document has been signed by both Client and the Company and the Company has received a written Order from the Client.

2.3. The Company's obligation to provide the Services is subject to any applicable Licence Agreements being in force.

2.4. Where the Company has not provided the core, underlying licenses or applications to a Client, the Company will not be liable for any faults, bugs or incidents relating to such core software, and any time and resources that have to be applied by the Company to issues found to be or related to, such core software, will be out of the scope of the Services being provided and subject to separate charges.

2.5. Services bought from the Company must be consumed by the Client within 12 months from the date of signing the Contract. If unused or unallocated after 12 months, the Contract will expire and be rendered null and void.

2.6. The Company will:

2.6.1. use reasonably competent staff in the performance of the Services and perform the Services with reasonable care and skill and if the Company prefers utilise an approved sub-contractor;

2.6.2. use reasonable endeavours to meet a request from the Client for the provision of Services outside of the Service Hours;

2.6.3. use reasonable endeavours to remedy free of charge any faulty work done by the Company provided that the Client notifies the Company in writing of the fault within seven days after the work is carried out;

2.6.4. provide proof of qualifications and experience of proposed personnel on request and to make same subject to interview upon reasonable request from the Client where specialist skills are deemed necessary;

2.6.5. use reasonable endeavours to ensure that personnel assigned to any task remain employed in the performance of that task through to completion and if not possible, use reasonable endeavours to provide a suitable replacement within a reasonable timescale.

2.7. The Company will not be responsible for any delay in the provision of the Services or failure to achieve targets set by the Client arising out of

2.7.1. any breakdown in project management by the Client; or

2.7.2. as a consequence of any breach by the Client of its obligations under these Conditions.

2.7.3. any non acceptance, delay in or non payment by the Client of any charges due under the Contract or as a result of an extension offered.

3. THE CLIENT'S DUTIES

3.1. The Client shall:

3.1.1. ensure that any applicable Licence Agreements are valid and in force and permit the Company and its sub-contractors to use, install, and, where necessary, modify, adapt or alter the Third Party Software for the purpose of providing the Services;

3.1.2. use only skilled and competent operatives in relation to the Services;

3.1.3. make available all such facilities as the Company shall reasonably require to provide the Services;

3.1.4. ensure that any equipment or software maintained by a third party on behalf of the Client is both working and configured correctly and promptly to allow the Software to operate correctly and without the intervention of the Company, otherwise the Company will be entitled to recover any costs associated in such involvement, at normal day rates;

3.1.5. not carry out any unauthorised alteration adaptation or modification of the Software ;

3.1.6. permit the Company access to the Client Site and the Equipment during Service Hours;

3.1.7. ensure that all prerequisites set out in the Working Document are carried out prior to the Company commencing work or going onto the Client Site;

3.1.8. ensure that all the requirements of health and safety legislation and procedures are and continue to be met with regard to the Site and the Equipment;

3.1.9. maintain adequate insurance in respect of its potential liability to the personnel performing the Services on behalf of the Company;

3.1.10. make available all passwords and/or digital certificates required for the Company to deliver and complete the Services, or supply staff with access to such information at the time the Services are being provided;

3.1.11. only dispose of packaging for Deliverables that are accepted as being in full working order.

3.2. The Client warrants that:

3.2.1. in respect of any Third Party Software:-

3.2.1.1. the Client has entered into and has fully complied (and shall at all times fully comply) with the terms of the relevant Licence Agreement; and

3.2.1.2. the Company and its sub-contractors are permitted to use, modify, adapt, install and alter the Third Party Software for the purpose of providing the Services; or

3.2.1.3. consent to such use, modification, adaptation, installation and alteration by the Company has been obtained from the relevant Third Party Licensor.

3.2.2. the Equipment and the Third Party Software have been and will be used entirely in accordance with manufacturers' instructions and recommendations and that no unauthorised use, alteration, adaptation, installation or modification has taken place or will take place in breach of the Licence Agreements in place;

3.2.3. it has full authority and power to authorise all necessary works required to the Site to be carried out to enable any equipment to be installed and cables laid.

