

MTI TERMS AND CONDITIONS

1. These are the terms and conditions which apply to all contracts, or delivery of any IT Supplies by MTI to you.
2. These Conditions consist of three schedules which contain the follow:

SCHEDULE 1 contains the definitions and interpretations that apply to these Conditions generally.

SCHEDULE 2 contains the terms that apply to all Orders for IT Supplies.

SCHEDULE 3 contains the terms that only apply to Orders for the specific IT Supplies.
3. Unless and until superseded by any new Conditions that we may post on this Website, or MTI otherwise agrees in writing, all orders are entered into on the basis of these Conditions to the exclusion of any other terms and conditions set out in, or referred to, in any document or other communication used by You or MTI in concluding an Order.
4. Unless otherwise stated in a quotation or a price guide, a price is valid until the end of the month in which it is quoted only, and unless otherwise agreed in writing, We may withdraw it at any time by Notice to the You.
5. Each order or acceptance of a quotation for IT Supplies by You shall be deemed to be an offer by You subject to these Conditions. You shall ensure that Your order is complete and accurate.
6. A binding contract shall not come into existence between Us and You unless and a Statement of Works is signed by both parties, until We issue a written order acknowledgement to You or We commence delivery of the IT Supplies to You (whichever occurs earlier).
7. No order which has been acknowledged by Us may be cancelled by You, except as provided in these Conditions and/or a Statement of Works and provided that You indemnify Us in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by Us as a result of cancellation.

SCHEDULE 1 DEFINITIONS AND INTERPRETATIONS

- 1.1 In these conditions the expressions which follow are given these meanings:

"Applicable Laws" means any legislation in force from time to time that MTI can be reasonably expected to be aware of in relation to the IT Supplies;

"Business Day" means any day which is not a Saturday, a Sunday or a bank or public holiday throughout England and Wales or Scotland;

'Brexit' means the UK ceasing to be a member state of the European Union;

"Commencement Date" means the earlier of the date specified as such in the Statement of Works or the commencement of delivery of the IT Supplies;

"Confidential Information" means (i) Your Input Data; (ii) the Deliverables; (iii) the terms of any Statement of Works; and (iv) any and all other confidential information in any form or format disclosed by or on behalf of one party to the other party under or in connection with any Statement of Works at any time (whether before, upon or following the entry into force of these Conditions), which information is marked as confidential or otherwise designated (whether orally or in writing, including in the latter case in terms of the following provisions of this definition) by the person supplying it as 'confidential', or which by its nature is clearly confidential. Confidential Information includes any information in relation to the past, present and potential future finances, policies, procedures, plans, products, services, contractual arrangements, staff, customers or other of Our contractors and/or those of any of Our Group Companies;

"Contract" means the contract for the purchase and sale of the IT Supplies;

"CREST" means the Council for Registered Ethical Security Testers;

"CREST Approved Test" means a Security Test Service performed to the standards defined by CREST;

"Data Protection Legislation" means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy;

Deliverables: means any works, materials or other output in any form or format whatsoever (including drafts) produced or supplied by or on MTI's behalf for or to You, as part of the IT Supplies, including any such works, materials or other output specified in any Statement of Works;

"Discloser" means, in respect of any Confidential Information, the party by or on behalf of which that Confidential Information is disclosed, except that both parties will be treated as the "Discloser" of the terms of these Conditions;

"Fees" means the fees specified in, or calculated in accordance with, any Statement of Works and/or Order;

"Force Majeure Event" means any cause affecting the performance by a Party of its obligations under any Statement of Works arising from acts, events or omissions beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving Our workforce or the workforce of any other party), failure of a utility service or transport network, default of suppliers or sub-contractors, act of God, war, riot, civil commotion, act or threats of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of IT equipment, fire, flood or storm;

"Group Company(ies)" means, in relation to a Party: any subsidiary of that Party; the holding company of that Party (if any); and any other subsidiary of that holding company; and for these purposes the terms "subsidiary" and "holding company" each have the meaning given to them in section 1159 of the Companies Act 2006;

