

# 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 **"Confidential Information"** all confidential information (however recorded or preserved) in connection with this Contract, including but not limited to: (a) the terms of this Contract and the pricing; (b) any information that would be regarded as confidential by a reasonable business person (excluding Cleansed Data) relating to: (i) the business, assets, affairs, customers, clients, suppliers, of the disclosing party or its Affiliates; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party or its Affiliates;
- 1.5 **"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.
- 1.6 **"Contract"** means these MSA Terms & Conditions, the Order, and the Schedules.
- 1.7 **"Costs"** means costs, liabilities, penalties, and charges.
- 1.8 **"Deliverables"** means the output/deliverables in respect of any Services.
- 1.9 **"Effective Date"** means the contract date specified in the Order.
- 1.10 **"Event of Force Majeure"** any circumstances beyond a party's 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 (and any difficulties in obtaining supplies), arising as a result of any epidemic, pandemic, or outbreak of disease; (h) national or regional loss of or interrupted supply of utilities or essential supplies.
- 1.11 **"Fees"** means the fees and charges specified in the Order and the SOW(s), as varied and/or otherwise due under this Contract and/or any SOW(s).
- 1.12 **"First Payment Date"** means the date identified in the Order as the 'First Payment Date' (or otherwise, the Target Go-Live Date).
- 1.13 **"Hosted Services"** means 'Hosted Services' as described in the Order.
- 1.14 **"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.
- 1.15 **"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.
- 1.16 **"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.
- 1.17 **"Minimum Term"** means the period identified in the Order as the 'Minimum Term' (measured from the First Payment Date).
- 1.18 **"Order"** means the 'MSA Order' agreed between the parties.
- 1.19 **"Renewal Term"** means the shorter of: (a) the period, equal in length, to the Minimum Term; and (b) one year.

- 1.20 **"Services"** means Set-up and Implementation Services, Hosted Services and additional professional services from time to time performed pursuant to an SOW.
- 1.21 **"Set-up and Implementation Services"** means 'Set-up and Implementation Services' as described in the Order.
- 1.22 **"SLA"** means the 'Service Level Agreement' set out as a Schedule to this Contract.
- 1.23 **"Software"** means the Supplier Software, and any software supplied pursuant to this Contract, including all new releases, new versions, updates, and modifications thereto.
- 1.24 **"SOW"** means a contract for specified professional services that is made in accordance with Clause 5.2.
- 1.25 **"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, and as specified in the SLA.
- 1.26 **"Supplier"** means the 'Supplier' specified in the Order.
- 1.27 **"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.
- 1.28 **"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.
- 1.29 **"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

- 2.1 From the Target Go-Live Date the Supplier shall provide Hosted Services 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 The Supplier shall not be responsible for any failure to provide Hosted 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 User Data; and/or (b) the occurrence of a Suspension Event.
- 2.3 The Supplier reserves the right at its sole discretion to suspend or limit performance of the Hosted 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 (or actually has damaged or degraded the same); (d) the occurrence of an Event of Force Majeure.
- 2.4 In the event of a failure by the Supplier to provide Hosted 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 accordance with the SLA. The Supplier's provision of corrective services in accordance with this Clause 2.4 shall constitute the Client's exclusive remedy for any breach of Clause 2.1. Nothing in this Clause 2.4 purports to limit the Supplier's liability for any failure of the Supplier to comply with this Clause 2.4 (for which the provisions of Clause 12 shall apply).

## 3. LICENCE

- 3.1 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 via the Hosted Services 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 Deliverables and the documentation of the Supplier Software for the Licensing Purpose.
- 3.2 The Client shall not: (a) except as may not be excluded by Law: (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Supplier Software and/or its associated documentation in any form or media or by any means; or (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Supplier Software; or (b) access all or any part of the Hosted Services and/or Supplier Software

# MSA: Terms & Conditions

(and/or its associated documentation) in order to build a product or service which competes with the Hosted Services.

- 3.3 The Supplier shall be entitled, from time to time, to conduct an audit of the Client's users and use of the Hosted Services to validate that such users and/or use remain compliant in full with the terms of this Contract ("Use Audit"). If and to the extent the Supplier requires access to data and/or information that is not available to it (and accessible by the Client) in order to undertake such Use Audit, the Client shall promptly provide the Supplier with such data and/or information reasonably requested by the Supplier.
- 3.4 If a Use Audit reveals any unlicensed use by the Client, without prejudice to its other rights and remedies, the Supplier shall be entitled to raise an invoice for such historic unlicensed use at its prevailing list price(s) and either: (a) adjust the future Fees on the same basis on the assumption of such continued use; (b) treat such use as a material breach of this Contract and require the Client to cease such use.

## 4. CLIENT'S RESPONSIBILITIES

- 4.1 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; (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.
- 4.2 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 (with the exception of the Client's responsibility to pay Fees); save that both parties shall use their reasonable endeavours to mitigate the adverse impact of such changes on the Hosted Services.
- 4.3 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.