3.3. Where personnel are supplied by the Company on a contract basis and are required to work in accordance with instructions given from time to time by or on behalf of the Client, the Client shall:

3.3.1. ensure that such instructions are provided with sufficient notice and detail to enable completion to the Client's required standards;

3.3.2. approve personnel's leave of absence (which shall not be chargeable), which shall not be unreasonably refused;

3.3.3. approve and signoff the personnel's weekly activity reports on a weekly basis.

3.4. The Client agrees to provide full responses in the shortest timescales to requests for information and assistance and acknowledges that the Company will not be responsible for problems arising as a result of failure to do so.

3.5. Where project management is undertaken by the Client, the Client shall ensure that time scales and targets (including performance-related targets and milestones) it sets are reasonably achieved.

3.6. The Client shall at all times perform its obligations hereunder with due skill and care in a timely professional and reliable manner, use its reasonable endeavours to comply with any agreed timescales, and to respond to Company requests in under 5 Working Days.

3.7. The Client shall promptly sign off the task sheet or Working Document upon completion of the detailed schedule of work or in the case of stage projects at intervals as detailed in the relevant document.

3.8. The Client hereby warrants, represents and undertakes that in so far as the Client is aware, use by the Company of any information, software, hardware, documentation, drawings, specifications, data or other materials made available by the Client to the Company for the purposes of providing the Services will not infringe the Intellectual Property Rights of any third party.

3.9. The Client shall indemnify and hold the Company harmless from any and all loss, costs, damages and expenses arising out of any breach of Condition 3.7.

4. CHARGES

4.1. In consideration for providing the Services to the Client, the Client shall pay the Company the charges set out on the front page of this Contract together with the requisite deposit plus any cancellation or additional fees that might arise due to breach of the Conditions by the Client.

4.2. Any fees and charges arising under this Contract are exclusive of VAT and where appropriate the Client must pay VAT to the Company in addition to such fee or charge.

4.3. Service fees and charges will be paid by the Client within 30 days of invoice, or at any other stipulated point in the Contract, together with VAT at the prevailing rate.

4.4. Invoices will normally be provided within 30 days of the amount becoming due. Reminders and final notices may be issued, however the Company is not obliged to issue these before deeming the Client in breach of these Conditions.

4.5. The Client will in addition to such fees and charges pay interest to the Company upon the amount of any invoice which is overdue from the date of invoice to the date of actual payment at 2% above the base rate of the Royal Bank of Scotland plc per month.

5. ACCEPTANCE TESTING

5.1. If relevant, the Supplier shall, prior to completion of the Services, run system testing of any Systems at its premises. The Company agrees to grant such access to its premises to such representatives of the Client as the Client reasonably requires to be present at the relevant system testing.

5.2. Upon completion of the testing by the Company detailed in Condition 25.1, the Company shall deliver to the Client a CD-ROM, or other suitable media version of any Software for installation at the Client's Site by the Client or Company. Once the Software has been installed, the Client shall notify the Company and the parties shall work together in good faith to conduct the Acceptance Tests.

5.3. The Acceptance Tests shall take the form to be agreed between the parties in good faith. During a period of ten (10) Working Days following the last date of signature of this Contract, the Client shall deliver to the Company proposed acceptance criteria and test data. If requested by the Client at any time after signature of this Contract, the Company shall promptly provide the Client with reasonable assistance in the preparation of such acceptance criteria and test data. The parties shall use reasonable endeavours to agree the proposed acceptance criteria and test data as soon as possible after the date of delivery to the Company, and once agreed in writing by both parties, such proposed acceptance criteria and test data shall constitute the "Acceptance Tests". If the parties fail to agree on the form of Acceptance Tests within a further period of fifteen (15) Working Days or such other period as may be agreed between the parties, either party may terminate this Contract with immediate effect.

5.4. The Acceptance Tests shall be started as soon as reasonably possible after installation and shall be run continuously during Service Hours. The Client shall give the Company at least twenty four (24) hours' notice of the start of the Acceptance Tests and permit the other Company to observe all or any part of the testing.

5.5. If the Systems (or any part thereof) fails to pass the Acceptance Tests, the Client shall, within five (5) days from the completion of the Acceptance Tests or any part of these tests, provide notice to the Company this effect, giving details of such failure(s). The Company shall remedy the defects and deficiencies and the relevant Acceptance Test(s) shall be repeated as soon as reasonably possible.