"Hardware" means any hardware products to be provided by MTI to You in an Order;

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"IT Supplies" means any services, Software, Hardware or Third Party Support which we have agreed to supply to you in an Order and/or Statement of Work;

"Manufacturer" means the original manufacturer of the IT Supplies, the author or licensor of the program, or where appropriate their legal representation in the United Kingdom;

"MTI Technology Ltd" or "MTI" means MTI Technology Ltd whose registered office is Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2EG with company number SC112019;

"Notice" means any notice provided by one Party to another in accordance with Clause 16;

"Order" means any form of acceptance of a quotation or an order placed by You, on MTI for the purchase and delivery of IT Supplies;

"Our Group" means MTI and our Group Companies;

"Parties" means MTI and You, as parties to the relevant Statement of Works;

"Personal Data" and **"Processing"** have the meanings given to them in the Data Protection Legislation and **"Process"** and any other tense or part of that verb will be interpreted accordingly;

"Project Milestones" means the dates (if any) identified as such in the Project Timetable;

"Project Timetable" means the timetable (if any) for the provision of the IT Supplies which appears in the Statement of Works;

"Published Specifications" means the Manufacturers specifications for Software and/or Hardware listed valid at the time of acceptance of an Order from You;

"Recipient" means, in respect of any Confidential Information, the Party to which that Confidential Information is disclosed under any Statement of Works, except that both Parties will be treated as the "Recipient" of the terms of any Statement of Works;

"Statement of Works" means any contract (and any subsequent document(s)) that the Parties enter into for the provision of IT Supplies and/or Deliverables to be provided by Us to You, which is subject to these Conditions. Where the IT Supplies is Software, Hardware and/or Third Party Support the Statement of Works refers to any order confirmation in relation to that Software and/or Hardware where no further agreement is signed by both parties;

"Software" means any software products to be provided by MTI to You in an Order;

"**Term**" means the term of the Statement of Works;

"**Third Party Support**" means any support and/or maintenance services we resell to You, that is provided by any party other than Us on any Software and/or Hardware;

"**Us**" means MTI Technology Limited and similar expressions such as "We", "Our" and "Ours" shall be construed accordingly;

"**User Licence**" means the end user licence agreement applying to the Software provided to You by the Manufacturer and/or licensor of the Software;

"**UK Data Protection Legislation**" means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation;

"**VAT**" means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax;

"**Website**" means the website url <https://www.mti.com/> (or any website that MTI may operate in replacement therefor from time to time);

"**You**", means the person, firm or company whose Order for IT Supplies is accepted by MTI. References to "Your" and "Yours" shall be construed accordingly;

"**Your Input Data**" means any information and works in any form or format whatsoever disclosed to Us by You or on Your behalf for use by Us in supplying the IT Supplies and includes the physical embodiment of any such information and works (if any) listed in the Statement of Works as part of Your Property; and

"**Your Property**" means the equipment, materials and other items listed in the Statement of Works as resource requirements that You will provide.

- 1.2 Unless the context requires a different interpretation or these Conditions expressly provides otherwise, the following rules will be used to interpret these Conditions:
 - 1.2.1 Any reference to a statute, a statutory instrument or a provision of either includes references to that statute, statutory instrument or provision as amended, extended, applied, consolidated or re-enacted from time to time, whether before, on or after the Commencement Date and, in the case of a statute or a provision of that statute, will be interpreted as including any subordinate legislation made under that statute or that provision from time to time.
 - 1.2.2 Words used in the singular will be interpreted to include the plural and vice versa.
 - 1.2.3 A reference to a Party to these Conditions includes that Party's permitted successors, transferees and assignees.
 - 1.2.4 A reference to a "person" is to any legal person, including any individual, partnership, company or other body corporate.
 - 1.2.5 The word "including" means "including but not limited to" and "include" and "includes" will be interpreted accordingly.
 - 1.2.6 Except if and to the extent that these Conditions expressly provide otherwise, any reference to recording or communicating any matter in "writing" will be interpreted as excluding email, and "written" will be interpreted accordingly.
 - 1.2.7 The word "disclose" includes permitting a person to access information in any manner or imparting that information orally or by demonstration and any other tense or part of that verb will be interpreted accordingly.
- 1.3 Where a word or phrase is defined anywhere in these Conditions, whether in this Clause or elsewhere, that word or phrase will have the meaning given to it in that definition wherever it is used throughout these Conditions.
- 1.4 The clause headings in these Conditions and any Statement of Works do not create legal rights or obligations, nor affect the meaning of these Conditions.
- 1.5 In the event of any conflict or inconsistency between them, the terms of the Statement of Works will prevail over these Conditions.
- 1.6 Where these Conditions use an English legal term and the relevant provision of these Conditions is being considered in the context of a jurisdiction other than England and Wales, the term will be interpreted as referring to that which most nearly approximates to the English legal term in such other jurisdiction.

