

[On BlueChilli Letterhead]

22 September 2017

FOUNDER NAME and **FOUNDER NAME**
COMPANY NAME Ptd Ltd ACN **ACN**
ADDRESS **STATE** **POSTCODE**

Dear **FOUNDER NAMES**

Business Development Agreement

The purpose of this letter is to set out the agreement between us, **BLUECHILLI TECHNOLOGY PTY LTD** ACN 122 406 731 (“**we/us/BlueChilli**”), **FOUNDER NAME** of **FOUNDER ADDRESS**, and **FOUNDER NAME** of **FOUNDER ADDRESS** (together the “**Founders**”), and **COMPANY NAME PTY LTD** ACN **ACN** (“**Company**”). The parties to this letter agreement (this “**Agreement**”) are BlueChilli, each Founder and the Company.

This letter agreement is intended to be legally binding and to create legal relations and obligations between the parties. By signing below, both the Founders and the Company acknowledge that they are bound by this Agreement.

This Agreement sets out the terms of the provision of the Business Development Programme (“**Programme**”) by BlueChilli to the Company, and the respective obligations of the Founders, the Company and BlueChilli in relation to the Programme. In consideration of the parties’ mutual obligations to each other as described in this letter, the parties agree as follows:

1. THE PROGRAMME

- 1.1 The purpose of the Programme is for the parties to use reasonable commercial endeavours to develop a minimum viable product, and to learn and understand the potential market and product fit for the proposed technology solution which the Company intends to offer to its target market (“**Technology**”), and which BlueChilli will develop for the Company as part of the Programme.
- 1.2 The Programme will be delivered over a six-month period, commencing on a date to be agreed, or over such other period as separately agreed between the parties in writing (“**Term**”). The Programme will be delivered in two stages:
 - (a) for the first 12 weeks of the Term, the parties shall undertake one or more Sprints (as defined below) for the delivery of an initial version or prototype of the Technology (“**Development Term**”); and
 - (b) for the remainder of the Programme (“**Mentoring Term**”), the Company and Founders may continue to access the Mentoring Services described below.
- 1.3 At the conclusion of the Development Term, should the parties agree for BlueChilli to undertake further software development work for the Company, then that further work will be provided on a paid basis under the terms of a separate agreement.

2. SPRINTS

- 2.1 A Sprint shall constitute a fixed development period as reasonably specified by BlueChilli, during which BlueChilli will (together a “**Sprint**”):

- (a) undertake product design or software development tasks;
 - (b) provide Mentoring Services and assist the Company with its business processes; and
 - (c) deliver one or more items which could include prototypes, visual mock-ups, other design documentation or deliverables, and/or developed software.
- 2.2 At the commencement of each Sprint, the parties will together seek to agree (“**Sprint Requirements**”):
- (a) the key hypothesis to be tested during the Sprint;
 - (b) the functionality for the Technology which BlueChilli will use reasonable endeavours to complete during the Sprint;
 - (c) the amount of time and BlueChilli resources to be dedicated towards development, testing, bug fixing and planning for subsequent Sprints; and
 - (d) the activities and tasks which the Founders must complete during the Sprint.
- 2.3 If the parties cannot agree on the Sprint Requirements, then either:
- (a) BlueChilli may suspend the Programme until such time as the parties reach agreement; or
 - (b) BlueChilli may, acting reasonably, determine the Sprint Requirements (which will be binding on the Company and Founders).
- 2.4 Once the Sprint Requirements are agreed or determined, the parties will then carry out their respective responsibilities identified as part of the Sprint Requirements.
- 2.5 The Founders and the Company acknowledge that:
- (a) it is usual for the parties to set overly ambitious goals and development tasks to be achieved by the end of a Sprint;
 - (b) despite each party’s best efforts, not all goals or development tasks may be complete by the end of a Sprint; and
 - (c) BlueChilli will not be in breach of this Agreement if it fails to meet all Sprint Requirements by the end of a Sprint, provided that it has used reasonable commercial endeavours to do so.
- 2.6 Provided BlueChilli has used all reasonable commercial endeavours to fulfil the Sprint Requirements by the end of a Sprint, then BlueChilli will be released from performing any outstanding obligations thereunder which remain undelivered by the end of the Sprint. Those outstanding obligations however may be separately agreed by the parties to be performed as part of subsequent Sprints (during the Development Term), or pursuant to a separate agreement as contemplated by paragraph 1.3.
- 2.7 Subject to paragraphs 2.5 and 2.6, the Company and the Founder’s sole remedy for BlueChilli’s failure to meet all Sprint Requirements by the end of a Sprint which BlueChilli remains responsible to deliver, is for BlueChilli to complete the outstanding Sprint Requirements following the conclusion of the Sprint, for no extra charge to the Company.