5.6. If the Systems (or any part thereof) fails to pass any repeated Acceptance Test(s) within four (4) weeks from the date of the first Acceptance Tests:

5.6.1. the Client may, by written notice to the Company, choose at its sole discretion to fix a new date for carrying out further tests on the Systems on the same terms and conditions. If the Systems fails such further tests then the Client may request a repeat test under this Condition 5.6.1 or to proceed under Condition 5.6.2;

5.6.2. following the procedure under Condition 5.6.1 the Client may accept the Systems subject to, agreement between the parties of amended acceptance criteria and/or test data, amended Specification and/or alteration in the sums payable under this Contract as, after taking into account all the relevant circumstances, is reasonable; or

5.6.3. if the Company is unable to correct defects of a nature deeming the Systems not fit for purpose within a period of three (3) months from the commencement of Acceptance Tests under Condition 5.4, to reject the Systems as not being in conformity with the Agreement, in which event the Client may terminate this Contract.

6. ACCEPTANCE OF THE SYSTEMS

6.1. Acceptance of the Systems shall be deemed to have occurred on whichever is the earliest of:

6.1.1. the signing by the Client of an acceptance certificate for the Systems following successful completion of the Acceptance Tests; or

6.1.2. the expiry of ten (10) days after the completion of all Acceptance Tests, where the Client has not given any notice under Condition 5.6 above.

6.2. Where Services have been provided to the Client in accordance with this Contract, and the Client has not undertaken any required user testing, preparation of acceptance criteria or test data, acceptance tests, feedback or sign off within a period of fifteen (15) Working Days after expiry of the relevant period provided by this Contract (other than as a consequence of the delay or fault of the Company) the Systems will be deemed to be accepted.

7. CHANGE CONTROL PROCEDURE

7.1. The Client may, by giving written notice to the Company at any time during the term of this Contract, request a change to the scope of the Services.

7.2. Within seven (7) days of receipt of such notice, subject to the change being viable, the Company shall, at its rates then in force, prepare for the Client a written quote, chargeable in itself, for any increase or decrease in the sums payable by the Client under this Contract, and of any effect that the requested change would have on the scope of the Services.

7.3. Should the request made not be viable, the Company shall within seven (7) working days of the request, notify the Client of this, qualifying why and where possible suggest an alternative, also which is chargeable.

7.4. Within seven (7) working days of receipt of the written quote referred to in Condition 7.2, the Client shall inform the Company in writing of whether or not the Client wishes the requested change to be made. If the change is required, the Company shall not make the requested change until the parties have agreed and signed a written agreement specifying, in particular, any changes to the scope of the Services and the charges payable to the Company.

8. MANAGEMENT OF RELATIONSHIP

8.1. The Company shall appoint an Account Manager and/or Project Manager, and the Company shall procure that the Account Manager shall:

8.1.1. be responsible for the management of all Services under these Conditions; and

8.1.2. organise and attend regular meetings with the Client's Project Manager as required by the Client from time to time.

8.2. The Client shall appoint a Project Manager and the Client shall procure that he/she shall:

8.2.1. liaise regularly with the Company's Account Manager; and

8.2.2. attend regular meetings with the Company's Account Manager.

8.3. The Company shall procure that its staff shall, at all times while on the Client's premises, comply with the Client's regulations regarding health, safety, disciplinary and security matters as reasonably notified to them from time to time.

9. INTELLECTUAL PROPERTY RIGHTS

9.1. The Client acknowledges that any and all Intellectual Property Rights in the Tools are owned by and shall remain at all times the exclusive property of the Company, unless otherwise agreed.

9.2. If any third party Intellectual Property Rights are used, the Company shall obtain all necessary consents, approvals and licences for the use of the same, and advise the Client of any conditions or terms or costs attached to the same.

9.3. If any part of the Services supplied by the Company to the Client infringes or is alleged to have infringed the Intellectual Property Rights of any third party, the Company will, as soon as it reasonably practicable (unless such material has been obtained from the Client) replace the infringing part or code (as the case may be) at its own expense with non-infringing material.

