



STANDARD TERMS AND CONDITIONS

of

BUI Limited

Registration Number: 12672822

Revision and Signoff Sheet

Revision History

Version Number	Revision Date	Effective Date	Compiled By	Approved by Head of Legal	Description of change
LEGAL – CON – Standard Terms and Conditions	24/11/2020	24/11/2020	Gayle Roseveare	Richard Hammond	First Version

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INTRODUCTION

The Contractor and the Company have agreed that the Contractor will provide Services to the Company on a non-exclusive basis and on the terms and conditions set out in this Agreement and any applicable Scope of Work.

1. DEFINITIONS

In this Agreement, unless the context indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings:

- | | | |
|-----|--|--|
| 1.1 | “Agreement” | Shall mean this agreement and the Scope of work as well as all annexures thereto; |
| 1.2 | “Applicable Laws” | shall mean all relevant statutes, subordinate legislation, common law, regulations, ordinances, by laws, directives, codes of practice, circulars, guidance or practice notices, judgments, decisions, standards and similar provisions which are prescribed, adopted, made, published or enforced by any competent court or regulatory or other authority, or any local, provincial or national governmental authority, body or department or any inter-governmental or supra national organisation or any self-regulatory authority, body or organisation; and compliance with which is (or was or will be, at the relevant time referred to in this Agreement) mandatory for that Party, as the case may be; |
| 1.3 | “Bespoke Intellectual Property” | means the Intellectual Property in all deliverables and developments resulting from the Services which are specifically and exclusively developed for the Company pursuant to this Agreement and which are identified as Bespoke Intellectual Property in the relevant Scope of Work, including all documents, information, data, plans, investigation schedules, working papers, diagnostic models, methodologies, reports or the like customised, developed or used by the Contractor specifically and exclusively for the Company and supplied or delivered to the Company. For the purpose of clarity, this term excludes any Contractor background, pre-existing, or third party Intellectual Property existing as at Signature Date; |
| 1.4 | “Business Day” | shall mean any day other than a Saturday, Sunday or public holiday in terms of the laws of the England; |

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- 1.5 **“Contractor”** shall mean **BUI Limited**, Registration Number: **12672822**, a private company duly incorporated in terms of the laws of England with its principal place of business being **71-75 Shelton Street, Covent Garden, London WC2H9JQ**.
- 1.6 **"Confidential Information"** Shall mean all information (written, oral or electronic) disclosed by one Party to the other Party whether before or after the Signature Date and concerning the business affairs of the disclosing Party including any information relating to that Party's operations, processes, plans, intentions, product information, know-how, designs, trade secrets, software, market opportunities, customers and shall include this Agreement;
- 1.7 **“Company”** shall mean a private/public company duly incorporated in accordance with the laws of England.
- 1.8 **“Commencement Date”** Shall mean the date on which provision of the Services will first occur as set out in the applicable Scope of Work;
- 1.9 **“Completion Date”** Shall mean the date on which the provision of the Services will be completed by the Contractor as set out in the applicable Scope of Work;
- 1.10 **“Intellectual Property”** Shall mean, without limitation, all patents, trademarks, designs, design rights, copyright (including all copyright in any designs and computer software), source codes, proprietary material, know-how, ideas, concepts, trade secrets, methods, techniques, rights in databases, confidential information and all other intellectual property rights and rights of a similar character whether registered or capable of registration, rights in the nature of any of the aforesaid items in any country or jurisdiction and all applications and rights to apply for protection of any of the same;
- 1.11 **“Invoice”** means the original tax invoice prepared by the Contractor reflecting the Service Fees to be paid by the Company to the Contractor and which invoice conforms to this Agreement and the provisions of the VAT Act;
- 1.12 **“Member of Staff”** means any person who, during the currency of this Agreement is or was a member of staff/employee of the Contractor and/or an independent contractor contracted by the Contractor and/or in any way directly or indirectly involved in the delivery of the Services and/or any ancillary or incidental services provided in terms of this Agreement;

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- 1.13 **"Parties"** shall mean, collectively, the Contractor and the Company, and **"Party"** shall mean any one of them as the context may require;
- 1.14 **"Prime Rate"** means the prime interest rate (expressed as a % per annum, compounded monthly) from time to time published by the Contractor's bankers, as certified by any manager of such bank, whose appointment or authority it shall not be necessary to prove, and which certificate shall, save for manifest error of calculation, be *prima facie* proof of the rate thereof;
- 1.15 **"Property"** Shall include, but not limited to, all documents and papers relating to the business or work of the Parties and prepared by the Parties in connection with, performance of the Services, and all copies and summaries of such documents and papers;
- 1.16 **"Scope of Work"** Shall mean the document (including where applicable a proposal) setting out those Services required by the Company and to be performed by the Contractor, and any such Scope of Work shall be attached as a separate **Annexure A** to this Agreement and each Scope of Work shall be numbered sequentially;
- 1.17 **"Services"** Shall mean those services to be provided to the Company by the Contractor from time to time, and as more fully detailed in the relevant Scope of Work;
- 1.18 **"Service Fees"** Shall mean the agreed amount payable by the Company to the Contractor for the Services rendered, and as more fully set out in the relevant Scope of Work;
- 1.19 **"VAT"** means value added tax in terms of the VAT Act or any similar tax or impact of a similar nature on the supply or sale of goods and/or Services;
- 1.20 **"VAT Act"** means the Value Added Tax Act 1994, as amended, of England and Wales.

