

**PARTIES**

	Company Name	Company #	Registered Office	Country [Territory/Region]	Abbreviation
1	Digital Catapult Services Limited	08564481	level 9, 101 Euston Road, London, NW1 2RA	England	Catapult
2	[INSERT]	[INSERT]	[INSERT]	[INSERT]	Supplier
3	[INSERT]	[INSERT]	[INSERT]	[INSERT]	Sponsor

**AGREEMENT**

Supplier hereby agrees to supply the Order (as defined) for the benefit of each Customer (as defined) in exchange for a Fee (as defined), and Catapult hereby agrees to pay such Fee, each in accordance with the agreed Commercial Terms.

This agreement includes the information on this page, together with the T&Cs, Special Terms, and Services Description, each as attached hereto (including any documents referenced therein) only ("**Contract**").

**COMMERCIAL TERMS**

<b>Order:</b>	The Services to be provided at the delivery location(s), by the Key Personnel, in accordance with this Contract.			
<b>Project:</b>	[Define the broad programme]			
<b>Start Date:</b>	[INSERT]			
<b>End Date:</b>	[INSERT]			
<b>Fee:</b>	[INSERT FEE].			
<b>Insurance:</b>	Professional Indemnity:	£[1]m		
	Product Liability:	£[2]m		
	Public Liability:	£[2]m		
	Employer's Liability:	£5m (unless exempt under law)		
<b>[Payment Schedule:</b>	#	Milestone/Deliverable Achieved	Amount	Earliest Date
	1	[TBC]	£[TBC]	[TBC]
	2	[TBC]	£[TBC]	[TBC]
	3	[TBC]	£[TBC]	[TBC]
	4	[TBC]	£[TBC]	[TBC]
<b>Customer:</b>	<ol style="list-style-type: none"> <li>Catapult and its Group</li> <li>[insert other beneficiaries of Contract – [Company Name] with company registration number [INSERT], registered in [TERRITORY], with registered office at [ADDRESS] [and its Group]] ("<b>Sponsor</b>")</li> <li>NIANTIC INTERNATIONAL LIMITED, with company registration number 11403737, registered in England, with trading address at 11th Floor Whitefriars, Lewins Mead, Bristol, BS1 2NT and its Group ("<b>Niantic</b>")</li> </ol>			
<b>Catapult Contact:</b>	[INSERT]			
<b>Supplier Contact:</b>	[INSERT]			

**This agreement has been entered into on the date of the last signature below.**

**SIGNATURES**

**Signed:** \_\_\_\_\_  
**Signatory:** \_\_\_\_\_  
**Position:** \_\_\_\_\_  
**Email:** \_\_\_\_\_  
**On (date):** \_\_\_\_\_



## 1. Interpretation

1.1. **Definitions.** In the Contract, the definitions in the Commercial Terms apply together with the following:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Catapult:** As defined in the "Parties" section on the first page of this Contract.

**Charges:** the charges payable by Catapult for the supply of the Services in accordance with clause 5.

**Commercial Terms:** as defined in the "Commercial Terms" section on page one of the Contract.

**Conditions:** the terms and conditions set out in this Contract as amended from time to time in accordance with clause 17.10.

**Confidential Information:** any confidential information, know how and data (in any form or medium) which relates to Customer, including information relating to the businesses of Customer, and information relating to their staff, finances, policies and procedures.

**Data Protection Legislation:** has the meaning given to it in the Data Protection Act 2018.

**Deliverables:** an identifiable and measurable output in connection with the Services, including, without limitation, supply of Goods.

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form, including drafts.

**Goods:** mean any goods, including without limitation, materials, products, hardware, software, programs, technology, Documents, reports and test results which are to be provided by Supplier to Customer under this Contract, and includes any or all of them as the context may require.

**Group:** in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Privacy Policy:** Catapult's privacy policy, as may be updated from time to time at <https://www.digicatapult.org.uk/legal/privacy-policy/>

**Services:** the services as set out in the Services Description, including without limitation, work and technical assistance which are to be performed by the Supplier and any Deliverables to be provided by the Supplier (including any related Specification).

