

MSA: Terms & Conditions

1. DEFINITIONS

In this Contract the following words have the following meanings:

- 1.1 **"Affiliate"** means any direct or indirect Holding Company or Subsidiary Company of the relevant entity. A Company is a **"Subsidiary"** of another Company, if the latter company (**"Holding Company"**): (a) holds a majority of the voting rights in it; or (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it. **"Company"** includes any body corporate or any legal entity capable under law of making a contract.
- 1.2 **"Client Infrastructure"** means the Client's systems and technical infrastructure (whether owned or licensed by the Client), including those systems that directly or indirectly interface and/or are interoperable with, and/or impact on, the Services, and which are not under Supplier's management and control and explicitly identified as Supplier's responsibility under this Contract, but excluding the Connectivity Infrastructure.
- 1.3 **"Client"** means the 'Client' specified in the Order.
- 1.4 **"Connectivity Infrastructure"** means the internet, telecommunications links, broadband and/or third party software and systems which are neither owned or supplied by the Supplier or the Client and which connect the Services and/or the Supplier Software to wide area networks.
- 1.5 **"Contract"** means these MSA Terms & Conditions, the Order, and the Schedules.
- 1.6 **"Costs"** means costs, liabilities, penalties, and charges.
- 1.7 **"Deliverables"** means the output/deliverables in respect of any Services, excluding any Materials.
- 1.8 **"Effective Date"** means the contract date specified in the Order.
- 1.9 **"Equipment"** means the hardware (if any) listed in the Order Form, sold by the Supplier to the Client, and installed during the Set-up and Implementation Services;
- 1.10 **"EULA"** means the end user licence agreement referenced in the Order;
- 1.11 **"Event of Force Majeure"** any circumstances beyond its reasonable control, including, without limitation: (a) act of God, explosion, flood, tempest, fire or accident; (b) unusual atmospheric conditions and unusual conditions in outer space which may affect signals to and from and the workings of satellites; (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition; (d) import or export regulations or embargoes; (e) any change in any Law(s) that has an impact on the parties' rights and/or responsibilities under this Contract; (f) any breach by a third party of the Computer Misuse Act 1990 or the Communications Act 2003 that has the object or effect of directly or indirectly interfering with or damaging the Client Infrastructure, and/or the Supplier's hardware, software and/or network infrastructure; (g) any government guidance or instruction(s) applicable to either party or its suppliers, arising as a result of any epidemic, pandemic, or outbreak of disease.
- 1.12 **"Fees"** means the fees and charges specified in the Order and the SOW(s).
- 1.13 **"First Payment Date"** means the date identified in the Order as the 'First Payment Date' (or otherwise, the Target Go-Live Date).
- 1.14 **"Hosted Services"** means 'Hosted Services' as described in the Order.
- 1.15 **"Intellectual Property Rights"** means all copyrights (including copyright in computer software), database rights, rights in inventions, patent applications, patents, trade marks, trade names, know-how, service marks, design rights (whether registered or unregistered), trade secrets, rights in confidential information and all other industrial or intellectual property rights of whatever nature for the full duration of such rights, including any extensions or renewals.
- 1.16 **"Law"** means any applicable laws, regulations, regulatory constraints, obligations, proclamations, rules (including binding codes of practice and statement of principles incorporated and contained in such rules), or applicable judgment of a relevant court of law which is a binding precedent, in each case in force in any jurisdiction that is or may be applicable to this Contract.
- 1.17 **"Licensing Purpose"** means in the ordinary course of the Client's business and for the use(s) envisaged in the Supplier's published marketing materials for the Hosted Services and/or Software.
- 1.18 **"Materials"** means any tangible materials delivered by Supplier to the Client under this Contract or any SOW(s).
- 1.19 **"Minimum Term"** means the period of years identified in the Order as the 'Minimum Term'.
- 1.20 **"MSA T&Cs"** means these MSA Terms & Conditions.

