**THIS DATA PROTECTION AND CONFIDENTIALITY AGREEMENT** is made on <date>

**BETWEEN**

**(1)** ***Company* Ltd.,** a company incorporated in the United Kingdom, having its registered office at <address> (**“*COMPANY*”**); and

**Feature Creep Ltd,** a company based at 24 Pembridge Court, Belfast, BT4 2RW (the **“Consultant”**).

# RECITALS

***COMPANY*** and the Consultant have an ongoing contractual relationship for the provision of services by the Consultant for and on behalf of ***COMPANY*** (the **“Work”**). In connection with the Work, from time to time the Consultant will be provided with Confidential Information.

THE PARTIES agree as follows:

**1. Interpretation**

 In this Agreement unless the context otherwise requires

**“Confidential Information”** means information regarding the business and/or activities of ***COMPANY*** and its client companies including, but not limited to, transactions in business with their customers, both past and present, and particulars of their customers and any other data relating to their customers as may from time to time be disclosed by ***COMPANY*** and its client companies to the Consultant or to which the Consultant may be provided access either before, on or after the date of this Agreement whether voluntarily or inadvertently and in whatever form, whether in writing, orally, magnetic or machine readable or by demonstration or any other form. Confidential Information shall include subsequent interpretation, application, analysis, reproduction, copying and reporting of such information.

**2. Data Protection - Duty to maintain confidentiality**

* 1. The Consultant undertakes and agrees that it will maintain the confidentiality of all Confidential Information, that the Confidential Information will be used by the Consultant exclusively for the purposes of the Work and in accordance with ***COMPANY***’s instructions and will not be disclosed in whole or in part to any third parties.
	2. The Consultant will not:
		1. process the Confidential Information for the Consultant’s own purposes;
		2. carry out any research, analysis or profiling activity which involves the use of any element of the Confidential Information or information derived from the processing of the Confidential Information;
		3. include the Confidential Information in any product or service offered by the Consultant to third parties; or
		4. pass files containing the Confidential Information to any third party for further processing by that third party or its agents.
	3. The Consultant warrants and undertakes that the Consultant has in place, and will maintain throughout the term of this Agreement, appropriate technical and organisational measures against unauthorised access to, or accidental or unauthorised destruction, loss, alteration or disclosure of the Confidential Information, and adequate security programs and procedures to ensure that unauthorised persons will not have access to any equipment used to process the Confidential Information.
	4. The Consultant further warrants and undertakes that the Consultant shall take all reasonable measures to protect the secrecy of the Confidential Information, and will ensure that all persons employed by the Consultant and/or having access to the place at which the Work is carried out are aware of and comply with the measures aforesaid.
	5. The Consultant shall not make any copies of Confidential Information unless ***COMPANY*** has previously approved the copying in writing. If the Consultant makes copies, it must include on the copies all of the confidentiality and intellectual property notices of ***COMPANY*** and/or its group companies exactly as in the original.
	6. The Consultant undertakes and agrees that in performing the Consultant obligations in relation to the Work it will at all times strictly comply with all relevant laws and regulations from time to time applicable, including but not limited to, data protection and privacy laws that may be applicable arising from, or, in connection with the Work and the Confidential Information and the terms of this Agreement.
	7. The Consultant agrees that the Consultant will not, without the prior written consent of ***COMPANY***, disclose to any person or body either the fact that the Work is being carried out or any of the terms, conditions or other matters relative to the Work.

**3. Redelivery of Confidential Information**

The Consultant acknowledges and agrees that the Consultant will redeliver to ***COMPANY***, within 30 days of completion of the Work or immediately on receipt of an earlier request by ***COMPANY***, all of the Confidential Information and the Consultant will not retain any copies, extracts or other reproductions in whole or in part of the Confidential Information. The Consultant further agrees that all documents, memoranda, notes and other writings whatsoever prepared by the Consultant based on or arising from or in connection with the Confidential Information or any of it shall be destroyed, returned to ***COMPANY*** and/or permanently erased from the files and computer systems of the Consultant.