**Special Conditions:** the conditions as specified in the "Special Terms".

**Specification:** the specification for the Services, as set out (or referenced) in the "Services Description".

**Supplier:** as defined in the "Parties" section on the first page of this Contract.

**Supplier's Associate:** any individual or entity associated with the Supplier including, without limitation, the Supplier's subsidiary, affiliated or holding companies and any employees, agents or contractors of the Supplier and / or its subsidiary, affiliated or holding companies or any entity that provides services for or on behalf of the Supplier.

1.2. **Construction.** In the Contract, unless the context requires otherwise, the following rules apply:

1.2.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2. A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5. The headings in these Conditions are for ease of reference only and do not affect the interpretation or construction of the Contract.

1.2.6. A reference to writing or written includes e-mails.

## 2. Supply of Services

2.1. The Supplier shall from the Start Date until the End Date provide the Services to Customer in accordance with the terms of the Contract.

2.2. The Supplier shall meet any performance dates for the Services (including the delivery of Deliverables) specified in the Order.

2.3. In providing the Services, the Supplier shall:

2.3.1. co-operate with Customer in all matters relating to the Services, and comply with all reasonable instructions of Customer;

2.3.2. perform the Services with good care, skill and diligence in accordance with good practice in the Supplier's industry, profession or trade;

2.3.3. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;

2.3.4. ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Order, and that the Deliverables shall be fit for any purpose expressly made known in writing to the Supplier by Customer;

2.3.5. deliver any Goods to the specified premises, unloaded, and with all duties paid;

2.3.6. provide all data, information, equipment, tools, facilities and vehicles and such other items as are required to provide the Services, except as explicitly stated in the Specification;

2.3.7. use good quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Customer, will be free from defects in workmanship, installation and design;

2.3.8. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;

2.3.9. observe all health and safety rules and regulations and any other security requirements that apply at any of Customer's premises;

2.3.10. not do or omit to do anything which may cause Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that Customer may rely or act on the Services;

2.3.11. not do or omit to do anything which may cause damage to Customer's reputation.

2.4. Customer's rights under the Contract are without prejudice to and in addition to the statutory terms implied in favour of Customer under the Supply of Goods and Services Act 1982 and any other applicable legislation.

2.5. Without prejudice to Customer's statutory rights, Customer will not be deemed to have accepted any Deliverables until Customer has had at least 14 Business Days after delivery to inspect them and Customer also has the right to reject any Deliverables as though they had not been accepted for 14 Business Days after any latent defect in the Deliverables has become apparent.

2.6. If, in connection with the supply of the Services, Customer permits any employees or representatives of the Supplier to have access to any of Customer's premises, the Supplier will ensure that, whilst on Customer's premises, the Supplier's employees and representatives comply with:

2.6.1. all applicable health and safety, security, environmental and other legislation which may be in force from time to time; and

2.6.2. any Customer policy, regulation, code of practice or instruction relating to health and safety, security, the environment or access to and use of any Customer laboratory, facility or equipment which is brought to their attention or given to them whilst they are on Customer premises.

2.7. The Supplier warrants that the provision of Services shall not give rise to a transfer of Supplier's or third party employees to Customer pursuant to TUPE.

## 3. Customer remedies

3.1. If the Supplier fails to perform the Services by the applicable dates, Customer shall, without limiting its other rights or remedies, have one or more of the following rights:

3.1.1. to immediately terminate the Contract by giving notice to the Supplier;

3.1.2. to refuse to accept any subsequent performance of the Services (including delivery of Deliverables) which the Supplier attempts to make;

3.1.3. where Catapult has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or

3.1.4. to claim damages for any additional costs, loss or expenses incurred by Customer which are in any way attributable to the Supplier's failure to meet such dates.

3.2. These Conditions shall extend to any substituted or remedial services provided by the Supplier.

3.3. Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

## 4. Customer's obligations

4.1. Catapult shall:

4.1.1. provide the Supplier with reasonable access at reasonable times to Customer's premises for the purpose of providing the Services to the extent necessary; and

4.1.2. provide such information to the Supplier as the Supplier reasonably requests and Catapult considers reasonably necessary for the purpose of providing the Services.