3. **FOUNDERS’ AND COMPANY’S COMMITMENT**

3.1 Each Founder agrees to:

- (a) ensure that the Company fulfils each of its obligations under this Agreement;

- (b) be actively engaged with BlueChilli in the software development process;
- (c) provide the whole of his or her available time and attention (to no less than a 40 hour per week commitment) to the Founder's and Company's obligations hereunder during the Term;
- (d) meet all requirements of the Company which are specified in the Sprint Requirements, or as separately agreed between the parties, by their agreed due dates;
- (e) ensure the Company provides BlueChilli with access to the Company's staff which BlueChilli reasonably requests for the purpose of providing the Programme;
- (f) promptly answer all queries placed by BlueChilli in relation to the Technology or the Sprint Requirements;
- (g) provide BlueChilli with all other reasonable assistance requested by BlueChilli from time to time which BlueChilli reasonably considers it requires for the delivery of the Programme;
- (h) when accessing any software or computer systems of BlueChilli, comply with any access or usage guidelines or restrictions, as specified by BlueChilli from time to time; and
- (i) when accessing or using BlueChilli's premises, to follow BlueChilli's policies which are in force from time to time in relation to such access ("**BlueChilli Policies**").

3.2 The Company and each Founder acknowledges and agrees that BlueChilli's delivery of the Programme is dependent on the Company and each Founder meeting their obligations under this Agreement, and that a failure to do so, may result in a failure or delay by BlueChilli to deliver the Technology, complete a Sprint or otherwise fulfil its obligations under this Agreement.

4. **MENTORING SERVICES**

4.1 During the Term, BlueChilli will provide access to ("**Mentoring Services**"):

- (a) various members of its staff for the purposes of providing guidance in relation to operational matters, including marketing and product development; and
- (b) various opportunities to meet external mentors through BlueChilli's network.

4.2 The Mentoring Services will be provided for no charge.

4.3 The Company and Founders acknowledge that as the Mentoring Services are shared with other participants in the Programme and other BlueChilli customers, there is no entitlement to any minimum level of Mentoring Services.

4.4 The Company and Founders agree that:

- (a) any advice provided by BlueChilli or its personnel in relation to the Company and its business are merely suggestions only. It is the responsibility of the Founders and the Company to undertake their own investigations and verify the advice provided, and to not rely solely on that advice. BlueChilli disclaims any and all liability which it may have to the Company and the Founders in relation to any advice provided;
- (b) although the Company and Founders may meet external mentors or advisors through BlueChilli, they agree that BlueChilli is not liable or responsible in any way for any act, omission or negligence of those external mentors or advisors; and

- (c) any advice provided by external mentors introduced by BlueChilli and who are acting in their personal capacity based on their work experience is not to be taken as advice from their respective employers.

5. COMPANY CAPITAL STRUCTURE AND FEES

- 5.1 The Company and the Founders shall, as a condition of participating in the Programme, execute a Shareholders Deed and a BlueChilli Venture Fund Option Deed in relation to the Company, in the form specified by BlueChilli.
- 5.2 The Company and the Founders acknowledge and agree that the capital structure of the Company on a fully diluted basis, just prior to commencement of the Programme, shall be:

Shareholder name	Percentage of ordinary shares held	Capital contribution
Founder(s) (in proportions to be agreed between them)	75%	\$0
BlueChilli and associates*	15%	\$INSERT
Future employee share/option plan allocation	10%	\$0

* Note the associates of BlueChilli may include associated venture capital funds, private funds or other persons to whom BlueChilli may transfer its shares prior to or during the Programme

- 5.3 If the above capital structure does not exist as at the date of this Agreement, then the Founders will procure that the Company issues an appropriate number of ordinary class shares, to ensure that the capital structure of the Company reflects the above table.
- 5.4 Subject to paragraph 1.3, no additional fees will be payable by the Company to BlueChilli for its participation in the Programme during the Term.