- 1.21 **"Order"** means the foregoing 'Services Order'.
- 1.22 **"Services"** means Set-up and Implementation Services, Hosted Services and additional professional services from time to time upon the completion of an SOW.
- 1.23 **"Set-up and Implementation Services"** means 'Set-up and Implementation Services' as described in the Order.
- 1.24 **"SLA"** means the 'Service Level Agreement' set out as a Schedule to this Contract.
- 1.25 **"Software"** means the Supplier Software, and any software supplied pursuant to this Contract, including all new releases, new versions, updates, and modifications thereto.
- 1.26 **"SOW"** means a contract for specified professional services that is made in accordance with Clause 4.2.
- 1.27 **"Supplier Software"** means the 'Supplier Software' described in the Order, including all new releases, new versions (which the parties may have mutually agreed that the Supplier will provide, at additional cost, to the Client, whether under an SOW or as a change in accordance with Clause 14), updates, and modifications thereto.
- 1.28 **"Supplier"** means the 'Supplier' specified in the Order.
- 1.29 **"Support and Maintenance Services"** means, where the Supplier has agreed to implement the Software on-site at the Client's premises, (instead of providing use of the same as Hosted Services), the support and maintenance services for the Software described in the SLA (such Support and Maintenance Services may also include support and maintenance for Equipment (if any) provided but only where the Order indicates that the same has also been purchased by the Client);
- 1.30 **"System Access"** the local and wide area access to the Client Infrastructure as required by the Supplier in order to provide the Services pursuant to this Contract.
- 1.31 **"Target Go-Live Date"** means the target date (advised by the Supplier) on which the Client should put some or all of the Hosted Services and/or Supplier Software into live and/or operational use.
- 1.32 **"User Data"** means any information, materials, or data: (a) uploaded, stored or created in or using the Supplier Software by: (i) the Client or its users; or (ii) by the Supplier or a third party on the Client's or its users' instructions; and/or (b) provided to the Supplier by (or on behalf of) the Client or its users.

2. HOSTED SERVICES AND/OR SUPPORT AND MAINTENANCE SERVICES

- 2.1 From the Target Go-Live Date the Supplier shall provide Hosted Services and/or Support and Maintenance Services (as agreed pursuant to the Order) substantially in accordance with the SLA with reasonable skill and care in accordance with good industry practice, subject to the terms of this Contract and provided that the Supplier does not warrant that the Client's use of Hosted Services will be uninterrupted or error free.
- 2.2 Subject to the Client complying at all times with the terms of this Contract, the Supplier grants to the Client a non-exclusive non-transferable licence for the duration of this Contract to: (a) permit its authorised users to use the Supplier Software either via the Hosted Services or on-site at the Client's premises (as applicable and, in the case of Software installed on-site at the Client's premises always in accordance with the EULA) for the Licensing Purpose and at all times in compliance with the Law, subject to the licensing parameters set out in the Order; and (b) use the Materials and Deliverables for the Licensing Purpose.
- 2.3 The Supplier shall not be responsible for any failure to provide Hosted Services and/or the Support and Maintenance Services as a result of a failure by the Client to comply with its responsibilities under this Contract and: (a) errors in or corruption of the Client Infrastructure, Connectivity Infrastructure, and/or the Client's data; and/or (b) the occurrence of a Suspension Event.
- 2.4 The Supplier reserves the right at its sole discretion to suspend or limit performance of the Hosted Services and/or the Support and Maintenance Services in the event of (each of which shall be a **"Suspension Event"**): (a) scheduled maintenance services (for which the Supplier shall give to the Client as much notice as is reasonably practicable in the circumstances); (b) a material breach by the Client of the terms of this Contract (including a failure to pay the Fees in accordance with Clause 6); (c) where ongoing use by the Client of Hosted Services has, in the Supplier's reasonable opinion, the prospect of damaging Hosted Services or degrading performance; (d) the occurrence of an Event of Force Majeure.
- 2.5 In the event of a failure by the Supplier to provide Hosted Services and/or Support and Maintenance Services in accordance with this Contract, the Supplier will, at its expense, use all reasonable commercial efforts to correct any such failure(s) promptly (which may include the provision of a temporary workaround) in

MSA: Terms & Conditions

accordance with the SLA. The Supplier's provision of corrective services in accordance with this Clause 2.5 shall constitute the Client's exclusive remedy for any breach of Clause 2.1. Nothing in this Clause 2.5 purports to limit the Supplier's liability for any failure of the Supplier to comply with this Clause 2.5 (for which the provisions of Clause 12 shall apply).