9.4. Unless otherwise agreed, all Intellectual Property Rights arising from or relating to the Bespoke Software shall remain the exclusive property of the Company.

10. CONFIDENTIALITY

10.1. Each party shall treat the Confidential Information as secret and confidential and, other than as set out in Conditions 10.2 and 10.3, not use, copy or disclose the Confidential Information or any part of the Confidential Information except insofar as may be necessary for the proper fulfilment of its obligation under these Conditions, subject always to the provisions of Condition 10.3.

10.2. The obligations contained in Condition 10.1 shall not apply to information or data which:

10.2.1. is in or enters the public domain otherwise than by breach of these Conditions;

10.2.2. is known to the recipient prior to its receipt and is at its free disposal;

10.2.3. is received from an independent third party having the right to disclose the same; or

10.2.4. is required to be disclosed by law to any court or other competent authority.

10.3. The Company summarise its current or past projects for purposes of publicity in various media, unless otherwise agreed in writing with the Client.

10.4. The obligations contained in this Condition 10 shall survive any termination of this Contract for a period of five (5) years.

11. LIMITATION OF LIABILITY

11.1. The express obligations of the Company in condition 2 are, to the fullest extent permitted by law, in lieu of and to the exclusion of any warranty, conditions, term, undertaking or representation of any kind whether express, implied, statutory or otherwise relating to the BESPOKE SOFTWARE or anything supplied or the Services or Other Services provided (in this CONDITION 9 referred together as "a warranty") including (without limitation) a warranty as to the condition, quality performance or fitness for purpose of any OF the Services or Other Services or any aspect of them.

11.2. Subject to CONDITION 9.4 the Company will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused whether arising under contract, delict (including negligence) or otherwise including (without limitation) loss of production, loss of or corruption to data, loss of profits, or of contracts, loss of operation time, loss of goodwill or anticipated savings even if the Company has been advised of their possibility.

11.3. subject to condition 9.4 the maximum liability of the company or that of its employees or properly appointed sub-contractors under this contract shall be limited as follows:

11.3.1. for up to £1million in respect of each incident or series of connected incidents giving rise to damage or loss to the Client's tangible property;

11.3.2. in all cases not falling within 9.3.1 £100,000 in aggregate.

11.4. Nothing in these Conditions excludes the liability of the Company:

11.4.1. for death or personal injury caused by the Company's negligence or that of its employees or properly appointed sub-contractors; or

11.4.2. for fraud or fraudulent misrepresentation.

12. CLIENT INDEMNITY

12.1. The Client shall indemnify and hold the Company harmless in respect of any claim, action, proceedings, losses, damages, expenses and costs arising out of or in connection with the Company's use of any Third Party Software in the course of providing the Services provided that:

12.1.1. the Client is given reasonably prompt notice of such claims;

12.1.2. the Company gives reasonable co-operation to the Client in defending such claims; and

12.1.3. the Client is given sole authority to defend such claims.

12.2. The Client shall indemnify and hold the Company harmless in respect of any claim, action, proceedings, losses or damages, expenses and costs arising out of or in connection with any breach by the Client of this Contract.

12.3. The Client shall reimburse the reasonable costs incurred by the Company in complying with the provision of Conditions 10.1.2 and 10.2.2 above.

13. CANCELLATION AND SUSPENSION OF SERVICES

13.1. The Company reserves the right to suspend provision of the Services in the event that any invoice is overdue, if Condition 2.6 applies, or for health and safety reasons under Condition 3.

13.2. Subject to Condition 11.3, if the Client gives notice in writing cancelling an Order not less than ten days before the Services are due to commence then no charge shall be made by the Company. If the Client gives notice in writing cancelling an order not more than nine days and not less than five days before the Services are due to commence then the Client shall pay the Company one half of the agreed fee or if no fee shall have been agreed one half of the fee that the Company anticipated charging in respect of the Order. In all other cases the Client shall pay the Company the full fees.

13.3. Upon receipt of a valid notice of cancellation the Company shall at its discretion terminate the provisions of the Services.

13.4. The Client shall give the Company a minimum of two Working Days' notice will be required for the postponement of scheduled on-site and off-site Services work, or the Client will be liable to recompense the Company for the notice days at the published rates.