6. INTELLECTUAL PROPERTY

- 6.1 For the purposes of this Agreement, the term “**Intellectual Property Rights**” shall mean all present, future, registered and unregistered rights throughout the world, which subsist in copyright, patents, trademarks, circuit layouts and designs.
- 6.2 Subject to the remainder of this paragraph 6:
- (a) the Company shall be the owner of the Intellectual Property Rights which subsist in the Technology; and
- (b) each of BlueChilli and the Founders hereby assign to the Company, all Intellectual Property Rights which they have in the Technology.
- 6.3 The Technology may include BlueChilli’s software known as “ChilliSource” (“**ChilliSource**”) and the Intellectual Property Rights in the Technology may include, implement or make use of, processes created, owned or used by BlueChilli, which it generally re-uses with its other customers and clients, including, without limitation, the “156 Process” (“**BlueChilli Processes**”). The parties agree that nothing in this Agreement will assign the Intellectual Property Rights in Chillisource or the BlueChilli Processes to the Company and that all such rights shall be held and strictly reserved by BlueChilli at all times.
- 6.4 The Company however will be granted an open source licence to use ChilliSource, pursuant to the “MIT Licence”. A copy of the MIT Licence may be found here - <https://opensource.org/licenses/MIT>. The Company agrees that in using Chilli Source that it is bound by the MIT Licence, together with any further licence conditions that may be displayed to the Company on its installation or use of Chilli Source.

- 6.5 If there is any ambiguity or uncertainty as to whether the Intellectual Property Rights in any particular part of the Technology constitutes Chilli Source or BlueChilli Processes, then BlueChilli's determination in that regard will be final and binding on the parties.
- 6.6 If the Technology incorporates software in which the Intellectual Property Rights are owned by a third party ("**Third Party Software**"), then the Company will be responsible for ensuring that it has all necessary rights to use the Third Party Software as part of the Technology. The Company will be responsible for all licence fee payments to any licensor or vendor of the Third Party Software.
- 6.7 The Company hereby grants to BlueChilli, a royalty free, perpetual, irrevocable, worldwide, non-exclusive licence for BlueChilli to incorporate any part of the Technology in any future works which BlueChilli produces for itself or its other customers or clients, provided that parts which BlueChilli re-uses do not form a substantial part (as reasonably determined by BlueChilli) of the Technology. The forgoing licence however will not apply to any works, items or other things which the Company supplies to BlueChilli for inclusion in the Technology ("**Customer IP**").

7. **CONFIDENTIAL INFORMATION**

- 7.1 For the purposes of this Agreement, the term "**Confidential Information**" means the confidential information of a party which relates to the subject matter of this Agreement and includes without limitation, information relating to the design, functional requirements and content of the Technology; the personnel, policies or business strategies of BlueChilli; and the terms of this Agreement.
- 7.2 Each party will keep the Confidential Information of the other party confidential and will only use or disclose that Confidential Information for the purposes of this Agreement. A party may disclose the Confidential Information of the other party:
- (a) for the purposes of performing this Agreement, but only where the recipient of the information disclosed is under a similar obligation of confidentiality as specified in this paragraph 7;
 - (b) that it is required to disclose by law;
 - (c) that is in the public domain (other than through a breach of this Agreement); or
 - (d) that it discloses to its legal and other professional advisers (but only for the purposes of seeking advice).

8. **LIABILITY**

8.1 **Indemnity**

The Founders and the Company jointly and severally indemnify BlueChilli, its officers, employees, agents and related bodies corporate (together the "**Indemnified**"), from and against any and all loss, cost, expense or damage, suffered or incurred by any of the Indemnified as a result of:

- (a) the Founders' or Company's breach of this Agreement;
- (b) the Founders' or Company's breach of any BlueChilli Policies;
- (c) personal injury or damage to property caused by the Founders' or Company to the Indemnified, or to any tenant or licensee of BlueChilli's premises; and/or
- (d) any Customer IP infringing the Intellectual Property Rights of a third party.

8.2 Errors in the Technology

The software development process is based on rapid iterative experimentation, and correcting errors is a normal part of the development process. The Founders and the Company acknowledge that BlueChilli has not provided any warranties or made any representations that the Technology will be error free. They agree that their sole remedy against BlueChilli in relation to any error or defect found in relation to the Technology is to:

- (a) have that error or defect rectified by BlueChilli during a Sprint under this Agreement;
- (b) have BlueChilli rectify that error or defect if BlueChilli is required to do so under paragraphs 2.5, 2.6 or 2.7; or
- (c) engage BlueChilli on a paid basis to rectify the error or defect pursuant to the terms of a separate agreement, as part of further software development work (as contemplated by paragraph 1.3).

8.3 Acknowledgements, representations and warranties

The Company and Founders acknowledge that BlueChilli has not made and will not make any express or implied warranties in relation to the goods or services provided by BlueChilli under this Agreement, other than those warranties expressly contained in this Agreement. Subject to paragraphs 8.6 and 8.7, any term that would be implied into this Agreement, including without limitation any condition or warranty, is hereby excluded.