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2. INTERPRETATION

2.1 In this Agreement:

- 2.1.1 Words importing the singular shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.
- 2.1.2 References to a "**Person**" include any natural person, firm, company, corporation, legal entity, government, state or agency of a state or any association, trust or partnership (whether or not having a separate legal personality) or two (2) or more of the foregoing.
- 2.1.3 References to clauses, paragraphs, schedules or annexes are, unless otherwise stated, references to clauses, paragraphs, schedules or annexes (as the case may be) of or to this Agreement.
- 2.1.4 The word "**including**" and its other grammatical forms shall not limit the general effect of the words which precede and shall be construed without any limitation.
- 2.1.5 A reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated.
- 2.1.6 Any notice required to be given under this Agreement shall be deemed to be a notice in writing.
- 2.1.7 Any reference to any legislative provision shall be deemed to include any statutory instrument, by-law, regulation, rule, subordinate or delegated legislation or order and rules and regulations which are made under it, in each case, as modified, consolidated or re-enacted.
- 2.1.8 Any reference to "**month**", "**monthly**", "**year**" and "**yearly**" and any other references in time shall be construed by reference to the Gregorian calendar.
- 2.1.9 Any reference to "**day**" or "**daily**" shall be construed as a reference to a calendar day.
- 2.1.10 The head notes to the clauses to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.1.11 If any provision in clause 1 above is a substantive provision conferring rights or imposing obligations on

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a Party then, notwithstanding that such provision is contained in clause 1, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement.

2.1.12 When any number of days is prescribed in this Agreement, the same shall be reckoned exclusively of the first and inclusively of the last day.

2.1.13 No provision herein shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.

2.2 Priority and Precedence

If there is any conflict, ambiguity, or inconsistency between any parts of this Agreement the following order of precedence shall apply from the Commencement Date:

2.2.1 the Scope of Work; and

2.2.2 the clause of this Agreement

3. ENGAGEMENT

3.1 In situations where the Company requires Services from the Contractor, the Parties shall formulate and conclude a Scope of Work in relation to the relevant Services prior to the Commencement Date of the relevant Services stipulated in the Scope of Work. Once signed, each Scope of Work shall be deemed to form an indivisible part of this Agreement as if it were fully incorporated into the body of this Agreement and shall include all of the terms, conditions and provisions in this Agreement mutatis mutandis.

3.2 The Contractor hereby agrees to perform the Services for the Company, as agreed between the Parties and more fully set out in any agreed to Scope of Work, and on the terms and conditions contained in this Agreement;

3.3 The Parties agree that the Contractor is an independent contractor and that no employment relationship will come into existence between the Contractor and the Company and/or any of the Company's Members of Staff.

3.4 Neither of the Parties nor any of its employees shall be considered an agent of the other Party and shall not hold itself or themselves out to be an agent of the other Party, save as may be expressly authorised by the other Party in writing from time to time. Neither of the Parties nor any of its employees shall have authority to act or purport to act as agent for the other Party and shall not pledge the credit of the other Party nor incur any debts,

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liabilities or obligations on behalf of the other Party, save as may be expressly authorised by the other Party in writing from time to time.

4. DURATION

This agreement and the Scope of Work shall come into effect on the Commencement Date specified in the relevant Scope of Work and continue until the Completion Date specified in the Scope of Work, unless terminated in accordance with the provisions of the Scope of Work or in terms of clause 12.2 below.

5. CONTRACTOR DUTIES

5.1.1 The Contractor shall work with the Company representative, as specified in the relevant Scope of Work, to perform the Services as set out in the Scope of Work and in accordance with the following;

5.1.2 To work on the Company's project specified in the Scope of Work ;

5.1.3 To ensure coordination of all the Services to be performed and to communicate on a regular basis with the relevant Company Representative(s);

5.1.4 To guide the Services in respect to content and quality of output, and ensure fulfilment of that which has been agreed to in the Scope of Work;

5.1.5 To ensure the delivery of those specific deliverables as detailed in the Scope of Work; and

5.1.6 To provide electronic copies of all working materials structured in a manner that can be passed onto the Company as a project workbook (where applicable and specifically included in the Scope of Work).

5.2 As part of the Services to be performed, the Contractor shall also be required to:

5.2.1 Provide regular verbal and/or written reports to the Company representative when required to do so;

5.2.2 Meet with the Company representative, when requested to do so from time to time;

5.2.3 Provide guidance on deliverables, iterations, and milestones;

5.2.4 Assist the Company, to the best of the Contractor's ability, with all problems and questions and other matters which it may refer to the Contractor from time to time in connection with the Scope of Work;

5.2.5 Maintain all working documents in a structured manner so as to support further assignments by the

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Company, or any different lines of business within the Company; these documents are to be passed in electronic format to the Company on at least a monthly basis during the term of the applicable Scope of Work, including at the Completion Date.