## **5. Charges, invoices and payment**

5.1. Prior to any invoice being raised, the Supplier must first register as a supplier on the Catapult's payment system. A new supplier form can be requested from your Catapult representative leading on the purchase of Services.

5.2. The Charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services, and shall not exceed the Fee, including every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

5.3. Catapult will, as part of the Charges, reimburse the Supplier at cost for all reasonable travel, subsistence and other expenses incurred by individuals engaged by the Supplier in providing the Services to Customer provided that Catapult's prior written approval is obtained before incurring any such expenses, that all invoices for such expenses are accompanied by valid receipts and provided that the Supplier complies at all times with Catapult's expenses policy from time to time in force.

5.4. The Charges for the Services which have been correctly calculated in accordance with this clause 5 and verified by Catapult shall become due, and the Supplier shall invoice Catapult for such Charges, on completion of the Services, or in accordance with Payment Schedule (if specified in the Commercial Terms), to the satisfaction of Catapult pursuant to clause 2.5. Each invoice shall be deemed to be correctly rendered, and as a result shall become payable, only if it includes such supporting information as is required by Catapult to verify the accuracy of the such invoice, including but not limited to quoting within such invoice the relevant purchase order number as set out in the corresponding Order, and verified by Catapult.

5.5. Subject to clause 5.4, and in consideration of the supply of the Services by the Supplier, Catapult shall pay the invoiced amounts within 30 days of the date of receipt of a correctly rendered invoice. Payment shall be made to the bank account registered by the Supplier on Catapult's payment system.

5.6. All amounts payable by Catapult under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Catapult, Catapult shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

## **6. Customer property**

6.1. The Supplier acknowledges that all information (including Confidential Information), equipment and tools, drawings, specifications, data, software and any other materials supplied by Customer to the Supplier (Customer Materials) and all rights in Customer Materials are and shall remain at all times the exclusive property of Customer. The Supplier shall keep Customer Materials in safe custody at its own risk, maintain them in good condition until returned to Customer, and not dispose or use the same other than for the sole purpose of performing the Supplier's obligations under the Contract and in accordance with Customer's written instructions or authorisation.

## **7. Intellectual property rights**

7.1. See Special Conditions

## **8. Export Control**

8.1. The Supplier shall comply with all applicable import and export control laws and regulations in fulfilling the Contract and provide all information about the Services necessary for Customer's compliance with all applicable import and export control laws and regulations.

8.2. Unless stated in the Special Conditions, the Supplier warrants that no part of the Deliverables constitute controlled materials under any import and export control laws and regulations.

## **9. Indemnity**

9.1. The Supplier shall indemnify, and shall keep indemnified, Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Customer as a result of or in connection with:

9.1.1. any claim brought against Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services; and

9.2. This clause 9 shall survive termination or expiry of the Contract.

## **10. Insurance**

10.1. During the term of the Contract and for a period of 3 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, the Insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on Catapult's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **11. Liability**

11.1. Subject to clause 11.4, no party shall have any liability for:

11.1.1. any indirect or consequential loss or damage;

11.1.2. any loss of business, rent, profit or anticipated savings;

11.1.3. loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto Catapult's premises by or on behalf of the Supplier; or

11.2. Subject to clause 11.4, Customer's total liability shall be limited to the Charges.

11.3. Subject to clause 11.4, any indemnities under the Contract, a breach of confidentiality, or a misuse of Customer Materials or branding, Supplier's total liability shall be limited to twice the Fee.

11.4. Nothing in the Contract restricts any party's liability for:

11.4.1. death or personal injury resulting from its negligence; or

11.4.2. its fraud (including fraudulent misrepresentation); or

11.4.3. breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or

11.4.4. any other liability to the extent it cannot be limited or excluded by law.

## **12. Confidential information**

12.1. A party (Receiving Party) shall keep in strict confidence all Confidential Information which has been disclosed to, or otherwise obtained by, the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors (including Customers). The Receiving Party shall restrict disclosure and use of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 12 shall survive termination or expiry of the Contract.

