

STANDARD SOFTWARE DEVELOPMENT TERMS

The following terms apply to the development and supply of software by Roam Creative Ltd ("Roam") to the Customer, and are to be read in conjunction with the Estimate.

1. DEFINITIONS

'*Development*' means the development of the Software (and specifications) to use on the System as described in the Estimate in accordance with the agreed specifications and Estimate deliverables;

'*Development Testing*' means the tests and checks of the Software and Documentation provided by Roam to identify any unacceptable defects;

'*Documentation*' means the documents relating to the Software and Development supplied by Roam from time to time;

'*Equipment*' means the devices and platforms licenced to the Customer by Roam in order that the Customer may use the Software described in the Estimate;

'*Estimate*' means the scoping document and/or Statement of Work detailing the Development to be supplied to the Customer;

'*Maintenance*' means any agreement or proposal by Roam to provide ongoing software maintenance, fixes, upgrades and improvements;

'*Roam's Libraries*' means Roam's pre-existing server code, copyright, the Droplet and DropSense Internet of Things platforms and other intellectual property;

'*Roam Pre-Existing IP*' means any Intellectual Property right, title or interest in any part of Software which is either:

(a) owned by, licensed to or in the possession of Roam on or prior to the commencement of the relevant Estimate; or

(b) developed by, licensed to or in the possession of Roam after the commencement of the relevant Estimate, but not in relation to the relevant Estimate. The Equipment is deemed to be Roam Pre-Existing IP.

'*Software*' includes applications, and Roam's Libraries specified in the Estimate deliverables and any new releases or versions of any module of that Software or any other software provided by Roam to the Customer and includes related Documentation excluding source code;

'*System*' means the platform or Equipment on which the Software is to be used as agreed prior to or as part of the undertaking of the Development; and

'*Warranty Period*' means the number of days specified in the Estimate (or if not specified, 14 days) from the date of installation of the Software or completion of the Development whichever is the earlier.

2. CUSTOMER'S RIGHTS

2.1. If the Customer copies, installs or uses the Software or executes this Agreement and pays the applicable licence fees, Roam grants the Customer a personal, non-exclusive and non-transferable right and licence to use the Software on the System on the terms set out in this Agreement.

2.2. Roam agrees to provide the Customer with:

2.2.1. A written Estimate detailing the Development scope, deliverables, assumptions, timeframes and costs;

2.2.2. The degree of skill, care and diligence reasonably to be expected of similar organisations providing similar Development services.

3. CUSTOMER'S RESPONSIBILITIES

3.1. The Customer:

3.1.1. May use the current version of the Software on the System and in accordance with the Documentation until new versions or enhancements become available to use instead;

3.1.2. Must carefully check the final Development copy/graphics for errors and advise Roam;

3.1.3. May make copies of the Documentation for its own internal use provided that all copies include a statement acknowledging Roam's proprietary rights; and

3.1.4. Must advise Roam of any defects in a timely manner and provide Roam reasonable assistance to resolve them.

3.2. The Customer must not, must not allow a third party to and must not attempt to:

3.2.1. Copy the Software (other than is reasonably required for backups, as otherwise permitted by this Agreement or as required by law);

3.2.2. Transfer the Software to another System or non-licenced or approved Equipment;

3.2.3. Incorporate the Software into other products or non-licensed systems;

3.2.4. Assign, mortgage, lease, sub-licence any of the Customer's rights or obligations under this Agreement or otherwise make the

3.2.5. Software available to a third party;

- 3.2.6. Alter, modify, tamper with, reverse engineer, decompile, disassemble, create derivative works based on or imitate all or part of the Software without the prior express and written agreement of Roam;
- 3.2.7. Remove any copyright or disclaimer notification on the Software or Documentation and any copies must bear the same notification as the original.

4. SOFTWARE SECURITY

- 4.1. The Customer must ensure that its employees/agents comply with the provisions of this Agreement and that no unauthorised use is made of the Software or Development.
- 4.2. The Customer must notify Roam immediately if it becomes aware of or suspects any:
 - 4.2.1. Unauthorised access, theft, copying, tampering, reverse engineering, or use of the Software, Development or Documentation; or
 - 4.2.2. Unauthorised use or disclosure of Confidential Information (as defined in Clause 6).