5.3 The Contractor shall at all times for the duration of the Agreement perform all of its obligations under this Agreement strictly in accordance with:

5.3.1 Best industry practice;

5.3.2 The service levels as outlined in the Scope of Work (if any);

5.3.3 All Applicable Laws;

5.3.4 All lawful and reasonable directions of the Company;

5.3.5 Any applicable policies of the Company as provided to the Contractor in writing;

5.3.6 The terms and conditions of this Agreement.

6. FEES AND EXPENSES

6.1 Subject to the provisions of clause 7 below, as consideration for the Services to be performed by the Contractor in terms of any applicable Scope of Work, the Company shall pay to the Contractor the Service Fees (plus VAT), as specified in the Scope of Work.

6.2 Any Services to be performed outside of the greater London area will attract further expenses, which include, but are not limited to, travelling, accommodation, communication, subsistence allowance and any other out-of-pocket expenses ("Out-Of-Pocket Expenses");

6.3 Out-of-Pocket Expenses:

6.3.1 The Company shall reimburse the Contractor for any Out-Of-Pocket Expenses incurred by the Contractor, but subject to;

6.3.1.1 presentation of proof of such expense being incurred by the Contractor;

6.3.1.2 The Contractor obtaining prior written approval from the Company before such costs are incurred.

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7. PAYMENT

- 7.1 The Contractor shall submit an Invoice to the Company on or before the last day of each month setting out the Service Fees in respect of Services performed and, subject to clause 6.3 above, any Out-Of-Pocket Expenses incurred during that calendar month.
- 7.2 The Company shall make payment to the Contractor within 30 (thirty) calendar days of receipt of the Invoice referred to in clause 7.1, free of deduction or set-off. Any payments due and owing to the Contractor must be paid on or before the due date for payment thereof, notwithstanding any corresponding payments the Company is entitled to from its customer and/or any third party.
- 7.3 If the Company fails to make full payment to the Contractor as outlined in clause 7.2 above the Company shall pay interest to the Contractor on the outstanding amount at the Prime rate, plus 3% (three percent) *per annum* calculated from the date on which payment falls due until the date on which payment is made.
- 7.4 In addition to clause 7.3 above and any other legal rights or remedies the Contractor may have in law, should the Company fail to make payment as outlined in clause 7.2 above the Contractor shall be entitled to cancel this Agreement and cease to render the Services in respect to the applicable Scope of Work with immediate effect.
- 7.5 Should the Company dispute any amount appearing on an Invoice submitted to it, pursuant to this Agreement and/or any applicable Scope of Work, the Company shall, within 10 (ten) calendar days of receipt of the affected Invoice, notify the Contractor, in writing, of such dispute, specifying the –
- 7.5.1 Affected Invoice;
 - 7.5.2 specific amount in dispute; and
 - 7.5.3 alleged reasons or grounds for dispute.
- 7.6 Any amount disputed in terms of clause 7.5 shall not be regarded as payable in terms of this clause 6 and if the Parties are unable to resolve such dispute within 7 (seven) business days from the date on which the dispute arose, it shall be referred to the financial manager of the Parties or their representatives for determination. If these representatives are unable to resolve the dispute within 7 (seven) business days from the date of referral, such dispute shall be referred for resolution in accordance with Clause 20 of this Agreement.

8. RELATIONSHIP OF THE PARTIES

- 8.1 Nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or the like

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between the Parties nor shall it constitute one Party being an agent of the other for any purpose;

- 8.2 No Party shall, by reason of the actions of the other Party, incur any liability to any third party and no Party shall be entitled to authorise, represent, or hold out, to any third party that the relationship between the Parties is that of a partnership, joint venture or the like as aforesaid;
- 8.3 The Contractor shall at all times remain independent of the Company and neither the Contractor nor any employees or agents of the Contractor shall be regarded as an employee of the Company (as defined in the Labour Relations Act, 1995 (as amended)), and the provisions of the Basic Conditions of Employment Act, 1997 (as amended), the Labour Relations Act, 1995 (as amended) as well as any other statutes, regulations, agreements or policies that regulate an employer/employee relationship or any substituted legislation replacing them, shall not apply to the relationship between the Parties.

9. OBLIGATIONS OF THE COMPANY

- 9.1 The Company shall –
- 9.1.1 Timeously make available to the Contractor all relevant information and data at the Company's disposal to, and reasonably required for, the performance of the Services;
 - 9.1.2 Authorise the Contractor to act on its behalf for such purposes as the Company deems necessary for the performance by the Contractor to complete the Services; and
 - 9.1.3 Nominate a person ("the Company representative") to represent it in the Company's dealings with the Contractor.
- 9.2 The Company representative shall have the full legal capacity and authority to bind the Company to the Contractor in relation to this Agreement and/or any applicable Scope of Work.
- 9.3 The Company undertakes, for the duration of this Agreement, not to appoint or use third parties (other than its own employees) to supply any of the Services, set out in the Scope of Work, supplied by the Contractor in terms of this Agreement.
- 9.4 The Company shall procure any and all tools, deployment tools, hardware, software, and software licenses that the Contractor reasonably requires the Company to possess in order to adequately perform its obligations in terms of any Scope of Work, which shall be the sole responsibility, and for the account, of the Company.
- 9.5 The Contractor will not be liable for any damage suffered by the Company as a result of any Services undertaken