SCHEDULE 2 GENERAL TERMS FOR THE DELIVERY OF IT SUPPLIES

2. Introduction

- 2.1 These are the terms under which MTI is willing to deliver the IT Supplies to You. All Orders and Statement of Works are entered into on the basis of these Conditions to the exclusion of any other terms and conditions set out in, or referred to, in any document or other communication used by You or MTI in concluding an Order or Statement of Works, except as expressly agreed to by MTI.

3. IT Supplies and Services

- 3.1 MTI will use reasonable endeavours to deliver the IT Supplies and/or Deliverables to You in accordance with;
- 3.1.1 the Statement of Works in all material respects;
 - 3.1.2 the Project Timetable, but the dates set out in the Project Timetable are estimates only and time shall not be of the essence for these Conditions;
 - 3.1.3 all Applicable Laws; and
 - 3.1.4 where the Service to be performed is explicitly defined as a CREST Approved Test the service will comply in all respects to the standards, quality, conduct, legal and arbitration requirements of CREST.

4. Deliverables

Risk of damage to, or loss of, any Deliverable which is a good, or any physical medium on which a Deliverable is stored, will pass to You on delivery to You. Property in any Deliverable which is a good, or any physical medium on which a Deliverable is stored, will pass to You on payment by You of the Fees in respect of that Deliverable.

5 Your Obligations

- 5.1 You shall:
- 5.1.1 cooperate with MTI in all matters relating to the IT Supplies;
 - 5.1.2 provide in a timely manner such access to Your premises and data (including Your Input Data), and such office accommodation and other facilities, or fulfil any other obligations as is requested by MTI and/or as indicated as being required from You in the Statement of Works;
 - 5.1.3 provide in a timely manner such information that MTI may request, and ensure that such information is accurate in all material respects; and
 - 5.1.4 be responsible (at Your own cost) for preparing Your premises for the supply of the IT Supplies.
- 5.2 Where the provision of the IT Supplies requires MTI to ensure that certain resources are made available at a time and location agreed by both Parties and/or as set out in the Project Timetable, if You are unable to fulfil Your obligations in relation to such activities at such time and location or wish to cancel or postpone the activity so that the resources are not required at the agreed time and/or location then You must provide Us Notice prior to the date of such activity, and will be subject to any cancellation charges as set out in a Statement of Work. .
- 5.3 MTI shall not be liable to You if our performance of our obligations under any Statement of Work is prevented or delayed by any act or omission of You or Your agents, sub-contractors or employees. Subject to Clause 5.2, if MTI's performance of its obligations under any Statement of Work is prevented or delayed by any act or omission of You or Your agents, sub-contractors or employees, You shall be liable to pay to MTI on demand all reasonable costs, charges or losses sustained or incurred by MTI (including, without limitation, any loss of opportunity to deploy resources elsewhere), subject to us confirming and providing evidence of such costs, charges and losses to You in writing, and provided MTI have taken all reasonable steps to mitigate such costs, charges and/or loss. For the avoidance of doubt, such costs, charges and losses may include any such costs, charges or expenses that MTI incur to any sub-contractors.
- 5.4 You shall not, without prior written consent, at any time from the Commencement Date to the expiry of six months after the completion of the Services, solicit or entice away from Us or employ or attempt to employ any person who is, or has been, engaged by MTI as an employee or sub-contractor in relation to the relevant Services.