3. CLIENT'S RESPONSIBILITIES

- 3.1 The Client shall: (a) undertake all reasonable enquiries to satisfy itself that the Services are suitable for its needs before entering into this Contract; (b) adopt such processes and make such changes to its working practices as are necessary to make effective use of the Services; (c) have in place appropriate Client Infrastructure and Connectivity Infrastructure necessary for the provision of Services and also have in place, at all times, appropriate and up to date virus-checking software in respect of all systems, networks and infrastructure; (d) maintain and upgrade the Client Infrastructure and Connectivity Infrastructure in accordance with good industry practice, the Supplier's reasonable instructions, and any minimum environment recommendations published as part of Software specifications/guidelines; (e) carry out all of its responsibilities set out in this Contract in a timely and efficient manner and, in particular, not act (or fail to act) in a manner that will delay or otherwise adversely impact on the Supplier (or its subcontractors) performance of Services; (f) provide the Supplier with all necessary information, co-operation, and assistance as may be required by the Supplier in order to provide Services; (g) comply with the Law with respect to its activities under this Contract; (h) provide the Supplier with such technical support, information, and access to systems and/or data as the Supplier reasonably requires in order to maintain System Access for the duration of this Contract; (i) reasonably determine whether it is appropriate (as a matter of good industry practice) to implement any form of additional back-up of User Data (in addition to such back-ups maintained by the Supplier as part of the Hosted Services) and if so either commission directly (or via the Supplier, if available) such additional data back-up services; (j) ensure that any data (including User Data) migrated to the Supplier as part of any data migration project is appropriately cleansed and is free from corruption or material errors; (k) not reverse engineer or decompile the Software (or attempt to do the same), save to the extent permitted by Law.
- 3.2 The Client acknowledges that the Software may (if the Supplier so chooses) contain optional features and functions which enable the Client to facilitate the purchase by its customers of certain third party products and services (e.g. insurance) and that it is the Client's sole responsibility, should it wish to use such features and functions, to ensure that it complies with any disclosure requirements and also obtains and maintains any necessary licences, permissions, registrations and consents required (in respect of its customers and/or the third party and/or the applicable third party products) to enable it to lawfully do so. The Client further acknowledges that the availability of any such optional features and functions depends upon the relevant contract(s) between the Supplier and such third party vendors (which may provide for payments to be made by them to the Supplier in respect of any such purchase) and the Supplier reserves the right, at any time, to modify, remove or disable such optional features and functions.
- 3.3 The Client recognises that the availability of the Hosted Services is, in part, dependent on the stability of the Connectivity Infrastructure and Client Infrastructure, and that changes to the Connectivity Infrastructure and Client Infrastructure may result in the loss of availability of (or the material degradation of) the Hosted Services. The Client shall not make changes to those elements of the Connectivity Infrastructure and Client Infrastructure that are within its control, which may impact on the Hosted Services, without the authorisation of the Supplier. The parties agree that changes to Connectivity Infrastructure that are outside of both parties control (and the consequences of such changes) are not the responsibility of either party; save that both parties shall use their reasonable endeavours to mitigate the adverse impact of such changes on the Hosted Services.
- 3.4 The Client shall permit the Supplier, on reasonable notice, to test the Client Infrastructure. In the event that the Supplier reasonably considers that the Client Infrastructure is inadequate and/or is (or may be) responsible for performance or functionality failures or degradation, the Client shall make such changes to Client Infrastructure (whether configuration or upgrades) as the Supplier may reasonably recommend.

4. SERVICES AND PROVISION OF EQUIPMENT

- 4.1 Services will be provided pursuant to this Contract if and to the extent that such Services are specified in the Order.
- 4.2 This Contract also operates as a framework under which Services may be provided if the parties agree any SOW(s) by completing an

SOW pro forma. Any written communication is capable of constituting an SOW provided that it is clearly identified as an order for Services. An SOW is deemed completed and binding on the parties if it is signed or otherwise agreed by both parties. Each completed SOW is a separate contract for Services. The completed SOW incorporates all the terms of this Contract that directly or indirectly relate to the SOW.