## **13. Termination**

13.1. Catapult may terminate the Contract with immediate effect by giving written notice to the Supplier if:

13.1.1. the circumstances set out in clauses 3.1.1 or 15.1 apply;

13.1.2. the Supplier breaches any term of the Contract and (if such breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach; or

13.1.3. the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this Clause 2.1(c);

13.1.4. there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010); or

13.1.5. the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business; or

13.1.6. the Supplier's financial position deteriorates to such an extent that in Catapult's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

13.2. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination or expiry of the Contract shall continue in full force and effect.

13.3. Without prejudice to clause 13.2, clauses 2, 3, 6, 7, 9, 10, 11, 12, and 17 shall survive the termination or expiry of the Contract, continuing in full force and effect.

13.4. Upon termination or expiry of the Contract, the Supplier shall immediately:

13.4.1. cease all work on the Contract;

13.4.2. deliver to Catapult all Deliverables and all work-in-progress whether or not then complete. If the Supplier fails to do so, then Catapult may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

13.4.3. cease use of and return (or, at Customer's election, destroy) all Customer Materials in the Supplier's possession or control; and

13.4.4. cease all use of, and delete all copies of, Catapult's confidential information.

## **14. Force majeure.**

14.1. If any event or circumstance that is beyond the reasonable control of the Supplier, and which by its nature could not have been foreseen by the Supplier or, if

it could have been foreseen, was unavoidable, (provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract) prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 10 Business Days, Catapult may, or Supplier with Catapult consent may, terminate this Contract immediately by giving written notice to the other, with Catapult receiving a refund of any payments made in advance of full delivery.

#### 15. Corruption, modern slavery

15.1. Catapult shall be entitled to terminate the Contract immediately and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Associate:

15.1.1. offers or agrees to give any person working for or engaged by Catapult, or any Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and Catapult or any Public Body, including its award to the Supplier or a Supplier's Associate and any of the rights and obligations contained within it;

15.1.2. has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by Catapult or any Public Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to Catapult before the Contract is entered into;

15.1.3. breaches the provisions of the Bribery Act 2010.

15.2. For the purposes of clause 15.1, "loss" shall include amongst other things:

15.2.1. Catapult's costs in finding a replacement supplier;

15.2.2. direct, indirect and consequential losses; and

15.2.3. any loss suffered by Catapult as a result of a delay in its receipt of any Deliverables.

15.3. In performing its obligations under the agreement, the Supplier shall:

15.3.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (Anti-Slavery Laws) including but not limited to the Modern Slavery Act 2015;

15.3.2. subject to clause 17.2.2, include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 15.3;

15.3.3. notify Catapult as soon as it becomes aware of any actual or suspected breach of clause 15.3.1;

15.3.4. maintain a complete set of records to trace the supply chain of all goods and services provided to Catapult in connection with this agreement; and permit Catapult and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 15.3.

15.4. The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

15.5. Breach of clause 15.3 shall be deemed a breach in relation to which Catapult shall have the right to terminate the Contract immediately on giving written notice.

#### 16. Data protection.

16.1. Other than business contact information in respect of each parties' representatives, which may solely be used by the other party to undertake the Contract activities and otherwise undertake contract management activities, no personal data is intended to be transferred or processed under this Contract. To the extent that personal data is transferred and processed, the parties shall comply with their obligations under the Data Protection Legislation, and shall enter into any additional clauses or data protection addenda as reasonably required by Catapult.

16.2. In the event the Supplier needs to process personal data for or on behalf of Catapult for the purposes of the Services, it shall first notify Catapult of the requirement, and subsequently enter into a supplemental agreement to govern such activity prior to any processing taking place.

16.3. Catapult processes data in accordance with its Privacy Policy.

#### 17. General

17.1. Entire agreement. The Contract constitutes the entire agreement between Catapult and the Supplier in relation to the supply of the Services and the Contract supersedes any earlier agreements, arrangements and understandings relating to that subject matter.