6. Fees, Charges and Payment

- 6.1 The Fees, invoicing and payment information will be confirmed by us in a Statement of Work.



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- 6.2 Clause 6.3 shall apply if any part of the IT Supplies is provided on a time-and-materials basis, and clauses 6.4 and 6.5 shall apply where the IT Supplies are provided for a fixed price. The rest of this clause 6 shall apply in either case.
- 6.3 Unless otherwise stated in a Statement of Works, or where the Statement of Work provides that any part of the IT Supplies are to be provided on a time-and-materials basis:
- 6.3.1 the Fees payable for the IT Supplies shall be calculated in accordance with MTI's standard daily Fee rates as amended from time to time;
 - 6.3.2 MTI's standard daily Fee rates are calculated on the basis of a eight hour day (including a one hour lunch break) worked between 8.00am and 5.30 pm on Business Days;
 - 6.3.3 We shall be entitled to charge at an overtime rate of 150% of the normal rate for time worked by members of MTI's team outside the hours referred to in Clause 6.3.2 on a pro-rata basis;
 - 6.3.4 MTI shall ensure that all members of the team complete time sheets recording time spent in providing the Services, and we shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 6.3.5; and
 - 6.3.5 MTI shall invoice You monthly in arrears for our Fees for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this Clause 6. The invoice shall set out the time spent by each member of MTI's team.
- 6.4 Where the Statement of Works provides that any of the IT Supplies are provided for a fixed price the Fees shall be the amount set out in the Statement of Works. The total price shall be paid to MTI (without deduction or set-off) in instalments as set out in the Project Timetable on its achieving of the corresponding Project Milestone. On achieving a Project Milestone, MTI shall invoice You for the Fees that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in this Clause 6. Where the Statement of Works does not contain a Project Timetable, MTI may invoice You on the dates otherwise set out in the Statement of Works, or on delivery of the IT Supplies and/or the Deliverables.
- 6.5 Any fixed Fees exclude;
- 6.5.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the team in connection with the provision of the IT Supplies, and the cost of any materials or IT Supplies reasonably and properly provided by third parties required by MTI for the provision of the IT Supplies. Such expenses, materials and third party services shall be invoiced by MTI at cost; and
 - 6.5.2 VAT, which We shall add to Our invoices at the appropriate rate.
- 6.6 You shall pay each invoice submitted to You by MTI in full, and in cleared funds, within 30 days of receipt.
- 6.7 Without prejudice to any other right or remedy that MTI may have, if You fail to pay us on the due date MTI may:
- 6.7.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. Alternatively, MTI may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - 6.7.2 suspend the provision of all IT Supplies until payment has been made in full.
- 6.8 Time for payment shall be of the essence of the Statement of Works.
- 6.9 All payments payable to MTI under the Statement of Works shall become due immediately on termination of the Statement of Works, despite any other provision. This clause is without prejudice to any right to claim for interest under the law, or any such right under these Conditions.
- 6.10 MTI may, without prejudice to any other rights we may have, set off any liability that MTI may have to You against any liability of You may have to MTI.

7. Change Control

- 7.1 If either Party wishes to change the scope of the IT Supplies, it shall submit details of the requested change to the other in writing.
- 7.2 If either Party requests a change to the scope or execution of the IT Supplies, MTI shall, within a reasonable time, provide a written estimate to You of:



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- 7.2.1 the likely time required to implement the change;
- 7.2.2 any variations to MTI's Fees arising from the change;
- 7.2.3 the likely effect of the change on the Project Timetable; and
- 7.2.4 any other impact of the change on the terms of these Conditions and/or the Statement of Works.