- 4.3 The Supplier shall provide Services using reasonable care and skill and in accordance with good industry practice. Both parties shall use their reasonable endeavours to meet the timescales specified in this Contract and the SOW(s). The Supplier shall not be responsible for any failure to achieve deadlines or milestones in this Contract or the SOW(s) to the extent that the failure has been caused by any delay or default on the part of the Client. Time shall not be of the essence in relation to the Supplier's performance, whether of this Contract or any SOW.
- 4.4 Where the Supplier has agreed to sell Equipment to the Client, the Supplier confirms that it has the right to do so. Risk in any Equipment provided by the Supplier to the Client shall pass to the Client upon delivery but title to any Equipment provided by the Supplier to the Customer shall only pass to the Client once payment in full has been made. Until that point, the Client must not in any way encumber the Equipment and must always keep such Equipment separate from any other equipment, clearly marked as the property of the Supplier. The Client hereby grants its irrevocable permission for the Supplier to enter the Client's premises to take possession of the Equipment, if the Client breaches any of its payment obligations regarding the same.
- 4.5 The Client accepts that the Supplier has no control over the merchantability, quality or fitness for purpose of the Equipment and the Client shall not, therefore, hold the Supplier liable for the same. However, to the extent it is able to, the Supplier shall pass through to the Client the benefit of any manufacturer's warranty for the Equipment. The Supplier may (but only if specifically purchased as a Service under the Order) repair or replace the Equipment as part of the Support and Maintenance Services, in accordance with the SLA.
- 4.6 The Client is responsible for the cost of carriage of the Equipment to the Client's premises, including its off-loading, removal of all packaging and all other associated costs. It is also the Client's responsibility (at its own cost) to provide a suitable location, appropriate power supply and all other facilities including any network, internet and other connectivity services and disposal services for the Equipment.

5. PERSONNEL

- 5.1 Each party shall appoint the personnel as specified in the Order ("**Key Personnel**"). Each party shall ensure that its Key Personnel shall be contactable using the contact details specified in the Order (as updated from time to time). Each party shall inform the other promptly if any of its Key Personnel resigns or for any other reason ceases to work under this Contract.
- 5.2 Each party shall use their reasonable endeavours to maintain the continuity of their Key Personnel in respect of the management of this Contract, and if such Key Personnel become unavailable, each party shall promptly replace such individuals and ensure that any disruption to the Contract is minimised.

6. PAYMENT

- 6.1 The Client shall pay: (a) Fees as and when they fall due for payment, as specified in the Order; and (b) Fees for Services in respect of any SOW(s) in the manner specified in the SOW(s).
- 6.2 The Supplier shall be entitled to raise invoices for Fees and charges as and when they fall due for payment under Clause 6.1.
- 6.3 The Client shall pay the Supplier's invoices either: (a) within thirty (30) days of the date of the invoice (or within such shorter period as specified in the Order); or (b) by direct debit or standing order (if applicable; and if specified in the Order).
- 6.4 The Client may not withhold payment of any amount due to the Supplier because of any set-off, counter-claim, abatement, or other similar deduction.
- 6.5 All fees payable by the Client to the Supplier under this Contract are payable in Pounds Sterling (unless another currency is specified in the Order) and are exclusive of any tax, levy or similar governmental charges, including value added or sales tax, that may be assessed by any jurisdiction, except for income, net worth or franchise taxes on the Supplier.
- 6.6 If any sum payable under this Contract is not paid ten (10) days after the due date for payment then (without prejudice to the Supplier's other rights and remedies) the Supplier reserves the right to charge interest on that sum on a daily compounded basis (before as well as after any judgment) at the annual rate of ten per cent

MSA: Terms & Conditions

measured from the due date to the date of payment, provided that at no time shall the Client be required to pay interest at an effective rate higher than legally permissible.

- 6.7 All Fees shall increase on each anniversary of the First Payment Date by an amount, as notified by the Supplier, that does not exceed five per cent (5%), measured between the date of review and the last review date (or in the event of the first review date, the First Payment Date) ("**Indexed Increase**").
- 6.8 Unless otherwise specified in the Order, after the expiry of the Minimum Term, the Supplier shall be entitled by giving the Client not less than ninety (90) days' written notice prior to an anniversary of the First Payment Date ("**Anniversary Date**") to increase any or all Fees with effect from the Anniversary Date by an amount that exceeds an Indexed Increase (as determined by the Supplier in its sole discretion) ("**General Increase**"), provided that if the Client objects to a General Increase it shall be entitled to terminate this Contract with effect from the Anniversary Date by giving to the Supplier not less than sixty (60) days' written notice prior to the Anniversary Date.