**4. Proprietary Rights/No Licence**

4.1 The Consultant acknowledges that the Confidential Information and whatever patent, copyright or other intellectual property rights of whatever nature attaching thereto are and remain the property of ***COMPANY*** and its group companies. ***COMPANY*** hereby grants to the Consultant a non-exclusive licence for the duration of this Agreement to use such intellectual property rights solely for the purposes of carrying out the Work. The Consultant will not disclose or sub-licence the use of such intellectual property rights without ***COMPANY***’s prior written consent.

* 1. Nothing in this Agreement or any disclosure of Confidential Information shall be construed as a transfer to the Consultant of any right, title or interest under any patent, copyright or other intellectual property held by ***COMPANY*** and its group companies. All intellectual property rights (including without limitation, patent and copyright) which relate or may relate to the Confidential Information produced or provided by the Consultant in relation to or which forms part of the Work, or which has been given to the Consultant by ***COMPANY*** to assist with the Work, shall be and become vested solely in ***COMPANY***. The Consultant undertakes to execute such documents or agreements and do such other things as ***COMPANY*** may require (at the expense of ***COMPANY***) to vest in ***COMPANY*** the intellectual property rights described above. The Consultant is not permitted to use any of the Confidential Information or related materials outside of the instructions of ***COMPANY*** and this Agreement.
1. **Survival of Obligations**

 The data protection and confidentiality obligations of this Agreement will continue to bind the Consultant on completion of the Work and termination of the agreements, arrangements and relationships between the Consultant and ***COMPANY*** relating to the Work and will survive and remain in force without limit of time.

1. **Breach of Agreement**

6.1 If the Consultant discloses any Confidential Information, whether in breach of this Agreement or not, the Consultant shall immediately notify ***COMPANY*** of the disclosure.

* 1. The Consultant hereby indemnifies and agrees to keep indemnified ***COMPANY*** from and against all actions, proceedings, claims and demands which may be brought or made against it and all losses, costs, charges, damages and expenses suffered or incurred by ***COMPANY***, its directors, officers, employees, agents or group companies or for which ***COMPANY***, its directors, officers, employees, agents or group companies may become liable by reason of any disclosure or use of the Confidential Information in breach of the terms and conditions of this Agreement and shall account to ***COMPANY*** for any monies received by the Consultant directly or indirectly arising out of the disclosure or use of the Confidential Information in breach of the terms and conditions of this Agreement.
	2. Neither ***COMPANY*** nor any of its directors, officers, agents, employees, representatives, group companies or advisers shall have any liability to the Consultant resulting from the use by that party of the Confidential Information.
1. **Damages**

 Each party acknowledges and agrees that, in the event of default by the other, damages will not be a sufficient remedy for ***COMPANY***. Accordingly, in addition to other remedies, ***COMPANY*** shall have the right to seek injunctive relief and specific performance of the Consultant’s obligations. Any such remedy shall not be deemed to be exclusive or all-inclusive and shall be in addition to any and all other remedies which may be available to ***COMPANY*** at law or in equity.

**8.** **No Partnership**

Nothing in this Agreement will be construed so as to create a partnership, joint venture or agency relationship between the parties.

**9. No Waiver of Rights**

It is understood and agreed that no failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

**10. Variation**

This Agreement may not be released, discharged, supplemented, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties hereto.

1. **Transfer**

Neither party will assign or transfer or purport to assign or transfer all or any of its rights or obligations contained in this Agreement without the prior written consent of the other.

1. **Severability**

If at any time any one or more of the provisions of this Agreement is or becomes invalid, illegal or unenforceable in any respect under any law or regulation, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be in any way affected or impaired thereby.

**13. Counterparts**

 This agreement may be executed in any number of counterparts and by the different parties to this Agreement on separate counterparts, each of which, when executed and delivered, shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

**14. Governing law and jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of Northern Ireland and the parties hereto submit to the exclusive jurisdiction of the Northern Ireland courts for the resolution of disputes hereunder.

**IN WITNESS WHEREOF** the parties have executed this Agreement on the date written above.

**SIGNED BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Signature**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Title**

duly authorised for and on

behalf of ***COMPANY***

**SIGNED BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Signature**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Title**

duly authorised for and on

behalf of **Feature Creep Ltd**