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by third parties in contravention of the undertaking contained in clause 9.3 above. The Company will, in addition, be liable for any remedial or additional Services which the Contractor is required/requested to perform as a result of the Services undertaken by third parties in contravention of this undertaking

- 9.6 For the time being, if not specified otherwise in the Scope of Work, the Contractor representative shall be the Operations Manager and the Company representative will be identified in the Scope of Work. Either Party shall be entitled to change the identity of their respective representative from time to time by giving no less than 10 (ten) days' notice of such change in writing.
- 9.7 At all times it shall be the responsibility of the Company to have adequate disaster recovery and data back-up systems in place and to maintain these systems. The Contractor shall not be liable for any loss or damage, from whatsoever cause and howsoever arising, suffered by the Company as a result of the Company's failure to maintain adequate disaster recovery and data back-up systems.
- 9.8 At all times it shall be the responsibility of the Company to have adequate security and anti-virus systems in place and to maintain these systems. The Contractor shall not be liable for any loss or damage, from whatsoever cause and howsoever arising, suffered by the Company as a result of the Company's failure to maintain adequate security and anti-virus systems, including but not limited to, cyber-attacks caused by (i) Malware - such as adware, botnets, ransomware, rootkits, spyware, trojan horse, viruses/worm; (ii) Social engineering – such as phishing, deceptive phishing, pharming, spear phishing, whaling, vishing, pretexting, baiting, quid pro quo; (iii) Password attacks – such as guessing attacks, brute force attacks, dictionary attacks, rainbow attacks, stealing attacks, hybrid password attacks, birthday attack; (iv) Denial-of-Service – such as distributed denial-of-service attacks, denial-of-service attacks; (v) Data breaches – such as data breaches caused by negligence, lost/stolen devices, hacked infrastructure and/or services due to insecure configurations and/or unpatched vulnerabilities; (vi) Missing/incomplete documentation (policies, processes, procedures); (vii) Lack of existing user education/training/awareness.
- 9.9 At all times it shall be the responsibility of the Company to ensure compliance with its own internal policies and procedures (including, but not limited to, corporate governance, due diligence, risk management, framework assessments, infrastructure assessments, self-assessments, audit compliance, and compliance reports) as well as any Applicable Laws applicable to the Company. Should the Company require assistance in this regard, the Contractor may (at its discretion) provide such assistance at the sole cost and expense of the Company.

10. STANDARD OF CARE

For the duration of this Agreement, the Contractor shall:

- 10.1 Perform the Services under this contract with due care and diligence, in a professional manner and in

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accordance with the reasonable instructions of the Company;

- 10.2 Exercise the skill required of a reasonable person in the same position of the Contractor in performing the Services set out in this Agreement;
- 10.3 Use its best endeavours to protect and promote the business of the Company and preserve its reputation and goodwill;
- 10.4 Use the assets of the Company entrusted to it, if any, with the utmost care;
- 10.5 In relation to the Company, act honestly and in good faith;
- 10.6 Avoid any material conflict between its own interests and those of the Company; and
- 10.7 Take all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Contractor to comply with its obligations under this Agreement or Scope of Work will be reduced to the greatest extent possible.

11. OTHER SERVICES

The Contractor shall be entitled to perform Services for any other person or entity and any consideration derived from such other Services shall be for the benefit of the Contractor only.

12. TERMINATION AND BREACH

- 12.1 The agreement and the Scope of Work may not be terminated prior to the Completion Date except as otherwise stated in the applicable Scope of Work or as provided for in clause 12.2 below.
- 12.2 Either Party shall be entitled to give notice to terminate this Agreement and/or Scope of Work with immediate effect, without prejudice to its rights to claim damages, such termination to be effective upon deemed receipt of such notice, if the other Party:
 - 12.2.1 commits a material breach (including a series of minor breaches which together are considered material) of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 14 (fourteen) days of that Party being notified in writing of the breach;

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- 12.2.2 takes steps to place itself, or is placed in liquidation, whether voluntary or compulsory and whether provisionally or finally;
- 12.2.3 takes steps to deregister itself or is deregistered;
- 12.2.4 if there is a change in control (as such term is construed in the Corporation Tax Act 2010, as amended) of either Party without the prior written consent of the other Party;
- 12.2.5 ceases or threatens to cease to carry on business;
- 12.2.6 is financially distressed;
- 12.2.7 or any person proposing to take, or taking, any step to pass a resolution or apply to court or actually applying to court for the business rescue of that Party;
- 12.2.8 commits an act which would be an act of insolvency as defined by the Insolvency Act of 1936 as amended from time to time if committed by a natural person;
- 12.2.9 fails to satisfy a judgement in excess of £10,000.00 (Ten Thousand Pounds) entered against itself within 21 (twenty one) days after it becomes aware of the judgement, except if it provides evidence on an ongoing basis to the reasonable satisfaction of the other Party that steps have been initiated within the 21 (twenty one) days to appeal, review or rescind a judgement and to procure suspension of execution of the judgement and that such steps are being expeditiously pursued; the period of 21 (twenty one) days shall run from the date on which the judgement becomes final, or the date on which the attempt to procure the suspension of the execution fails.