5. TITLE

- 5.1. Except as expressly provided in an Estimate, all Intellectual Property right, title or interest which may subsist in any Software (other than any Roam Pre-Existing IP in any part of that Software and Intellectual Property right, title or interest in any Roam owned software) will vest absolutely and exclusively to the Customer upon payment in full by the Customer of any and all Roam invoices issued under this Agreement.
- 5.2. Ownership of any Roam Pre-Existing IP in any part of the Software remains with its owner, but Roam grants the Customer and its affiliates a non-exclusive, perpetual licence to all Intellectual Property rights in Roam Pre-Existing IP, including the right to modify that Roam Pre-Existing IP and use, copy and distribute that Roam Pre-Existing IP and such modifications.
- 5.3. Should the Customer intend to access and make use of Roam's Libraries in the course of the Development, the Customer will be required to enter into a software licence with Roam and pay further applicable software licence fees. In doing so, Roam will grant the Customer a personal, non-exclusive and non-transferable right and software licence to use Roam's Libraries on the terms set out in this Agreement.
- 5.4. For the avoidance of doubt, the Customer agrees that it shall only ever own aspects of the Software or the Development specifically designed for the Customer and it shall not own the Equipment, Roam's Libraries or Roam's Pre-Existing IP and shall only ever have a license to use the Equipment and Roam's Libraries in order to be able to make use of the Development and Software.
- 5.5. The Customer acknowledges that Roam may provide similar services to the Development to clients unrelated to the Customer and shall not be restricted from doing so.

6. CONFIDENTIALITY

- 6.1. The Customer will as a result of their engagement, be privy to confidential information (including but not limited to any software, source codes, coding (including Roam's Libraries), devices, platforms, copyright and other intellectual property, formulas, documentation, products, services, client information, prices charged, business methods, new initiatives, financial information, know-how, show-how, and trade secrets) of Roam, and its general business processes which are valuable and commercially sensitive ("Confidential Information"). The Customer must keep confidential and not use or disclose any of the Confidential Information concerning the Development or contractual arrangements of Roam which is not lawfully in the public domain or required to be disclosed by law. The Customer must not disclose any of the Confidential Information unless authorised to do so in writing by Roam to fulfil the Customer's obligations under these terms. The obligations of confidentiality extend to any employees, affiliates, agents, consultants or sublicensees deemed of the Customer and will endure until all of the Confidential Information known by the Customer under these terms lawfully enters the public domain.
- 6.2. Roam will as a result of this Agreement be provided with content and materials by the Customer that are commercially sensitive and of a confidential nature ("the Customer's Confidential Information"). Roam must keep confidential and not use or disclose any of the Customer's Confidential Information except as to develop the Software under the Terms of this Agreement. Roam must not disclose any of the Customer's Confidential Information unless authorised to do so in writing by the Customer to fulfil Roam's obligations under these terms. The obligations of confidentiality extend to any employees, affiliates, agents, consultants or sublicensees deemed of Roam and will endure until all of the Customer's Confidential Information known by Roam under these terms lawfully enters the public domain.

7. SCOPING/ ESTIMATES/ DEPOSITS AND PAYMENT

- 7.1. Any Development requiring scoping work will be invoiced in terms of clause 7.3 below.
- 7.2. Roam agrees to commence work on the Development following the Customer's acceptance of any estimate provided and the receipt of a non-refundable deposit (in the event of cancellation) plus a contingency fee of up to 20% of the agreed estimate for unexpected issues or delays which Roam is not responsible for. Estimates must be accepted within 10 working days from the date of issue and all other payments will be credited against the final invoice.

- 7.3. The Customer must pay any amounts due within 10 days of the date of the applicable Roam invoice as well as for any additional work requests on a time and materials basis (such as changes to specifications design or artwork) or sundry costs not included in the agreed Estimate (such as media, studio material, freight, accommodation and travel costs incurred in the supply and Development of the Software and Documentation). Roam will seek the Customer's prior approval before incurring those sundry costs which will also include a 20% administration fee.
- 7.4. All late payments will accrue interest calculated monthly on the Customer's account at a cumulative rate of 10% of the amount due and owing until the date of payment.
- 7.5. If the Customer fails to make payment of the applicable Roam invoice within 30 days of the due date, Roam may give the Customer seven days' notice and cease the Development and/or supply of the Software to the Customer if payment has not since been made.
 - 7.5.1. Roam will recommence the Development and supply of the Software to the Customer when the Customer pays all outstanding amounts plus a fee of \$10,000.00 plus GST.
 - 7.5.2. If the Customer has not paid any outstanding amounts within a further 30 days, Roam may terminate this Agreement on seven days' notice.
- 7.6. If the Customer fails to make payment of any Roam invoice within 90 days of the due date, the Customer will be deemed to have abandoned any claim to the ownership of any Intellectual Property right which may subsist in any Software (other than any Roam Pre-Existing IP in any part of that Software and Intellectual Property right, title or interest in any Roam owned software) as afforded by clause 5.1 of this Agreement. For the avoidance of doubt, any money still owing to Roam under this Agreement will remain due and payable.
- 7.7. If the Customer wants to dispute any invoice, the Customer must notify Roam in writing within 21 days of the invoice date, failing which the Customer waives any right to dispute such amounts.