13.5. Once both parties sign the Working Document or Schedule then no cancellation of an Order for the Services will be permitted unless the Company agrees in writing.

14. EFFECT OF SUSPENSION OR TERMINATION

Immediately following suspension or termination of the Services (whether partial or in respect of all the Services) the Client shall forthwith pay to the Company all outstanding fees and charges (together with VAT where appropriate) and the quantum meruit amount due in respect of all Services for which no invoice has at the date of suspension been delivered, including any fees and charges payable by instalments. In calculating a quantum meruit charge the Company shall be entitled to take into account any loss of profit suffered by the Company arising out of the suspension or termination as the case may be.

15. SOLICITING OR APPOINTMENT OF STAFF

Whilst the Services are being provided and for a period of six months following the last provision of such Services neither the Client nor the Company shall (whether directly or indirectly) employ or retain the services of any person employed or retained by the other party including sub-contractors where such person has at some time in the preceding 12 months worked on or been involved in connection with the Services. Unless agreed by both parties before the event has occurred and for the avoidance of doubt the minimum payment to the other party shall be 33% of the person's current annual remuneration or 25% of day rate (7 hours) multiplied by 260.

16. Alternative Dispute Resolution

If a dispute arises between the Company and the Client the parties agree first to use their respective best endeavours in good faith to settle the dispute by mediation before having recourse to litigation or some other dispute resolution procedure. A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute. On receipt of such notice the parties must within seven (7) days of receipt convene a meeting between their respective Chief Executive Officers (or nominated deputy) and the other relevant members of management to attempt to resolve the dispute. If the dispute is not resolved within seven (7) days or within such further period as the parties agree, then the dispute is to be referred to a mediation provider appointed by the parties and in default of agreement by the President for the time being of the Law Society of Scotland.

17. SUB-CONTRACTORS

The Company may appoint sub-contractors for the provision of the Services but such appointment shall not relieve the Company from its obligations under these Conditions.

18. ENTIRE AGREEMENT

This Contract and associated Working Documents contains the whole agreement between the parties in respect of the subject matter of this Contract and each of the parties acknowledges that in entering into this Contract it does not rely

on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the agreement or not) relating to the subject matter of this Contract other than as expressly set out in this Contract.

19. FORCE MAJEURE

Neither the Company nor the Client will be liable to the other for any delay in performance or failure to perform its obligations under these Conditions (other than a payment obligation) due to any course outside its reasonable control. Such delay or failure will not constitute a breach of this Contract and the time for performance of the affected obligation will be extended by such period as is reasonable.

20. NOTICES

All notices which are required to be given shall be in writing and shall be sent to the address of the recipient set out on the Order or such other address as the recipient may designate by notice given in accordance with this Condition. Any such notice may be delivered personally by first class pre-paid letter or facsimile transmission and will be deemed to have been received:

20.1. by hand delivery – at the time of delivery;

20.2. by first class post – 48 hours after the date of mailing;

20.3. by facsimile transmission -immediately on transmission within the Service Hours (the hours of any Saturday Sunday or Public Holiday shall be ignored) provided a confirmatory copy is sent by first class prepaid post or by hand by the end of the next business day.

21. WAIVER

No neglect, forbearance, indulgence of, or giving of extra time by the Company in obtaining payment or enforcing these Conditions strictly or at all shall in any way affect the liability of the Client.

22. SEVERABILITY

If any provision of these Conditions shall be held to be invalid, illegal or unenforceable, then both parties shall be relieved of all rights and obligations arising under such provision but only to the extent that such provision is invalid, illegal or unenforceable and such provision shall be modified to the extent necessary to make it valid, legal and enforceable whilst preserving the intent of the parties. All other provisions of this Contract shall be regarded as fully valid and enforceable unless otherwise proved.