13. CONSEQUENCES OF TERMINATION

- 13.1 In case of termination, the Company shall pay to the Contractor any amount owed in respect of the Services that have already been provided, delivered and accepted in accordance with this Agreement.
- 13.2 The Parties acknowledge and agree that where a Party exercises a right to terminate under this Agreement, that Party shall use reasonable endeavours to mitigate any losses it suffers as a result of exercising its right to terminate.

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13.3 On termination of this Agreement:

13.3.1 any rights of the Parties that arose or accrued prior to termination of this Agreement, or are intended to survive termination, shall survive and continue in full force and effect, but all other rights and obligations of the Parties shall cease immediately.

13.4 Termination of this Agreement shall not relieve a Party of obligations imposed upon such Party by statute or regulation or by this Agreement prior to its termination.

13.5 The exercise of any termination right set out in this clause 13 by a Party shall be without prejudice to the Party's other rights and remedies under this Agreement.

14. CONFIDENTIALITY

14.1 All Confidential Information disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party") shall only be disclosed as is strictly necessary and each Party shall procure that its Members of Staff treat such information as confidential. Such Confidential Information shall only be used for the purpose for which it is disclosed and only insofar as it is strictly necessary for the purpose of this Agreement and shall not without the prior written consent of the Disclosing Party be disclosed to any third Party provided always that the Receiving Party may disclose without the consent of the Disclosing Party any Confidential Information:

14.1.1 as required to be disclosed in compliance with any law;

14.1.2 to an employee including a director who needs to know strictly for the purpose of this Agreement;

14.1.3 to a sub-contractor only to the extent that such disclosure is strictly necessary for the purpose of this Agreement;

14.1.4 as may be required to comply with any applicable stock exchange regulations; and

14.1.5 provided always that where such disclosure is to be made by the Receiving Party to a sub-contractor, employee or to a third Party such Receiving Party shall (a) ensure that the recipient sub-contractor, employee or third Party (as the case may be) owes to that Receiving Party an obligation of confidentiality in respect of the Confidential Information to be disclosed upon terms identical to the provisions of this

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clause 14 and (b) shall remain liable to the Disclosing Party for any unauthorised disclosure by any such sub-contractor, employee or third Party.

14.2 Information shall not be deemed Confidential Information where it:

14.2.1 is authorised to be disclosed by the Disclosing Party to that extent of the authority given;

14.2.2 is made public by the Disclosing Party or becomes part of the public domain;

14.2.3 is in possession of or is known by the Receiving Party prior to its receipt from the Disclosing Party;

14.2.4 becomes public other than by the default of the Receiving Party; or

14.2.5 is independently developed by the Receiving Party.

14.3 Any Confidential Information, remains the property of the Disclosing Party. The furnishing of Confidential Information shall not result in any obligation to grant the Receiving Party rights therein other than expressly stated in this Agreement. It is acknowledged by the Receiving Party that no license or right of use under any patent, copyright, trademark or other proprietary right is granted or conveyed by this Agreement.

14.4 The Parties shall not at any time during the term of this Agreement, release any statement to the press or make any other public statement of any nature which could reasonably be expected to be published in any media regarding the relationship of the Parties or the subject matter of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

14.5 Personal Identifiable Information:

14.5.1 The Receiving Party confirms that all personal identifiable information received pursuant to this Agreement shall be processed by it in accordance with the Contractor's Internal Data Privacy and Security Policy.

14.5.2 The Disclosing Party consents that all personal identifiable information disclosed pursuant to this Agreement shall be processed in accordance with the Contractor's External Data Privacy and Security Policy.

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14.5.3 All Data Privacy and Security Policies of the Contractor can be obtained on written request to the Contractor.

14.6 Both Parties' obligations in terms of this clause 14 will survive the completion or termination, for whatsoever reason, of this Agreement for a further period of 5 (five) years.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 Intellectual Property

15.1.1 All intellectual property rights of one-Party subsisting in or used in respect of the Intellectual Property are and shall remain the property of that Party. The other Party shall not during or at any time after termination of this Agreement acquire or be entitled to claim any right or interest in the Intellectual Property or in any way question or dispute the ownership thereof.

15.1.2 To the extent that any Intellectual Property is contained in any material, each Party grants to the other Party (to the extent legally and commercially possible), a non-exclusive, royalty-free licence to use such Intellectual Property in connection with, and for the duration of, this Agreement.

15.2 Neither Party shall have the right to use, and shall not use, the name of the other Party and/or any of its officials or employees, or logos or trademarks in any manner without the prior written consent of the other Party's, which consent may be withheld in the other Party's sole discretion. Neither Party shall issue any public release regarding this Agreement or the Services to be provided hereunder without the consent of the other Party, which may be withheld in the other Party's sole discretion.