7. PROPERTY RIGHTS

- 7.1 Title to the Materials is and shall at times remain with the Supplier unless otherwise specified in the Order or an SOW. The Supplier and its licensors own and shall continue to own all Intellectual Property Rights in the Supplier Software, and any Deliverables. Full and unencumbered title (with full title guarantee) in Deliverables shall vest in the Supplier absolutely upon creation. The Client undertakes at the request of the Supplier at all times from the date of this Contract to, and to procure that any and all of its sub-contractors and any third party involved in any SOW(s) shall, do all acts and execute all documents, papers, forms and authorisations and to dispose to or swear all declarations or oaths reasonably necessary and/or desirable to give effect to the provisions of this Clause 7.1.

8. TERM AND TERMINATION

- 8.1 **This Contract.** This Contract is formed (and becomes legally binding) when the parties complete and sign the Order. This Contract shall commence on the Effective Date and shall continue unless and until terminated by either party in accordance with this Clause 8.
- (i) Either party shall be entitled to terminate this Contract on expiry of the Minimum Term specified in the Order and each subsequent anniversary of the First Payment Date by giving to the other party not less than ninety (90) days' prior written notice.
- (ii) Either party shall be entitled to terminate this Contract immediately if the other party commits any material breach of this Contract and fails to remedy that breach within thirty (30) days of written notice of that breach (the 30 day period only applies where a breach is capable of remedy - if it is incapable of remedy, the Contract may be terminated by written notice immediately).
- 8.2 **SOW(s).** The SOW(s) shall commence in accordance with Clause 4.2 and shall terminate on completion of the Services or in accordance with this Clause 8.2.
- (i) Either party shall be entitled to terminate any SOW(s) immediately by giving to the other party not less than ninety (90) days' prior written notice.
- (ii) Either party shall be entitled to terminate any SOW(s) immediately by giving written notice to the other party if that other party commits any material breach of the applicable SOW that is incapable of remedy (if the breach is capable of remedy, the SOW may be terminated immediately if the other party fails to remedy that breach within thirty (30) days of written notice).
- 8.3 **Insolvency.** Either party shall be entitled to terminate either this Contract and/or any SOW(s) immediately by giving written notice to the other party if that other party has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver, administrator or manager appointed over any of its assets, or a court or arbiter with authority to so determine, determines that the debtor is unable to pay its debts.

9. CONSEQUENCES OF TERMINATION

- 9.1 On termination of this Contract or any SOW(s) howsoever caused: (a) the rights and duties created by Clauses 6, 7, 10, 11, 12, 15,

16, and 17 shall survive; (b) the rights of either party which arose on or before termination shall be unaffected.

- 9.2 On termination of this Contract howsoever caused: (a) the SOW(s) shall be unaffected; (b) each party shall return, in good condition, the tangible property of the other party (if any) that was made available under this Contract in accordance with that other party's reasonable instructions; (c) all licences granted shall terminate; and (d) the parties shall cooperate as regards the migration of User Data to the Client, subject to any data retention that is required by Law.
- 9.3 On termination of any SOW(s) howsoever caused: (a) other SOW(s) and the Contract shall be unaffected; and (b) each party shall return, in good condition, the tangible property of the other party (if any) that was made available under the SOW(s) in accordance with that other party's reasonable instructions. In the event that termination of the SOW(s) precedes completion of the Services: (i) the Supplier shall make such partial delivery to the Client of the Materials and Deliverables as is reasonably practicable, such Materials and Deliverables to be provided on an "AS IS" basis; and (ii) if the parties had agreed to a fixed price under the SOW(s), the Supplier may (at its sole discretion) reduce the fixed price by an amount that reasonably reflects both the value of the Services that have been provided under the SOW(s) and the cost to the Supplier of providing such Services.