#### 17.2. Assignment and subcontracting

17.2.1. Catapult may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

17.2.2. The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without Catapult's prior written consent.

17.3. Further assurance. The Supplier will promptly at Catapult's request do (or procure to be done) all such further acts and things, including the execution of all such other documents, as Catapult may from time to time require for the purpose of securing for Catapult the full benefit of the Contract, including ensuring that all title in the goods is transferred absolutely to Catapult.

#### 17.4. Publicity

17.4.1. The Supplier shall not make any press announcements or publicise this Contract in any way without Catapult's prior written consent.

17.4.2. Customer shall be entitled to publicise this Contract.

17.4.3. The Supplier shall not do anything or cause anything to be done, which may damage the reputation of Customer or bring Customer into disrepute.

#### 17.5. Notices

17.5.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to:

17.5.1.1. in the case of Catapult: the Legal Department; Address: Level 9, 101 Euston Road, London NW1 2RA;

17.5.1.2. in the case of the Supplier: the address set out in the parties section of this Contract.

#### 17.6. Severance

17.6.1. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

17.6.2. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.7. Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.8. Status. Nothing in the Contract creates any partnership or joint venture between the Supplier and Catapult. Nothing in the Contract creates any agency between the Supplier and Catapult. The relationship of the Supplier to Catapult will be that of independent contractor and nothing in this agreement shall render it (nor any employees, agents, subcontractors) an employee or worker of Catapult and the Supplier shall not hold itself out as such and shall procure that its employees, agents, and subcontractors shall not hold themselves out as such.

17.9. Third party rights. Except for the Customer, a person who is not a party to this Contract shall not have any rights under or in connection with it. Notwithstanding the foregoing, the Contract is enforceable by Catapult and Customer and by any members of their Group from time to time pursuant to the Contracts (Rights of Third Parties) Act 1999. Changes and variations agreed by parties to this Contract in accordance with clause 17.10 will not require the consent of any other parties.

17.10. Variation. Any variation to the Contract, including any changes to the Services, these Conditions, the Special Conditions or the Order, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing, signed by or on behalf of each of the parties. The Supplier shall continue to perform under this Contract unless and until a variation is agreed and binding between the parties. The Supplier acknowledges that only Catapult's C-Suite Officers and Company Secretary have the authority to vary this Contract on behalf of Catapult.

17.11. Governing law and jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**SPECIAL CONDITIONS**

**1. Demonstrator**

- a. For the purposes of this Contract, a demonstrator is an experience that provides an audiovisual and interactive benchmark of the experience, illustrating what a user will be expected to see, do, hear, and feel when they are within or having the experience. It will also prove the feasibility of any key technological or logistical elements, particularly if they could be considered risky. The demonstrators will not be ready for a consumer application but the audiovisual elements and interactive functionality should be of sufficiently high quality to constitute a “preview” or “alpha” version of an application.
- b. The Supplier’s demonstrator is as described in its written application in response to the open call competition and further detailed in the written presentation.
- c. The demonstrator must use the Customer, Niantic’s, Lightship platform, which is provided by Niantic subject to the platform terms and conditions which must be accepted by Supplier.
- d. The deliverable supplying the final build of the demonstrator, shall be delivered to each Customer and shall include: [describe the nature of the deliverable and ancillary components (if any) e.g. executable file / source code / an application file only, and not the underlying source code / an application file and associated demonstrator hardware which the application file operates, but excludes a PC and operating system, network connectivity and cabling. Consider if it’s in a cloud instance, or whether an underlying licence is required in order to use the Demonstrator – if so, specify terms). It shall also include any design files and animation, and Customer shall have the right to utilise such materials in any way (including modification and adaptation to create new materials) throughout the world in perpetuity.
- e. For the avoidance of doubt, ongoing support and maintenance for the demonstrator is outside the scope of the Contract, unless explicitly stated by Supplier.