15.3 Where there are modifications to pre-existing material, which are inseparable from the pre-existing material, then the Party, which owns the pre-existing material, will own the modifications.

15.4 To the extent that any Bespoke Intellectual Property is developed for the Company, all right, title, interest and ownership to the Bespoke Intellectual Property subsisting in such development shall be ceded to the Company by the Contractor, subject to all amounts owing to the Contractor being paid in full.

16. INTELLECTUAL PROPERTY INFRINGEMENT

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- 16.1 Should the deliverable materials or any part thereof, become, or in the Company's bona fide and reasonable opinion be likely to become the subject of a claim for infringement of the intellectual property right of any third Party, the Contractor shall:
- 16.1.1 Either procure for the Company the right to continue using the deliverable material in question or procure that it becomes non-infringing; or
- 16.1.2 With the Company's consent, which shall not unreasonably be withheld, require the return of the deliverable material and shall refund to the Company all the fees paid by the Company to the Contractor in respect of such deliverable material.
- 16.1.3 The Contractor agrees to indemnify the Company against claim for infringement of the intellectual property rights of a third Party that may be brought against the Company.

17. NON-SOLICITATION

- 17.1 The Company undertakes that neither it nor any, company, customer, firm, employee or agent of it, without the written consent of the Contractor for the duration of this Agreement and for a period of 12 (twelve) months following termination of this Agreement, for whatever reason, engage, employ or otherwise solicit or attempt to engage, employ or otherwise solicit for employment, whether directly or indirectly under any circumstances, any person who, during the currency of this Agreement was a Member of Staff of the Contractor;
- 17.2 Should the Company breach the provisions of this Non-Solicitation clause, the Company shall then have 7 (seven) days, in which to remedy the breach by cancelling and/or terminating any relationship it may have with the recruited Member of Staff;
- 17.3 The Company agrees and understands that any breach of this Non-Solicitation clause may result in irreparable damage to the Contractor for which the Contractor will not have an adequate remedy at law. Accordingly, and in addition to any other remedies and damages available, the Company acknowledges and agrees that the Contractor may immediately seek enforcement of this Non-Solicitation clause by means of specific performance or interdict or injunctive relief, and without any requirement to provide a bond or any other security, and the Company accepts that it shall be liable for all costs incurred by the Contractor in enforcing this Non-Solicitation clause on an attorney and own client scale;
- 17.4 Without derogating from, and in addition to, the above rights of the Contractor, the Contractor may elect, in its sole discretion, to consent to the Company employing the Contractor's Member of the Staff and in such instance the Company shall be liable to pay a once off recruitment fee of 100% (one hundred percent) of the Contractor's Member of Staff annual package including any applicable incentives, bonuses and fringe benefits;

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17.5 Each Party acknowledges and agrees that any amount to be paid under this clause 17 shall be payable within 30 (thirty) days of commencement of such Member of Staff's appointment by the other Party.

18. PROPERTY OF THE PARTIES

18.1 The Parties acknowledge and agree that any Property of one Party ("Provider") that is provided to the other Party ("Receiver"), in order to facilitate compliance and performance in terms of this Agreement, shall remain the absolute property of the Provider and shall, upon reasonable notice, be available for inspection by the Provider's representative.

18.2 At all times the Property shall remain the sole property of the Provider and use of the Property for material gain is strictly prohibited unless written consent is provided;

18.3 The Receiver shall ensure that the Provider's property is kept in a safe and secure environment at all times;

18.4 Any Property in the possession of the Receiver on completion of this Agreement shall, at the Receiver's cost and expense, be promptly returned forthwith to the Provider; and

18.5 The Receiver shall ensure that the undertakings and acknowledgements set out in this clause 18 shall be equally observed by any of the Receiver's employee's and/or independent contractors assigned to perform any obligations in terms of this Agreement.

19. INDEMNITY

19.1 Should the Company not be in possession of the valid and legal licenses in terms of any software that may be required by the Contractor to perform in terms of this Agreement, it expressly accepts and agrees to indemnify the Contractor for any liability that may arise in this respect.

19.2 The Contractor hereby indemnifies and holds the Company harmless against all loss, damage, costs and/or expenses which the Company may suffer or incur and any and all claims which may be brought against the Company by any third party in respect of any loss, liability, damage, costs and/or expenses of any nature whatsoever as a consequence of or which may arise from or is attributable to any wilful or grossly negligent acts or omissions on the part of the Contractor or any of its employees; and

19.3 The Company hereby indemnifies and holds the Contractor harmless against all loss, damage, costs and/or expenses which the Contractor may suffer or incur and any and all claims which may be brought against the Contractor by any third party in respect of any loss, liability, damage, costs and/or expenses of any nature

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whatsoever as a consequence of or which may arise from or is attributable to any wilful or negligent acts or omissions on the part of the Company or any of its employees.