10. CONFIDENTIALITY

- 10.1 Each party that receives ("**Receiving Party**") non-public business or financial information (excluding the receipt by the Supplier of Cleansed Data) ("**Confidential Information**") from the other (or the other's Affiliates) ("**Disclosing Party**"), whether before or after the date of this Contract shall: (a) keep the Confidential Information confidential; (b) not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 10.2, or 10.3; and (c) not use the Confidential Information for any purpose other than the performance of its obligations or its enjoyment of rights under this Contract ("**Permitted Purpose**").
- 10.2 The Receiving Party may disclose Confidential Information to its own, or any of its Affiliates, officers, directors, employees agents and advisers who reasonably need to know for the Permitted Purpose (each a "**Permitted Third Party**"), provided that the Receiving Party shall remain liable to the Disclosing Party for the acts, omissions, and compliance with the terms of this Clause 10 of such Permitted Third Party as if such Permitted Third Party was the Receiving Party (and a party to this Contract). The Receiving Party shall ensure that each Permitted Third Party is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Clause 10. The Client agrees that the foregoing provisions are to be read subject to the caveat that the Client has granted to the Supplier the right to disclose information which may constitute Confidential Information of the Client to certain third parties with whom the Client has or may wish to have business relationship which is facilitated by the use of the Services (e.g. an insurance provider) and that, in doing so, the Supplier shall not in any way be held in breach of this Clause 10 nor liable to the Client for the acts, omissions and compliance by such Permitted Third Party with this Clause 10, such disclosure being the sole responsibility of the Client to regulate through its arrangements with such Permitted Third Party,
- 10.3 If required by Law, the Receiving Party may disclose Confidential Information to a court or regulatory authority or agency, provided that the Receiving party shall (if legally permissible) provide reasonable advance notice to the Disclosing Party and co-operate with any attempt by the Disclosing Party to obtain an order for providing for the confidentiality of such information.
- 10.4 The parties agree that any breach of the restrictions contained in this Clause 10 may cause irreparable harm to the innocent party, whereupon the innocent party shall be entitled to injunctive relief without the necessity of proving damages or the inadequacy of money damages, posting any bond or other security in addition to all other legal or equitable remedies.

11. DATA

- 11.1 The Supplier shall not own (or claim ownership rights in respect of) User Data.
- 11.2 The Client is responsible for the accuracy, reliability, lawfulness, and integrity of all User Data. The Client warrants that User Data shall not be defamatory or offensive and that it, and its users, have all consents, licenses and permissions (including the consent of any Data Subjects) in respect of User Data as are required for Client (and its users) to lawfully upload, store, distribute, publish, share and/or Process the User Data (as applicable): (a) in/through the Supplier Software; and/or (b) to/with other Client users or any third

MSA: Terms & Conditions

parties who are authorised by the Client or by Law to view/access the User Data. The Client shall indemnify and hold harmless the Supplier for Costs arising from a breach of this Clause 11.2, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this Clause 11.2.

- 11.3 The Client acknowledges that the provision of high-quality services requires the Supplier to analyse data to identify trends, optimise services, and provide clients with the opportunity to use such information to enhance their own services. The Client therefore grants to the Supplier a non-exclusive, perpetual, irrevocable, royalty free, worldwide licence to use, modify, adapt, and create derivative works of User Data for any purposes, and commercially exploit and/or sublicense any or all of such rights on any terms, provided always that such User Data must at all times be cleansed such that individuals, the Client, and/or any legal entities cannot be identified in any circumstances ("**Cleansed Data**").
- 11.4 The parties shall comply with the data processing provisions, set out as a Schedule to this Contract.