## 5. SERVICES

- 5.1 Services will be provided pursuant to this Contract if and to the extent that such Services are specified in the Order.
- 5.2 This Contract also operates as a framework under which additional 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.
- 5.3 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 the SOW(s). The Supplier shall not be responsible for any failure to achieve deadlines

or milestones in 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.

## 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 additional 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 in accordance with the Order and any SOWs.
- 6.3 The Client shall pay the Supplier's invoices either: (a) within fourteen (14) days of the date of the invoice (or within such shorter period as specified in the Order); or (b) immediately 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 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 which shall be additionally payable by the Client).
- 6.6 If any sum payable under this Contract is not paid within 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 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 by: (a) five per cent (5%) per annum on either: (i) the date as notified by the Supplier; or (ii) the commencement of each Renewal Term; or if otherwise notified by the Supplier (b) by up to ten per cent (10%) per annum; each an "Indexed Increase". The measurement period for an Indexed Increase shall be the period between the last increase (or if there has been no increase, the First Payment Date) and the effective date of the Indexed Increase.
- 6.8 The Supplier shall be entitled to increase Fees under Clause 6.7(b) beyond the ten per cent (10%) per annum limit ("General Increase"), provided that if the Client objects to a General Increase it shall be entitled to terminate this Contract at any time within a six (6) month period measured from the notification date by giving to the Supplier not less than sixty (60) days' prior written notice of termination, and no General Increase shall take effect for the period from the Client's written notice until the effective date of termination of this Contract.

## 7. PROPERTY RIGHTS

- 7.1 Full and unencumbered title (with full title guarantee) in Deliverables shall vest in the Supplier absolutely upon creation and the Supplier and its licensors own and shall continue to own all Intellectual Property Rights in the Supplier Software and any Deliverables. 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 Renewal Term by giving to the other party prior written notice in accordance with the notice period set out in the Order.
- (ii) Either party shall be entitled to terminate this Contract immediately by giving written notice to the other party 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, provided that: (a) the thirty (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; and (b) the parties agree that any failure to pay sums due under this Contract within the agreed payment terms shall constitute a material breach of this Contract.

# MSA: Terms & Conditions

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, save in respect of any SOW(s) that vary the scope of the Hosted Services.
- (ii) Either party shall be entitled to terminate any SOW(s) immediately by giving written notice to the other party if the other party commits any material breach of this SOW and fails to remedy that breach within thirty (30) days of written notice of that breach, provided that: (a) the thirty (30) day period only applies where a breach is capable of remedy - if it is incapable of remedy, the SOW may be terminated by written notice immediately; and (b) the parties agree that any failure to pay sums due under any SOW within the agreed payment terms shall constitute a material breach of the SOW.

8.3 **Insolvency.** Save to the extent otherwise specified by Law, 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 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; (d) the Supplier shall make available User Data for migration to the Client; and (e) the Supplier shall be entitled to permanently erase all User Data after the period of 90 days has elapsed from the effective date of termination of this Contract.

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 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 Deliverables as is reasonably practicable (subject to full receipt of payment under the SOW), such 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**") Confidential Information from the other (or the other's Affiliate(s)) ("**Disclosing Party**"), whether before or after the Effective Date 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 Supplier may disclose Confidential Information to any Affiliate, provided that such Affiliate shall only use such information either for the Permitted Purpose or in order to offer the Client its, or any of its Affiliate's, products and/or services that it reasonably considers may be of interest to the Client.

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.

## 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 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; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); (d) breach of section 2 of the Consumer Protection Act 1987; and/or (e) any liability that cannot be excluded or limited by Law.

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, re-procurement costs, and/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: (a) unlimited by virtue of Clause 12.1; or (b) 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 quality or fitness for purpose of its services, 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 fourteen (14) days ("**Force Majeure Period**"), the Client shall be entitled to terminate this Contract by giving to the Supplier not less than thirty (30) days' prior written notice, such notice to be given within fourteen (14) days of expiry of the Force Majeure Period.

## 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

# MSA: Terms & Conditions

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 of termination by the Client in accordance with this Clause 14.4, the Supplier shall refund to the Client any prepaid Fees covering any unused period, pro rated on a daily basis.
- 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).
- 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 **Anti-Slavery.** In performing its obligations under this Contract, the Supplier shall: (a) comply with all applicable anti-slavery and human trafficking Laws; (b) use its reasonable endeavours to include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 17.8; (c) maintain a complete set of records to trace the supply chain of all goods and services provided to the Client in connection with this Contract; and provide to the Client, on not less than 30 days' prior written notice, records to evidence the Supplier's compliance with its obligations under this Clause 17.8. The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 17.9 **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.
- 17.10 **Injunctive Relief.** Nothing in this Contract shall prevent or preclude either party from seeking injunctive relief.
- 17.11 **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.
- 17.12 **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.
- 17.13 **Hierarchy.** To the extent there is any inconsistency between the provisions of these terms and 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 terms and 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.
- 17.14 **Law.** This Contract is governed by the laws of England.