

PUBLIC[©]

SUBJECT TO CONTRACT

Custom Software Development Agreement

Dated _____ 2020 (the "Effective Date")

This Agreement is made between:

- (1) [**FITTING ROOM**] with its principal place of business at _____ (the "Customer")
and
- (2) **Public Ltd** with its principal place of business at Leigh Court, Bristol, United Kingdom. BS8 3RA. (the "Developer").

Purpose of This Agreement

- (A) The Customer desires to retain the services of the Developer as an independent contractor to develop the App and Web software defined in the Functional Specification at Schedule 1 hereto (the "Software").
- (B) The Developer is ready, willing and able to undertake the development of the Software and agrees to do so under the terms and conditions set out below.

It is hereby agreed as follows:

1. Development Plan

1.1 The Developer shall within a reasonable time following the Effective Date provide a development plan for the Software, satisfying the requirements set forth in the functional specifications which are set out in Schedule 1 (One) ("the Development Plan").

1.2 The Development Plan shall include:

1.2.1 detailed specifications for the Software;

1.2.2 a full list of all items to be delivered to Customer under this Agreement (the "Deliverables"); and

1.2.3 a schedule containing a delivery date for Deliverables.

1.3 Upon delivery of the Development Plan such document shall be deemed by both parties to have become a part of this Agreement and will be incorporated by reference. Upon acceptance of the Development Plan the Developer shall continue the development of Software that will substantially conform to the requirements set forth in the Development Plan.

4. Payment

4.1 The Client shall pay Developer a fixed fee of _____ sterling (£_____) (the "Development Fee") in _____ installments as set out in the payment schedule in Schedule B of this Agreement.

5. Payment of Developer's Costs:

5.1 The Customer shall reimburse Developer for any costs incurred by the Developer (over and above the Development Fee) for any development software or commercial software that the Developer deems necessary to complete the Software, subject to approval by Customer.

6. Changes in Project Scope

6.1 If at any time following acceptance of the Development Plan by Customer, the Customer requires any change in performance of the Developers services, the Software and or the operation of the Software then to the extent that any such change will alter or amend the Functional Specifications or other elements of the Development Plan, Customer shall submit to Developer a written proposal specifying any of the desired changes.

6.2 The Developer will evaluate each such proposal at its standard rates and charges. Developer will submit to the Customer a written response to each proposal within ten (10) working days following receipt thereof. Developer's

written response shall include a statement of the availability of Developer's personnel and resources together with any impact that any proposed changes will have to the Development Fee, delivery dates, warranty provisions or any other part of this Agreement that may be affected by any changes.

7. Acceptance Testing of Software

7.1 The Customer will receive fifteen (15) days prior to the agreed date of delivery of the Software in final form for the purposes of inspecting, testing and evaluating the Software in order to determine whether the Software satisfies the acceptance criteria in accordance with procedures set out in Functional Specifications set out in the Development Plan, or as otherwise agreed in writing by between the Developer and the Customer prior to testing.

7.2 In the event that the Software does not satisfy the acceptance criteria, Customer shall:

- 7.2.1 give the Developer written notice stating all reasons why the Software is unacceptable;
- 7.2.2 the Developer shall have fifteen (15) working days from the receipt of such notice to correct the specified deficiencies in the Software and to deliver the Software to the Customer;
- 7.2.3 the Customer shall then have a further fifteen (15) days to inspect, test and evaluate the Software for satisfaction as above;
- 7.2.4 in the event that the Software still does not satisfy the acceptance criteria, Customer shall have the option of either (1) repeating the procedure set out above, or (2) terminating this Agreement pursuant to the section of this Agreement entitled "Termination."

7.3 In the event that the Customer does not give written notice to the Developer within the initial fifteen (15) day inspection, testing and evaluation period or any extension of that period (agreed by the Developer), that the Software does not satisfy the Development Plan the Customer shall be deemed to have accepted the Software upon expiration of such period.

8. Ownership of Software

8.1 The Developer shall, upon full payment of the Development Fee together with any and all outstanding costs incurred and or other payments to be made in accordance with this Agreement, assign and transfer to the Customer its entire right, title and interest in and to all of the intellectual property created or developed

by the Developer for the Customer in and to the Software as stated in Schedule 1 (One).

9. Warranties

9.1 Save as set out in this Agreement, the software is provided "as is", without warranty of any kind, express or implied, including but not limited to the warranties of merchantability, fitness for a particular purpose and non infringement. In no event shall the developers be liable for any claim, damages or other liability, whether in an action of contract, tort or otherwise, arising from, out of or in connection with the software or the use or other dealings in the software.