23. DURATION AND TERMINATION

23.1. This Contract shall commence on the date of the last of the parties to sign the front page of this Contract and shall, subject to provisions on termination contained in Condition 23.2 below continue until

23.2. Each party shall be entitled forthwith to terminate this Contract by written notice to the other if:

23.2.1. the other party commits any material breach of any of the provisions of this Contract and, in the case of a breach which is capable of remedy fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or

23.2.2. an encumbrancer takes possession or a receiver, administrative receiver or a judicial factor is appointed over any of the property or assets of the other party; or

23.2.3. the other party becomes insolvent or apparently insolvent or makes any voluntary arrangement with its creditors generally, or becomes subject to an administration order; or

23.2.4. the other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom is solvent and effectively agrees to be bound by or assume the obligations imposed on the other party under this Contract); or

23.2.5. anything analogous to any of the foregoing under the laws of any jurisdiction outwith Scotland occurs in relation to the other party; or

23.2.6. the other party ceases, or threatens to cease, to carry on business.

23.3. For the purpose of Condition 21.2.1 a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

23.4. Either party may terminate provision of the Services without cause by giving at least three (3) months' written notice to the other party.

23.5. Upon termination of the Contract, the Client shall within fourteen (14) days cease all use of the Company Software and return the Company Software (and all copies of the whole or any part thereof) to the Company, or if requested by the Company shall destroy all copies of the same.

23.6. Termination of the Contract for whatever reason shall not affect the accrued rights of the parties under these Conditions arising out of this Contract as at the date of termination and, in particular but without limitation, the right to recover damages from the other; nor shall termination affect the continuance in force of any provision contained within this Contract which is expressly or by implication intended to continue in force on or after such termination. Conditions 7 (Intellectual Property Rights), 8 (Confidentiality), 9 (Limitation of Liability) and 10 (Client Indemnity) shall survive termination and/or expiry of the Contract and remain in full force and effect.

24. JURISDICTION

This Contract shall be governed by the laws of Scotland and the parties submit to the non-exclusive jurisdiction of the Scottish Courts.

Hosting Services

PART 4

Chess Digital Limited

Hosting Agreement

between

(1) CHESS DIGITAL LIMITED, a company incorporated in Scotland under registration number SC296800 and whose registered office is at Suite 2/3, 48 West George Street, Glasgow, G2 1BP ("the Company").

And

(2) THE CLIENT, details of which are set out below.

Company Name:	
Business Address:	
Contact and Position:	
Telephone:	
Email:	

We are Chess Digital Ltd (Known as Chess Digital) having our principal place of business at Suite 2/3, 48 West George Street, Glasgow, G2 1BP. These are the standard terms and conditions for our web hosting services. Additional company terms and conditions may be included in the Project Proposal – a copy of which can be made available by written request.

All contracts for the supply of Website Hosting Services made by or on behalf of Chess Digital are subject to the following terms and conditions:

1. Conditions

1.1 The contract constitutes an offer by Chess Digital to supply Website Hosting Services subject to the Conditions. The Conditions shall apply to the contract to the exclusion of any other terms and conditions of the Customer.

Variation or amendments must be confirmed by Chess Digital in writing.

2. Services

2.1 Our standard web hosting services are listed below. Any additional services we are to provide will be in the Project Proposal. The standard services are:

- 50Mb Disk space on a shared web server for storing your data for a web site;
- ¼ Gb limited data transfer per month;
- Access to a technical support engineer as per our Support and Service Levels, to assist with issues relating to the web hosting services; and
- Initial set-up of the website on the hosting server.
- Log files will be held only for the duration of the hosting contract.

2.2 Unless included in the Project Proposal, the web hosting services will not include the following:

- installation of any additional software packages;
- support or disaster recovery
- website design;
- e-business consultancy;
- anonymous Fixed Transfer Protocol (FTP) services;
- disaster recovery;
- any programming; or
- monitoring of individual websites.

3. Prices

3.1 The price for web hosting services will be as detailed in the Project Proposal. Unless otherwise stated, this price will be for the provision of the web hosting services for a 12-month period from the date of the initial set-up on the hosting server.

3.2 If you request additional support, service, training or maintenance, we will be entitled to charge for this separately.

3.3 All prices are exclusive of VAT and outlays.

4. Payment

4.1 You must make payment of the price shown in the Project Proposal in advance. We cannot commence provision of any of the web hosting services until this payment has been made.

4.2 We will issue invoices for any additional work on a monthly basis. Invoices must be paid in full within 28 days from the invoice date.