- 7.3 If MTI request a change to the scope of the IT Supplies, You shall not unreasonably withhold or delay consent to it.
- 7.4 If You wish us to proceed with the change, MTI have no obligation to do so unless and until the Parties have agreed in writing on the necessary variations to Our Fees, the Project Timetable and any other relevant terms of these Conditions and/or the Statement of Works to take account of the change.
- 7.5 You shall be responsible for paying additional fees for providing You with an estimate in accordance with Clause 7 unless the change in question has been requested by MTI.

8 Intellectual Property Rights

- 8.1 All Intellectual Property Rights existing prior to the Commencement Date shall vest in their originator absolutely.
- 8.2 You grant MTI for the Term a non-exclusive, worldwide, royalty free licence to use Your Intellectual Property Rights in any pre-existing material that vests in You pursuant to clause 8.1 (including without limitation Your Input Data) to the extent required by MTI to provide the IT Supplies and to fulfil our other obligations under these Conditions or the Statement of Works.
- 8.3 Subject to clauses 8.1 and 8.2 above and 8.4 below, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by MTI. We hereby licence all such rights to You free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable You to make reasonable use of the Deliverables and the IT Supplies as is envisaged by the Parties. If MTI lawfully terminate a Statement of Works and/or an Order under as set out these Conditions, this licence will automatically terminate.
- 8.4 Where we resell Third Party Support, Software or Hardware as part of the IT Supplies, the terms upon which these are provided are subject to the relevant third party's terms and conditions and as set out in Section C of these Conditions.

9 Limitation of Liability

- 9.1 The following provisions set out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of:
 - 9.1.1 any breach of these Conditions or a Statement of Works;
 - 9.1.2 any use made by You of the IT Supplies and the Deliverables or any part of them; and
 - 9.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with these Conditions or the Statement of Works.
- 9.2 We will provide the IT Supplies to You using reasonable care and skill and any Deliverables will conform substantially to the requirements of the Statement of Works or Order.
- 9.3 Nothing in this Clause 9 excludes MTI's liability:
 - 9.3.1 for death or personal injury caused by MTI's negligence; or
 - 9.3.2 for fraud or fraudulent misrepresentation.
- 9.4 Subject to clause 9.3 :
 - 9.4.1 MTI shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - 9.4.1.1 loss of profits; or
 - 9.4.1.2 loss of business; or
 - 9.4.1.3 depletion of goodwill or similar losses; or

- 9.4.1.4 loss of anticipated savings; or
- 9.4.1.5 loss of goods; or
- 9.4.1.6 loss of contract; or
- 9.4.1.7 loss of use; or
- 9.4.1.8 loss or corruption of data or information; or
- 9.4.1.9 any loss arising as a result of any defect in Software and/or Hardware; or
- 9.4.1.10 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

9.4.2 subject to Clause 9.4.1, MTI's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of its obligations under these Conditions or the Statement of Works (including any applicable conditions) shall be limited to the 125% of the value of the Fees (unless any other amounts are agreed in writing in the Statement of Works).

10 Insurance

MTI will take out and maintain with a reputable insurance company insurance policies sufficient in value to protect against MTI's potential liabilities under or in relation to these Conditions and/or a Statement of Works.

11 Confidentiality

11.1 Each Party will in respect of any Confidential Information of which it is the Recipient:

- 11.1.1 use that Confidential Information only if and to the extent necessary for the purposes of performing its obligations and/or exercising its rights under these Conditions and the Statement of Works;
- 11.1.2 not disclose that Confidential Information to any person other than:
 - 11.1.2.1 any person employed or engaged by it (including, in MTI's case, any of our subcontractors); (ii) its auditors and other professional advisers, in each case if and to the extent that such disclosure is necessary for the purposes in clause 11.1.1 ("**Permitted Disclosers**"); or
 - 11.1.2.2 any other person having a statutory or other legal right (other than a contractual right) to request and receive that information, including any court of competent jurisdiction, provided that the Recipient informs the Discloser prior to such disclosure that it has been required to make it (if and to the extent that the Recipient is legally permitted to so inform the Discloser); and
- 11.1.3 otherwise use its best endeavours to protect and maintain the confidentiality of that Confidential Information.