12. LIABILITY

- 12.1 Neither party shall exclude or limit its liability for: (a) death or personal injury caused by its negligence; and/or (b) fraudulent misrepresentation; and/or (c) breach of any obligation as to title regarding the sale of Equipment (if any, under this Contract) implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 12.2 Subject to Clause 12.1, the Supplier shall not be liable for any direct or indirect loss of profit, loss of revenue, loss of anticipated savings, or loss of goodwill.
- 12.3 The Client agrees that it will have no remedy in respect of any untrue statement or representation made to it upon which it relied in entering into this Contract and that its only remedies can be for breach of contract (unless the statement was made fraudulently).
- 12.4 The Supplier's Contractual Liability to the Client shall not exceed one hundred and fifty per cent (150%) of the fees paid (plus any unpaid fees that are payable) under the Contract (but not any SOW) in the 12 month period prior to the date in which the claim (or series of connected claims) arose. "**Contractual Liability**" means liability howsoever arising under or in relation to the subject matter of this Contract that is not:
- (i) unlimited by virtue of Clause 12.1; or
 - (ii) excluded pursuant to Clauses 12.2 and 12.3.
- 12.5 The Supplier's SOW Liability to the Client shall not exceed the fees paid (plus any unpaid fees that are payable) under the SOW under which the claim (or series of connected claims) arose. "**SOW Liability**" means liability howsoever arising under or in relation to the subject matter of the SOW under which the claim (or series of connected claims) arose that is not: (a) unlimited by virtue of Clause 12.1; (b) excluded pursuant to Clauses 12.2, 12.3, and 12.4.
- 12.6 Except as expressly provided in this Contract, the Supplier hereby excludes any implied condition or warranty concerning the merchantability, quality or fitness for purpose of its services or the Equipment, whether such condition or warranty is implied by statute or common law.
- 12.7 Neither party shall be liable for any delay or failure in performing its duties under this Contract caused by an Event of Force Majeure. If an Event of Force Majeure causes the Supplier a delay in or failure to perform duties under this Contract for a continuous period of thirty (30) days ("**Force Majeure Period**"), either party shall be entitled to terminate this Contract by giving to the other not less than thirty (30) days' prior written notice.

13. ASSIGNMENT AND SUBCONTRACTING

- 13.1 Neither party shall assign or otherwise transfer this Contract or any of its rights and duties under this Contract without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that the Supplier shall be entitled (and the Client hereby irrevocably consents) to assign in whole or in part, or novate the entirety of this Contract, to any Affiliate as part of a bona fide corporate restructuring by providing not less than seven (7) days' prior written notice to the Client.
- 13.2 The Supplier may sub-contract the performance of any of its duties. The Supplier shall be entitled, at its sole discretion, to replace such service providers from time to time without notice to the Client.
- 13.3 The rights and liabilities of the parties hereto are binding on, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

14. CHANGES

- 14.1 Subject to Clause 14.4, no changes to this Contract or the SOW(s) shall be valid unless made in writing and signed by the authorised representatives of both parties.
- 14.2 Either party shall be entitled from time to time to request a change to the scope of the Services ("**Change**"). Neither party shall be entitled to charge for considering and/or negotiating a Change unless such consideration requires the Supplier to undertake detailed scoping in which case the Supplier shall be entitled to charge pursuant to an SOW.
- 14.3 A Change will be effective when it is documented in writing in a standard Supplier change control form.
- 14.4 The Supplier reserves the right to make changes to Hosted Services from time to time provided that the Supplier has given the Client not less than sixty (60) days' prior written notice of such change (a "**Change Notice**") and provided further that in the event that such a change removes material Hosted Services functionality to the material detriment of the Client's use of Hosted Services the Client shall be entitled by giving the Supplier not less than thirty (30) days' prior written notice prior to the Change Notice taking effect to terminate this Contract. In the event that the Client has prepaid Fees covering a period that is shortened by termination by the Client in accordance with this Clause 14.4, the Supplier shall refund to the Client a proportion of the prepaid Fees in respect of such period, pro rated on a daily basis. This Clause 14.4 is without prejudice to the Supplier's rights under the SLA.
- 14.5 Neither party shall unreasonably withhold its consent to the other's request to re-schedule the date or time of performance of Services. However, given that it will not be practical for the Supplier to re-schedule resources on short notice, the parties agree that: (a) if the Client gives to the Supplier less than two (2) clear days' notice of such a request then the Client must pay to the Supplier the full value of such booked Services; (b) if the Client gives to the Supplier between two (2) and seven (7) clear days' notice of such a request then the Client must pay to the Supplier fifty per cent (50%) of the full value of such booked Services. For the purpose of this Clause 14.5, a "**day**" excludes Saturday, Sunday, and public holidays.

15. NON-SOLICITATION

- 15.1 For the duration of this Contract and a period of twelve (12) months thereafter, each party shall not, and shall ensure that any of its Affiliates shall not, without the prior written consent of the other, solicit, entice away, and/or actively initiate recruitment (whether directly or indirectly) of any employee of the other who performed (or is performing) a material function for the other party (excluding administrative, secretarial, or other back-office functions).
- 15.2 If a party breaches Clause 15.1, it shall pay the other party an amount equal to the last twelve (12) months' salary of the applicable individual in recognition of the value of the individual to the other party and cost of recruiting and training a replacement. The parties agree that this sum is a genuine pre-estimate of the loss likely to be suffered by the other party in these circumstances and not a penalty.