4.3 Any sum that you believe we owe you is a separate matter and cannot be offset in payment against any of our invoices.

4.4 If you fail to make payment when due we shall be entitled to:

- charge interest on any overdue amount at the rate of 2% per calendar month until paid in full;
- charge the administration and legal costs we incur in recovering amounts from you; and
- suspend or disconnect the hosting service. In such circumstances we may agree to resume the web hosting services once you have paid us a reconnection fee of £250 together with the overdue payment.

5. Hosting Conditions and Undertakings

5.1 You agree that you will not use the website for any unlawful purpose or in breach of Scots Law or any other law applicable to your use of the website. These prohibited uses include but are not limited to:

- civil and criminal offences of copyright and trademark infringement; or
- transmission or display or posting to a bulletin board, discussion group or chat room of any material of a defamatory, abusive, offensive, indecent or pornographic nature; or
- transmission or display or posting to a bulletin board, discussion group or chat room of any material in breach of the Data Protection Act 1998; or
- commission of any offence including but not limited to offences under the Computer Misuse Act 1990; or
- the sending of unsolicited mass communications (spam mail)
- use of the website in any manner which is a violation or infringement of the rights of any individual, firm or company within the United Kingdom or elsewhere; or
- violating the security of any website or engaging in unauthorised decryption of protected material.

5.2 You agree to indemnify us against all losses we may incur as a result of any breach by you of clause 5.1 above.

5.3 We are entitled at any time and without notice to remove the website from its server and/or bar access to it if you are in breach of any of the provisions of clause 5.1 above. In such circumstances we may agree to resume the web hosting services once you have paid us the reconnection fee of £250 and provided us with suitable undertakings regarding future compliance with these provisions. The removal of the website in these circumstances shall not entitle you to a refund, nor shall it affect your liability to pay for the web hosting services provided.

5.4 If we have reasonable grounds for believing that there has been a breach of these terms and conditions by you then we reserve the right to monitor any and all communications passing through our systems in connection with the web hosting services.

5.5 You acknowledge and agree that we may be required by a law enforcement agency to monitor website content and traffic and if necessary give evidence of this together with use of the logon ID to support or defend any dispute or actionable cause or matter which may arise in this connection.

6. Your Responsibilities

6.1 If requested by us, you must provide us with a fixed IP address before we can start to provide any of the File Transfer Protocol (FTP) services which may be detailed in the Project Proposal. We use security software to enhance the security of the services and a fixed IP address allows us to maximise this protection.

6.2 You will be solely responsible for the accuracy, legality, currency and compliance with data protection requirements, of all material on your website and will be solely liable for false, misleading, inaccurate, infringing or other actionable material contained or referred to on it.

6.3 You will be solely responsible for maintaining the confidentiality and security of your Internet account and usage including use of its unique logon ID.

6.4 Online transactions conducted via your website, and the honouring of such transactions are the responsibility of you and no claim can be made against Chess Digital in the event of any losses incurred by any individual / company.

6.5 Where website hosting services are inclusive of FTP services, you will be responsible for ensuring that no virus infected files or similar illegal files are uploaded to the web server. If you require to upload files with the following extensions: - .bat .exe .hta .js .vb? .wsf .wsh .shs .pif .scr .com .lnk you will: -

- supply a copy of the file to Chess Digital for review
- request in writing, approval from Chess Digital to allow the upload of such file.
- Failure to request approval will allow Chess Digital the right to remove all such files from the web server without prior notice.

6.6 Chess Digital reserve the right to amend the list of file extensions listed in 6.5, a written amended list of file extensions will be supplied to you, in such an event.

7. Software

7.1 Where the web hosting services we provide include software, you receive a non-exclusive non-transferable license to use the software. We undertake to ensure that all software provided is properly licensed.

7.2 Where the web hosting services include our software you must:

- not copy, distribute, transmit, transcribe, translate, adapt, vary, modify, disassemble, de-compile or reverse engineer our software or our software manuals without our express written permission; and
- obey the extra license terms, if any, shown in our software and our software manuals.

7.3 Where the web hosting services include third party software, you must obey the third party licence terms as shown in the third party software and third party software manuals.