8. WARRANTY AND LIABILITY

- 8.1. Roam warrants that:
 - 8.1.1. It has the necessary rights to enter into this Agreement; and
 - 8.1.2. It is the owner or licensee of all intellectual property rights which may subsist in the Software (including logos, trade marks, graphics and text); and
 - 8.1.3. During the Warranty Period, the System on which the Software is designed to be used on is compatible with the Software and will operate largely error free under normal use; and
 - 8.1.4. During the Warranty Period, the Software will operate substantially in accordance with the Roam published Development specifications as agreed with the Customer.
- 8.2. Except for the foregoing, the Software is provided as is. Roam does not warrant that the Software is error free or the Customer will be able to operate the Software without problems or interruptions particularly where Roam has not audited the System specifications or that the Development Specifications have been fully achieved.
- 8.3. If a warranty breach occurs within the Warranty Period, the Customer's exclusive remedy and the entire liability of Roam and its suppliers under the warranty contained in Clause 8.1 and 8.2 is, at Roam's option limited to:
 - 8.3.1. repair or replacing the Software;
 - 8.3.2. refund the price paid by the Customer (which shall be reduced where the Customer has contributed to the cause of the defective Software); or
 - 8.3.3. providing all or some of the Development services again.
- 8.4. Except as provided in Clause 8.1, Roam makes no express warranties in respect of the Software or Documentation.
- 8.5. To the extent permitted by law, Roam excludes all express and implied conditions, representations and warranties, including any warranty of merchantability or fitness for a particular purpose or other provisions in respect of the Development, Software and Documentation that would otherwise be implied by law into this Agreement.
- 8.6. To the extent permitted by law, Roam excludes all liability for and damage, whether direct, indirect, special or consequential, arising in any way out of the use of or in relation to the Software, Development or Documentation. This exclusion of liability also includes loss of data and any third party network operator, Internet or cloud computing service provider that is engaged by Roam to support the Development services.
- 8.7. Where Clauses 8.5 and 8.6 cannot legally operate, and to the extent permitted by law, Roam's liability for any breach of this Agreement or any warranty, provision, obligation or any item implied by law into this Agreement is limited to the cost of having the services supplied again.
- 8.8. Roam will not be liable for any loss, claim demand or damage to or caused by the Software or Development that is notified to Roam after the expiration of the Warranty Period, with the exception of the warranties provided in clause 8.1.1 and 8.1.2.
- 8.9. The Customer is responsible for:
 - 8.9.1. Ensuring that adequate back up and verification procedures are followed to protect its data from loss or corruption;

- 8.9.2. Obtaining all necessary approvals from relevant regulatory authorities in relation to the use of the Software and Development;
- 8.9.3. Providing Roam with reliable and accurate information for use in the Development; and
- 8.9.4. Providing Roam with fully tested back end services and sample API integration scripts for the Development.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. The Customer will notify Roam immediately of any claim that may be brought or established against the Customer alleging that any Software infringes any intellectual property rights of a third party ("Claim").
- 9.2. If the Customer has complied with clause 8.9.2, Roam will indemnify to the extent payable under its policies of insurance the Customer against any losses, claims, damages, costs, or liabilities the Customer may sustain or incur in connection with a Claim, but only to the extent that the Customer:
 - 9.2.1. Notifies Roam immediately when the Claim comes to the Customer's attention;
 - 9.2.2. Allows Roam sole control to negotiate, defend or settle the Claim; and
 - 9.2.3. Gives Roam reasonable assistance (at Roam's expense), and has not permitted any act which infringes Roam's copyright in the Software and related trade marks.
- 9.3. If the Customer is unable to use the Software by virtue of a Claim, then the extent of the Customer's remedies shall be at Roam's discretion either to:
 - 9.3.1. replace or modify the Software so that it is no longer infringing, provided that the replacement or modification has similar features and functionality as the original Software; or
 - 9.3.2. obtain for the Customer the right to continue use of the Software free from any Claim or liability for infringement; or
 - 9.3.3. refund the price paid by the Customer (subject to the Customer returning the infringing Software to Roam).
- 9.4. Where software is supplied to Roam by a third party or is sourced by Roam under licence, the extent of any indemnity given by Roam to the Customer is limited to that of the third party's or licensor's obligations to or indemnification of Roam.
- 9.5. The Customer agrees that it has no right to use, register or own any of Roam's logos, trade marks, graphics or text.