20. DISPUTE RESOLUTION

- 20.1 If a dispute of any nature arises between the Parties, including in regard to the interpretation of, the effect of, the Parties' respective rights or obligations hereunder, a breach of or the termination of this Agreement, then, upon written request of either Party, each Party will appoint a senior representative whose task it will be to meet for the purposes of resolving such dispute. Such representatives will discuss the matter in dispute and negotiate in good faith in an effort to resolve the dispute on amicable terms within 14 (fourteen) days. No formal proceedings may be commenced until the designated representatives conclude in good faith that an amicable resolution of the matter is not likely to occur.
- 20.2 Should the representatives of the Parties be unable to resolve a dispute in accordance with the foregoing, such dispute will be submitted to and decided by a court of competent jurisdiction or, upon agreement between the Parties, by arbitration in terms of this clause 20.
- 20.3 The arbitrator(s) shall be appointed by the Parties within 10 (ten) days of agreement on arbitration, and failing agreement on the choice of arbitrator, shall be nominated by the Chairman for the time being of the Johannesburg Bar Council. If replacement of the arbitrator becomes necessary, this shall be effected in the same manner as set out in this clause.
- 20.4 The arbitration shall be held in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment then in force. Such arbitration shall be held in London, and conducted in the English language before one arbitrator appointed in accordance with the said Act.
- 20.5 The arbitrator shall be entitled to:
- 20.5.1 determine and settle the formalities and procedures, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence;
 - 20.5.2 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision;

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- 20.5.3 decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of this Agreement; and
- 20.5.4 make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate. The Parties shall comply with any award without delay.
- 20.6 The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) days after it has been so demanded.
- 20.7 This clause is severable from the rest of the Agreement and shall remain in effect even if this Agreement is terminated.
- 20.8 An award made by an arbitrator pursuant to the provisions of this clause 20, shall be final and binding on the Parties.
- 20.10 Nothing in this clause 20 shall preclude the Contractor from seeking interim and/or urgent relief or enforcing any of its rights and obligations from a court of competent jurisdiction within England.
- 20.11 The Parties irrevocably consent, notwithstanding any monetary limitation, to the jurisdiction of the Magistrates Court for determination of any dispute sought by the Contractor in relation to the non-payment of fees.

21. LIMITATION OF LIABILITY

- 21.1 Subject to clause 21.3 the Parties shall not be liable to each other for any indirect or consequential loss or damage, including loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.
- 21.2 Each Party's total cumulative liability to the other Party in terms of this Agreement, no matter the cause (except for payment obligations), shall at all times be limited to the total Service Fees paid or payable by the Company to the Contractor in the preceding 6 (six) months from the date on which the cause of action arose.
- 21.3 Nothing in this Agreement shall exclude or limit either Party's liability in relation to;
- 21.3.1 death or personal injury caused by negligence or wilful or reckless misconduct of that Party;

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- 20.2.2 any fraud or fraudulent misrepresentation of that Party or any other criminal act which leads to such Party suffering a Loss;
- 20.2.3 any liability which cannot be excluded by law by that Party; and/or
- 20.2.4 clause 14 (*Confidentiality*), clause 15 and 16 (*Intellectual Property Rights*) and clause 17 (*non-solicitation clause*).

22. ADDRESSES FOR LEGAL PROCESS AND NOTICES

22.1 Purposes of this Agreement the following addresses and email addresses:

The Company:

As per the Approved Client Application

The Contractor:

BUI Limited

71-75 Shelton Street

Covent Garden

Greater London

WC5H9JQ

United Kingdom

Marked for Attention: Ryan Roseveare/ Arnold Sharp

Email: Ryanr@bui.co.za /
ArnoldS@firsttech.co.za

Any notice to any Party shall be addressed to it at its *Domicilium et Executandi* as aforesaid, and shall be delivered by hand, courier or email.

22.2 In the case of any notice:

22.2.1 Delivered by hand or courier, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a business day, otherwise on the following Business Day;

22.2.2 Sent via email transmission, shall be deemed to have been received on the same day, and provided such day is a Business Day, otherwise on the following Business Day.

22.3 Any Party shall be entitled by written notice to the other, to change its *domicilium*, provided that the change will become effective only 10 (ten) Business Days after service of the notice in question.

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23. RESOURCES ON SITE

- 23.1 Should any resources be placed onsite to perform the Services in terms of the Scope of Work, the provision of such resources shall at all times be subject to the following:
- 23.1.1 Company shall be responsible for providing, all reasonable instructions, guidance and overall management of the resource while on the Company's site, and the resource shall comply with the same;
 - 23.1.2 The Company shall ensure, at its own cost, that the resource is afforded access into the Company's site to the extent necessary to provide the Services, this shall include, but not be limited to, access cards, and safe and secure parking.
 - 23.1.3 The resource placed on site may, at the Company's discretion, be required to submit to a screening and/or interview process before being allowed on the Company's site;
 - 23.1.4 Any resource placed on the Company's site shall at all times be obliged to adhere to all Company policies (if applicable) as required by Company subject to the resource being provided with copies of the same prior to commencement of any Services;
 - 23.1.5 The Company shall be required to retain all resources of the Contractor who are providing Services, for the full duration of the applicable Scope of Work unless otherwise agreed to in writing by the Contractor. For the sake of clarity, the Company shall not be entitled to replace resources with any other resources not provided by the Contractor.
 - 23.1.6 At Contractor's discretion and/or at the reasonable request of the Company, and upon 14 (fourteen) days written notice to the other, any resource placed on the Company's site may be replaced and/or rotated.
 - 23.1.7 Subject to Contractor providing the Company with reasonable prior written notice (at its sole discretion), the Company accepts that the Contractor will be under no obligation to rotate or provide a substitute resource, should any resource placed on the Company's site take any form of statutory leave to which he/she is entitled to.