**2. Intellectual Property**

For the purposes of this Intellectual Property clause of the Special Terms, the following definitions are used:

- a. **“Intellectual Property Rights”** means all intellectual property rights of any nature whatsoever throughout the world and including, without limitation, all and any:
  - i. patents, registered trademarks, service marks, copyright, designs and any and all applications for registration of any of the same wherever made; and
  - ii. unregistered trademarks, service marks, designs, design right and copyright; and
  - iii. know-how, trade secrets and confidential information howsoever arising; and
  - iv. database rights and semi-conductor topographies;
  - v. and any right or interest in any of the foregoing.
- b. **‘Look and Feel’** shall mean the unique user interface of the Demonstrator or any product based thereon produced by the SME, excluding only anything that may form part of SME’s generic screen layout template but including the particular and distinctive elements of graphics, design, colours, organisation, presentation, typographical look and layout, navigation, trade dress and stylistic convention of any product developed by the SME pursuant to this Agreement;
- c. **‘SME’** means Supplier;
- d. **‘SME Materials’** means:
  - i. the proprietary technology and software of SME, owned by or under license to SME and as developed independently of this Agreement, comprising (without limitation) software programs, code, tools and/or modules for the development, use and management of content, including but not limited to software supporting the functionality and operation of such proprietary technology, excluding any source code for the same unless expressly provided for under a Project Schedule;
  - ii. any design, concept, format, specification, information and/or data of SME in eye-readable form for web/app content, owned by or under license to SME and as developed independently of this Agreement; and
  - iii. any documentation, manuals or user guides in relation to (i) and (ii) above and/or as provided by SME for Sponsor, Digital Catapult and/or Niantic’s use, together with all updates of the same (if any) from time to time;
- e. **‘Sponsor Materials’** means any work product, deliverable or materials including (without limitation) any software program, code, tools or modules, any design, specification, or requirements, any copyright work, trademark, logo, graphic design, storyline and game concepts or other material and in whatever form as supplied by Sponsor to SME or as created by SME based on or utilising those elements for the purposes of the Agreement.

The following conditions apply:

- f. **Sponsor’s Proprietary Rights:** All rights of ownership, title, interest or otherwise in the Intellectual Property Rights of Sponsor in Sponsor Materials are expressly reserved by Sponsor and shall vest in and remain the sole and absolute property of the Sponsor and its licensors. Supplier expressly

## SPECIAL TERMS

acknowledges each Sponsor's ownership, title, interest or otherwise in the Intellectual Property Rights in Sponsor Materials. Nothing in this Agreement shall be construed as vesting in, or transferring or licensing to SME any Intellectual Property Rights in Sponsor Materials, unless expressly specified. SME hereby assigns to Sponsor by way of future assignment with full title guarantee, SME's entire right and interest which SME acquires (if any) in any Sponsor Materials or where such right or interest cannot be assigned grant to Sponsor a royalty free licence in perpetuity to the same and SME will execute any documents in connection therewith that Sponsor may request.