16. DISPUTES

- 16.1 The parties shall attempt to resolve any dispute arising out of or relating to this Contract (including any dispute relating to any non-contractual obligations arising out of or in connection with it) (the "**Dispute**") through discussions between senior representatives.
- 16.2 Where the Dispute is not resolved within forty (40) days of the start of discussions in accordance with Clause 16.1 above, the parties shall attempt to resolve the Dispute in good faith through an Alternative Dispute Resolution ("**ADR**") procedure as recommended by the Centre for Effective Dispute Resolution.
- 16.3 If the Dispute has not been resolved by an ADR procedure within forty (40) days of the initiation of that procedure, or if either of the Supplier or the Client will not participate in an ADR procedure, either of the parties shall be entitled to refer the Dispute to the High Court of England and Wales and the parties submit to its exclusive jurisdiction for that purpose.
- 16.4 Clauses 16.1 to 16.3 above shall not restrict either party's ability to commence court proceedings in respect of any: (a) matter relating to its Confidential Information or Intellectual Property Rights; and/or (b) unpaid invoice.

17. GENERAL PROVISIONS

- 17.1 **Publicity.** The Client hereby irrevocably consents to the Supplier referring to the Client as a client of the Supplier in its sales and marketing literature (including its web site).

MSA: Terms & Conditions

- 17.2 **Third Party Rights.** The parties hereby exclude to the fullest extent permitted by law any rights of third parties to enforce or rely upon any of the provisions of this Contract.
- 17.3 **Relationship.** Nothing in this Contract shall render the Client a partner or an agent of the Supplier and the Client shall not purport to undertake any obligation on the Supplier's behalf nor expose the Supplier to any liability nor pledge or purport to pledge the Supplier's credit.
- 17.4 **Entire Agreement.** This Contract supersedes any prior contracts, arrangements and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to the subject matter.
- 17.5 **Severance.** If any part of this Contract is held unlawful or unenforceable that part shall be struck out and the remainder of this Contract shall remain in effect.
- 17.6 **No Waiver.** No delay, neglect or forbearance by either party in enforcing its rights under this Contract shall be a waiver of or prejudice those rights.
- 17.7 **No Bribery.** Each party warrants to the other that it: (a) has not and will not commit an offence under the Bribery Act 2010 in relation to this Contract or any other contract between the parties; and (b) has adequate procedures (as defined in section 7(2) of that Act) in place to prevent its associated persons from committing an offence under that Act.
- 17.8 **Counterparts.** This Contract may be executed in any number of counterparts and by each of the parties on separate counterparts each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.
- 17.9 **Notices.** All notices (which include invoices and correspondence) under this Contract shall be in writing and shall be sent to the address of the recipient set out in this Contract or to such other address as the recipient may have notified from time to time. Any notice may be delivered personally, by a reputable courier service, by first-class post, or by email and shall be deemed to have been served if by hand when delivered, if by courier service or first class post 48 hours after delivery to the courier or posting (as the case may be), or if by email immediately.
- 17.10 **Interpretation.** In this Contract: (a) any reference to a Clause means a reference to a Clause of this Contract unless the context requires otherwise; (b) unless the context otherwise requires, the words "including" and "include" and words of similar effect shall not be deemed to limit the general effect of the words which precede them; (c) the headings are for ease of reference only and shall not affect the construction or interpretation of the Contract; and (d) references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.
- 17.11 **Hierarchy.** To the extent there is any inconsistency between the provisions of these MSA Terms & Conditions, the Order, the Schedules, the SOW(s), any documents incorporated into this Contract, and any documents incorporated into the SOW(s) the following order of precedence shall apply: (a) first these MSA Terms & Conditions; (b) second the Schedules; (c) third the Order; (d) fourth the SOW(s); (e) fifth documents incorporated into the SOW(s); and (f) sixth documents incorporated into this Contract.
- 17.12 **Law.** This Contract is governed by the laws of England.
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