10. TERMINATION AND NON PERFORMANCE

- 10.1. Either party may terminate this Agreement by giving 14 days written notice if the other party fails to remedy any breach of this Agreement within 14 days of receiving a request from the other party to do so.
- 10.2. The Customer may terminate this Agreement where Roam fails to complete the Development by the Finish Date after first giving Roam one months' notice in writing.
- 10.3. Termination of this Agreement for whatever reason by the Customer will be without prejudice to any accrued rights of either party.
- 10.4. On termination of this Agreement or following any act of insolvency by the Customer, it must cease to use the Software and Documentation and all of Roam's obligations to the Customer cease.

11. ASSIGNMENT

- 11.1. Roam may engage subcontractors to perform any of its obligations under this Agreement, provided that such subcontractor(s) enter into obligations of confidentiality at least as onerous as those contained in this Agreement.

12. ENTIRE AGREEMENT

- 12.1. This Agreement, together with the Mutual Confidentiality Agreement:
 - 12.1.1. Constitute the entire agreement of the parties as to its subject matter; and
 - 12.1.2. May only be altered in writing, signed by both parties.
- 12.2. If any of these terms are held to be invalid or unenforceable for any reason then the remaining terms will continue in full force.
- 12.3. Should any inconsistencies or conflicts arise between the terms of this Agreement and the terms of the Mutual Confidentiality Agreement as executed by both parties, the terms of the Mutual Confidentiality Agreement shall prevail.

13. NON-SOLICITATION OF ROAM EMPLOYEE'S

- 13.1. For the duration of this agreement and for a period of six months after the completion of the Development, the Customer shall not directly or indirectly engage any Roam employee, or be connected with (as an employer or in any other capacity) any Roam employee.

14. MARKETING AND PROMOTION

Following completion of the Development Roam is granted the right to use the Customer's name and service marks together with information about the Development in any advertising, marketing, publicity, or proposal.

15. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed under the law of New Zealand and each party irrevocably submits to its exclusive jurisdiction of New Zealand Courts.

16. DEVELOPMENT TESTING AND SUPPORT

- 16.1. Where in Roam's opinion it has completed satisfactory Development Testing then the resolution of any subsequent issues will be charged on a time and materials basis.
- 16.2. Roam agrees to provide support services to the Customer in accordance with the agreed maintenance schedule, costs and SLA during Business hours. Where Roam provides support services for problems during the Warranty Period then time costs will not be charged.
- 16.3. Business Hours are (9: 00 am to 5: 00 pm Monday to Friday excluding NZ Public Holidays). **Call 09 3726058, or email chris@weareroam.com**

17. DISPUTE RESOLUTION

- 17.1. Without preventing either party from seeking immediate injunctive relief in the case of any breach or threatened breach of this Agreement, any dispute arising in relation to this Agreement will be dealt with in accordance with the following procedure:

a. Negotiation: The parties shall make genuine efforts to resolve the dispute by negotiation between them (ensuring the dispute is internally escalated to the appropriate levels of management as required).

b. Mediation: If the parties fail to negotiate a resolution to the dispute within 14 days they shall then appoint a mediator approved by LEADR (Lawyers Engaged in Alternative Dispute Resolution) and attempt to resolve the dispute by mediation. The costs and expenses of the mediator shall be shared by the parties equally.

18. NOTICES

- 18.1. Either party may send a notice to the other's last postal address, fax number or email address and it will be deemed to be delivered five days after the date of posting or if sent by fax or email when the transmission is successfully completed.