8.4 Consequential loss

Subject to paragraphs 8.6 and 8.7, the Company and the Founders agree that BlueChilli will not be liable in respect of any claim by either or both of them (whether contractual, tortious, statutory or otherwise) for any direct, special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision of BlueChilli's goods or services under this Agreement and whether as a result of any breach, default, or negligence by BlueChilli.

8.5 Maximum liability

Subject to paragraphs 8.6 and 8.7, the maximum liability of BlueChilli to both the Company and the Founders (in total) for any and all breaches of this Agreement, or for any and all negligence in relation to this Agreement, will be no greater than AUD \$10. The Company and Founders acknowledge that this is a fair and reasonable limitation given they shall not be required to pay BlueChilli any fees or charges in relation to its goods or services provided hereunder.

8.6 Permitted limitations under consumer laws

If the *Competition and Consumer Act 2010 (Cth)* (or analogous legislation) applies to this Agreement and permits the limitation of liability for breach of warranty implied by legislation, the liability of BlueChilli is limited, at the option of BlueChilli, to:

- (a) in the case of goods, any one or more of: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services: (i) the supplying of the services again; or (ii) the payment of the cost of having the services supplied again.

8.7 Implied warranties which cannot be excluded

- (a) Any of these terms and conditions which limit or exclude any term, condition or warranty, express or implied, or the liability of BlueChilli will apply to the extent permitted by law and will not be construed as excluding, qualifying or limiting the Company's and the Founders' statutory rights or remedies arising by virtue of the breach of any implied term of this Agreement where such exclusion, qualification or limitation would be prohibited by legislation.
- (b) Notwithstanding the above, for Australian consumers, BlueChilli's products come with guarantees that cannot be excluded under the Australian Consumer Law. If the Company or Founders are an Australian consumer, they may be entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Company and Founders may also be entitled to have goods or services provided by BlueChilli hereunder repaired or replaced if they fail to be of acceptable quality and the failure does not amount to a major failure. For more information about these rights please go to www.accc.gov.au.

9. TERMINATION

9.1 This Agreement shall automatically terminate at the conclusion of the Term.

9.2 This Agreement may be terminated at any time by BlueChilli, by written notice to the Founders and the Company if:

- (a) in BlueChilli's opinion, the services required from BlueChilli are unfunded (which may occur due to BlueChilli's funders refusing to fund BlueChilli's services for the Company);
- (b) BlueChilli considers that the Founders or the Company are in breach of this Agreement;
- (c) BlueChilli holds a reasonable opinion that the Founders are difficult to work with, have shown a lack of commitment to the Programme, or have shown a lack of commitment to continue to develop the business of the Company after the Term; or
- (d) BlueChilli terminates the Programme generally.

9.3 Upon termination of this Agreement:

- (a) the Company and Founders participation in the Programme will immediately cease;
- (b) the Company will promptly transfer to its name, any account held with any third party service provider engaged by BlueChilli on the Company's behalf; and
- (c) BlueChilli will deliver the then current version of the Technology to the Company.

9.4 Paragraphs 4.4, 5, 6, 7, 8, 9.3 and 10 shall survive termination of this Agreement.

10. GENERAL PROVISIONS

10.1 This Agreement may only be varied by a document in writing signed by the parties.

10.2 If there is more than one person named as the Founders, then those people are bound both jointly and severally under this Agreement.

10.3 This Agreement, shall constitute the entire agreement between the parties in relation to their respective subject matter, and supersedes all prior representations, arrangements, understandings and agreements between the parties in relation to the same. The parties may

however enter into separate agreements, in addition to this Agreement (including, without limitation, the Shareholders Deed and BlueChilli Venture Fund Option Deed) to record further obligations between them.

- 10.4 This Agreement shall be construed in accordance with and shall be governed by the laws in force in the State of New South Wales. Each of the parties irrevocably submits to and accepts the exclusive jurisdiction of any of the Courts of the State of New South Wales or the Commonwealth of Australia and any courts of appeal from these courts.

If you agree to the terms of this Agreement, please sign where indicated below:

Yours Faithfully,

Sebastien Eckersley-Maslin
CEO
BlueChilli Technology Pty Ltd

By signing this letter where marked below, the persons named as the Founders and the Company in this Agreement hereby agree that they are bound by the terms and conditions of this Agreement:

EXECUTED for and on behalf of **COMPANY**)
NAME PTY LTD ACN INSERT by its)
authorised person named below:)
))
)
Authorised Person (signature)

.....
Authorised Person (print name)

SIGNED by **FOUNDER NAME**)
))
)
(signature)

SIGNED by **FOUNDER NAME**)
))
)
(signature)