24. FORCE MAJEURE

- 24.1 "Force Majeure" in respect of any Party means an event beyond the reasonable control of that Party, its contractors or sub-contractors without the fault or negligence of that Party and was not reasonably foreseeable and providing that such event materially and adversely affects the ability of such Party to perform its obligations

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under this Agreement, including but not limited to, war or civil war (whether declared or undeclared and including the serious threat of same) or armed conflict, invasion and acts of foreign enemies, riots, sabotage, blockage and embargos, civil unrest, commotion or rebellion, or any act or credible threat of terrorism, any act of God, earthquake, flood, extraordinary storm, nuclear, chemical or biological contamination or explosion, plague, epidemic, theft, malicious damage not caused by that Party, its contractors or sub-contractors, strikes not caused by that Party, its contractors or sub-contractors, lock-outs or other industrial action of general application; any act of any authority (including delaying or refusing of licenses, wayleaves and/or restriction on construction work), explosion and fire.

- 24.2 If a Force Majeure event prevents a Party (“Affected Party”) from performing any of its obligations of the Agreement (“Force Majeure Event”), the Affected Party will be granted an extension to perform the relevant obligation.
- 24.3 The Affected Party is obliged to notify the other Party about the material adverse effect of a Force Majeure Event on the performance of obligations under the Agreement to the reasonable satisfaction of the other Party.
- 24.4 Upon the cessation of the Force Majeure Event, the Affected Party shall immediately notify the other Party of such cessation and resume performance of the affected obligations.
- 24.5 If, as a result of a Force Majeure Event, the performance by the Affected Party of some but not all of its obligations under the Agreement are affected, the Affected Party shall nevertheless remain liable for the performance of those obligations not affected by Force Majeure.

25. GENERAL

- 25.1 Neither Party shall be entitled to cede, assign, transfer or make over any of their rights or obligations in terms of this Agreement without obtaining the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed.
- 25.2 Any cession or assignment agreed to by a Party will not relieve the other Party of any obligations with respect to any covenant, condition, or obligation required to be performed by that Party under this Agreement
- 25.3 The laws of England shall govern the validity, interpretation and performance of this Agreement and the courts of England shall have sole jurisdiction;
- 25.4 The Company shall be liable for all costs incurred by the Contractor in the recovery of any amounts or the enforcement of any rights which it has in terms of this Agreement and/or any applicable Scope of Work, including collection charges and costs on an attorney and own client scale and costs of counsel, whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection

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with the satisfaction or enforcement of such judgement.

- 25.5 The Company agrees that the amount due and payable to the Contractor shall be determined and proven by a certificate issued by the Contractor and signed on its behalf by any person duly authorised by the Contractor, which authority need not be proven. Such certificate shall be prima facie proof of the indebtedness of the Company.
- 25.6 Notwithstanding anything to the contrary, and notwithstanding the termination of this Agreement for any reason whatsoever, those provisions of this Agreement which expressly or by their nature are intended to survive the termination of this Agreement, shall survive such termination and shall continue to be of force and effect;
- 25.7 This document contains the entire agreement between the Parties with regard to the matters dealt with herein and no representations, terms, conditions or warranties not contained in this Agreement shall be binding on any of the Parties, unless agreed to in writing by the Parties;
- 25.8 No latitude, relaxation, indulgence or extension of time which may be allowed to the Contractor or any of its employees by the Company in respect of any performance or breach or any other matter in terms of this contract shall in any circumstances be deemed as a waiver by the Company of any rights it may have; and
- 25.9 No variation, addition to or cancellation of this Agreement and no waiver of any right in terms of this Agreement shall be of any force and effect unless reduced to writing and signed by or on behalf of both Parties to this Agreement.
- 25.10 Notwithstanding anything to the contrary contained in this Agreement and/or any applicable Scope of Work, the Contractor shall be entitled to sub-contract any or all of the Services to any entity forming part of its group of companies (as defined in the Companies Act) without the Company's prior consent, provided the Contractor retains overall liability in terms of this Agreement for Services provided by its sub-contractor(s).
- 25.11 Each Party shall pay its own costs of and incidental to the preparation, drawing, finalising and execution of this Agreement, including incidental negotiations, consultations and attendances.
- 25.12 Counterparts and Electronic Signatures. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same Agreement. Documents scanned and transmitted electronically as well as documents signed by electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures. Each Party hereto hereby waives any right which it may have to dispute the validity or enforceability of this Agreement by virtue of its failure to either initial each page of this Agreement and/or have its signatory's signature verified by a witness.

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