10. Confidentiality

10.1 During the term of this Agreement and for one (1) year following the termination hereof, the Developer will use its reasonable commercial endeavors to prevent the unauthorized use or dissemination of Customer's confidential information.

10.2 Confidential information for the purpose of this Agreement is limited to information clearly marked as confidential, or disclosed orally that is treated as confidential when disclosed and summarized and identified as confidential in a writing delivered to Developer within 15 days of disclosure.

10.3 Confidential information does not include information that:

10.3.1 the Developer knew before the Customer disclosed it

10.3.2 is or becomes public knowledge through no fault of Developer;

10.3.3 Developer obtains from sources other than Customer who owe no duty of confidentiality to Customer; or

10.3.4 the Developer independently develops.

11. Term of Agreement

11.1 This Agreement commences on the Effective Date and shall continue until full performance by both parties, or until earlier terminated by one party under the terms of this Agreement.

12. Termination of Agreement

12.1 Each party shall have the right to terminate this Agreement by written notice

to the other if a party has materially breached any obligation herein and such breach remains uncured for a period of 14 days after written notice of such breach is sent to the other party.

12.2 In the event that the Developer terminates this Agreement because of Customer's default all of the following shall apply:

12.2.1 the Customer shall immediately cease use of the Software.

12.2.2 the Customer shall, within ten (10) days of termination, deliver to Developer all copies and portions of the Software and related materials and documentation in its possession furnished by Developer under this Agreement.

12.2.3 all amounts payable or accrued to Developer under this Agreement shall become immediately due and payable.

12.2.4 all rights and licenses granted to Customer under this Agreement shall immediately terminate.

13. Developer an Independent Contractor

13.1 The Developer is an independent contractor, and neither Developer nor Developer's staff is, or shall be deemed, Client's employees. In its capacity as an independent contractor, Developer agrees and represents, and Customer agrees, as follows:

13.1.1 the Developer has the right to perform services for others during the term of this Agreement subject to any non competition provisions set out in this Agreement, if any;

13.1.2 the Developer has the right to perform the services required by this Agreement at any place or location and at such times as Developer may determine;

13.1.3 the services required by this Agreement shall be performed by Developer, or Developer's staff, and Customer shall not be required to hire, supervise or pay any assistants to help Developer unless otherwise agreed between the parties from time to time acting at all times in good faith;

13.1.4 the Developer is responsible for paying all ordinary and necessary expenses of its staff;

13.1.5 neither the Developer nor the Developer's staff shall be required to devote full-time to the performance of the services required by this Agreement, unless otherwise agreed between the parties; and

13.1.6 the Customer shall not withhold from Developer's compensation any amount that would normally be withheld from an employee's pay.

14. Legal Costs

14.1 An agreed and fixed fee for Legal costs for this development are to be paid by the Customer in advance and in full paid directly to Raftermarsh UK.

15. General Provisions

14.1 Complete Agreement: This Agreement together with all exhibits, appendices or other attachments, which are incorporated herein by reference, is the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter. In the event of a conflict between the provisions of the main body of the Agreement and any attached exhibits, appendices or other materials, the Agreement shall take precedence.

14.2 Modifications to Agreement: Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

14.3 Applicable law: This Agreement will be governed by the laws of the England and Wales.

14.4 Notices: All notices and other communications given in connection with this Agreement shall be in writing and shall be deemed given as follows:

14.4.1 When delivered personally to the recipient's address as appearing in the introductory paragraph to this Agreement;

(a) three days after being sent by recorded delivery, postage prepaid to the recipient's address as setout in this Agreement; or

(b) When sent by fax or electronic mail. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail, or the recipient delivers a written confirmation of receipt.

14.5 No Agency: Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.

14.6 Assignment: The rights and obligations under this Agreement are freely assignable by either party. Client shall retain the obligation to pay if the assignee

fails to pay as required by this Agreement.

14.7 Severability: If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement will be interpreted so as best to carry out the parties' intent.

15. Signatures

Each party represents and warrants that on this date they are duly authorized to bind their respective principals by their signatures below.

Customer:

_____ (Signature)

[FITTING ROOM]

Title: Director

Date: _____

Developer:

_____ (Signature)

PUBLIC Ltd

Title: Director

Date: _____

SCHEDULE 1: Specification

Please see separate document Titled _____

[TBC]

SCHEDULE B: Payments of Developer Fees

Customer shall pay Developer according to the following schedule of payments:

[TBC]