- g. **SME's Proprietary Rights:** All rights of ownership, title, interest or otherwise in the Intellectual Property Rights of SME in any SME Materials (including any SME Materials comprised within or provided as part of any Demonstrator) are expressly reserved by SME and shall vest in and remain the sole and absolute property of SME and its licensors. Sponsor expressly acknowledges SME's ownership, title, interest or otherwise in the Intellectual Property Rights in the SME Materials.
- h. **Sponsor Work Product :** The ownership, right, title and interest in all Intellectual Property Rights in all elements of each Demonstrator (including without limitation the Look and Feel elements, graphics and animation) that are designed, developed, adapted or created by the SME or any employee, agent or sub contractor of SME from the Sponsor Materials but, excluding SME's underlying Proprietary Rights ("**Work Product Rights**"), shall throughout the world vest in and remain the sole and absolute property of Sponsor. SME hereby assigns with full title guarantee by way of future assignment to Sponsor the Work Product Rights, and will execute and deliver any documents in connection therewith that Sponsor may reasonably request to enforce, protect and otherwise perfect the vesting of the Work Product Rights in Sponsor. SME will use all reasonable efforts to deliver any graphic files and other elements that stand alone from the Demonstrator that feature the Work Product Rights to Sponsor on creation.
- i. Without prejudice to the foregoing and without prejudice to any other of Sponsor's rights hereunder or otherwise, to the extent that for any reason whatsoever, including without limitation local laws, regulations or third party rights, full and complete vesting in and/or assignment to Sponsor of the Work Product Rights is not or cannot be fully achieved, SME hereby grants to Sponsor a future exclusive, irrevocable, perpetual, transferable, sub-licensable (including multiple sub-licensing tiers), fully paid-up, royalty-free, world-wide license in the Work Product Rights to use exploit, copy, modify, adapt, distribute, perform, market and otherwise do anything with them via all means and media.
- j. **Moral Rights :** Without limiting the generality of the foregoing, SME specifically waives, forfeits, relinquishes and abandons, or if SME is a company, it shall ensure that all employees and sub-contractors and personnel involved in the provision of the creation of the Demonstrator specifically waive, forfeit, relinquish and abandon, all claims of "moral rights", "droit moral", attribution and/or integrity as to the Demonstrator. For purposes of this Agreement, "**moral rights**" means any rights of paternity or integrity, any right to claim authorship, to object to any distortion, mutilation or other modification of, or other derogatory action, whether or not such would be prejudicial to SME's honour or reputation, and any similar rights existing under judicial or statutory law or any country in the world, or under any treaty, regardless whether or not such right is denominated or generally referred to as a "moral" right. SME agrees, or if SME is a company, it shall ensure that all employees and sub-contractor personnel involved in the provision of the services, specifically agree, to execute all paperwork as may be required for it to successfully waive, forfeits relinquish and abandons and its claims of moral rights. In the event SME, or if SME is a company, all employees and sub-contractor personnel, cannot waive moral rights under any applicable legislation, SME warrants that it has entered into a contract with every person engaged or involved in the production of the Demonstrator, which provides for an assignment of all rights of such contributor (other than moral rights or equivalent rights which they are prohibited from waiving by law) and their authorisation for the worldwide exploitation in all media now known or hereafter developed of their work and that SME has paid or will pay all sums due under such contract to the contributors for such assignment and exploitation of their rights.
- k. **[Niantic & Digital Catapult's right to use the Demonstrator, marketing and promotional materials** With Sponsor now having all IP assigned to it under this Contract, a licence/right needs to be provided from Sponsor to Digital Catapult (Niantic third party right) to use the delivered materials. If Sponsor is a party to this contract, a clause can be included here, otherwise an update to the Sponsorship Agreement will be needed to provide for that positive obligation].

### 3. ROFR / Demonstrator Commercialisation

- a. Following delivery of the Demonstrator, the Supplier and the Sponsor may negotiate in good faith the terms of a new agreement in connection with the development of the Demonstrator and its commercialisation. However it is understood that, as the owner of the IP in the Demonstrator, the Sponsor will, at its discretion be free to work with any other developers in relation to the ongoing development or other exploitation of the Demonstrator or the ideas contained in such Demonstrator.

**4. Marketing**

- a. Supplier shall provide, or enable each Customer to generate images, videos and stills of the Supplier's pitches, demonstrations and other output from the Project, including the Demonstrator, as well as the Supplier's name, likeness and trade marks to acknowledge Supplier's activities in the Project, for use in Customer's marketing materials and promotions relating to this Project.
- b. Supplier shall use reasonable endeavours to cooperate in the creation of a dedicated video case study to promote the demonstrator, as well as at least one written case study and blog post.

## SERVICES DESCRIPTION

### **DESCRIPTION OF SERVICES**

[Insert text or link/reference relevant document or annex it e.g. application form from competition]

### **SPECIFICATION**

[Insert text or link/reference relevant document or annex it e.g. application form from competition]

### **KEY PERSONNEL**

[Not Applicable / insert key personnel]

### **DELIVERY**

#	Activity	Outcome	Deliverable(s)	Delivery Location	Milestone(s)	Milestone Date(s)
1						
2						

Note: The final build of the demonstrator should be listed as a deliverable with a description of the format (e.g. executable file) and any ancillary items accompanying the demonstrator.

)]

### **Annex**

This Schedule is deemed to incorporate the annexed (or attached) document titled "XXX", dated "XXX".