8. Support and Service Levels (where part of the contract)

8.1 We will provide a helpdesk to deal with issues relating to the web hosting services. This helpdesk will be open weekdays from 9am to 5pm, UK time, except on public holidays. We will log all your calls to our helpdesk notifying us of any interruptions in connection, or other service problems. We will do our best to respond to any queries as quickly and efficiently as we can – no response time will be guaranteed unless stated in the Project Proposal.

8.2 The availability of some of our web hosting services may depend on the level of performance of our Internet Service Provider (ISP). To provide you with as much customer care and security as we can, we will provide you with the same service levels that our ISP have agreed to give us. A copy of our ISP's Service Level Agreement can be supplied if requested by you in writing.

8.3 Our target level for availability of our standard web hosting services is 99%, 24 hours per day, seven days a week.

8.4 We will track and calculate any non availability on a yearly basis, measuring the periods of non availability from the time we log your call under Clause 8.1 until the connection is restored. Periods of non-availability beyond our or our ISP's control or responsibility will not be included in calculating this total. Examples of situations beyond our or our ISP's control include, but are not limited to, power failures and breakdown in telecoms services or equipment not supplied by us.

8.5 If in any year, the level of availability (other than for reasons beyond our or our ISP's control) falls below 99%, (calculating periods of non-availability in complete hours) you will be entitled to a credit against the yearly payment made by you for that year as follows:

For each whole percentage point by which the level of availability in the year in question falls below the target level of 99%, we will give you a credit equivalent to 10% of the yearly payment made, subject to a maximum of 50% in any year. Your credit entitlement will be applied to the next yearly payment.

If the agreement to provide web hosting services is not renewed then we will reimburse you for this credit entitlement.

9. Liability

9.1 We shall not be liable to you for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with these terms and conditions or the web hosting services we provide to you, except to the extent to which it is unlawful to exclude such liability.

9.2 In the event that any exclusion contained in these terms and conditions shall be held to be invalid for any reason and we become liable for loss or damage that it may otherwise have been unlawful to limit, this liability shall be limited to the amount of fees paid by you for the web hosting services in the year in which the liability occurred.

10. Intellectual Property Rights

10.1 You acknowledge that any and all of the copyright, trademarks, trade names, patents and other intellectual property rights created, developed, subsisting or used in or in connection with the web hosting services we provide are and shall remain our sole property. This will include any computer program or component, written or developed by us in connection with the web hosting services.

10.2 You agree to indemnify us fully against all liabilities, costs and expenses which we may incur as a result of work done in accordance with your instructions in hosting of the website involving infringement of any copyright, patent or other proprietary right, including, but not limited to, framing or linking to third party websites and/or third party proprietary material.

11. Termination

11.1 Without prejudice to any rights we may have for damages or compensation, we may by written notice terminate a contract with you if you:

- fail to make any payment on the due date;
- are in material breach of your obligations to us and do not remedy this within seven days of us asking you in writing to do so; or
- become apparently insolvent, are unable to pay your debts, call a meeting of your creditors, pass a resolution for winding up, have a liquidation petition served on you, go into liquidation or have a receiver or administrator appointed.

11.2 You cannot cancel any contract with us, without our prior written consent (90 days minimum), unless we are in material breach of our obligations to you.

11.3 Within seven (7) days after the date of termination for whatever reason, we will remove all digital versions of your website from the hosting server.

11.4 You must return to us on termination, all and any software provided to you in relation to the web hosting services.

12. Force Majeure

12.1 We will not be liable for any breach of contract due to force majeure or any circumstances beyond our reasonable control including, but not limited to, act of God, industrial action, act of war or terrorism, supervening illegality, power failures and breakdowns in any telecom service or equipment or anything else which commonly comes within the definition of force majeure.

13. No Waiver

13.1 We may choose not to act upon any breach by you of these terms and conditions. However this will not prevent us from acting in relation to any future breach of any of the terms and conditions.

14. Miscellaneous

14.1 If a court or other competent authority finds any clause of these terms and conditions invalid or unenforceable (in whole or in part) the rest of these terms and conditions will remain fully effective.

14.2 Scots law will apply to these terms and conditions. All parties agree to accept the non-exclusive jurisdiction of the Scottish Courts.