11.2 Clause 11.1 will not apply to any information which:

- 11.2.1 is or becomes public knowledge other than as a result of a breach of this clause 11;
- 11.2.2 was lawfully in the Recipient's possession before its disclosure to the Recipient under or in connection with these Conditions; or
- 11.2.3 following its disclosure to the Recipient under or in connection with these Conditions, is received by the Recipient from a third party who is not under an obligation of confidentiality in relation to that information.

11.3 Each Party will ensure compliance by its Permitted Disclosers with the confidentiality obligations imposed on it by this clause.

11.4 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much Notice of this disclosure as possible.

11.5 Each Party agrees that damages may not be an adequate remedy for any breach of this Clause and that the other Party will be entitled to a court order to enforce compliance with this clause or to stop any breach of it, actual or threatened.

11.6 The provisions of this clause 11 are subject to the provisions of Clause 12 in so far as they apply to any Confidential Information which is Personal Data.

12 Data Protection

- 12.1 To the extent required by the delivery of any IT Supplies, both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this Clause 12, Applicable Laws means (for so long as and to the extent that they apply to MTI) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 12.2 You acknowledge that for the purposes of the Data Protection Legislation, You are the data controller and MTI is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 12.3 You will ensure that You have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to MTI for the duration and purposes of any Contract.
- 12.4 MTI shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under these Conditions or any Statement of Work:
- 12.4.1 process that Personal Data only on your written instructions unless MTI is required by Applicable Laws to otherwise process that Personal Data. Where MTI is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, we shall promptly notify You of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from notifying You;
- 12.4.2 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- 12.4.4 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 12.4.5 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of You has been obtained;
- 12.4.6 assist You, at your own cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 12.4.7 notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 12.4.8 at your written request, delete or return Personal Data and copies thereof on termination of any Statement of Work and/or Order unless required by Applicable Law to store the Personal Data; and
- 12.4.9 maintain complete and accurate records and information to demonstrate its compliance with this Clause 12.
- 12.5 You consent to MTI appointing any third party as a processor of Personal Data or sharing Your Personal Data with Our Group Companies under these Conditions or any Statement of Work, for the purposes of delivering the IT Supplies. MTI confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement (incorporating terms which are substantially similar to those set out in this Clause 12). As between You and MTI, we shall remain fully liable for all acts or omissions of any third party processor or Our Group Companies pursuant to this Clause 12.
- 12.6 We may, at any time on not less than 30 days' Notice to You, revise this Clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

13 Termination

- 13.1 Any Statement of Works may be terminated by MTI at any time by giving at least thirty days' written Notice to You.
- 13.2 Any Statement of Works may be terminated by MTI immediately by giving written Notice to You, if You commit a material breach of the Statement of Works.
- 13.3 You may terminate the Statement of Works by giving written Notice to MTI, if we commit a material breach of the Statement of Works. However, where a breach is capable of being remedied, such Statement of Works may only be terminated where MTI have failed, within 14 days of receipt of a Notice from You (unless an alternative timescale is agreed), describing that breach and requesting that it be remedied, to remedy that breach or to provide You with a plan for remedying that breach.

- 13.4 The Statement of Works may be terminated immediately by You by giving written Notice to MTI, if we are in persistent breach of the Statement of Works. MTI will be in persistent breach of the Statement of Works if we have committed a material breach of such Statement of Works on at least the number of occasions in the period prescribed in the Statement of Works.
- 13.5 Either Party may by written Notice to the other, terminate the Statement of Works if a Force Majeure Event occurs which prevents MTI from performing its obligations in respect of all or a substantial part of the IT Supplies for a continuous period of more than 14 days.
- 13.6 The Statement of Works may be terminated by either Party (the “**Terminating Party**”) immediately by giving written notice to the other Party if:
- 13.6.1 the other Party suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or, being a company or a limited liability partnership, is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or, being a natural person, is deemed either to be unable to pay its debts or to have no reasonable prospect of so doing, in either case within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing applies;
 - 13.6.2 the other Party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors (other than for the sole purpose of a scheme for a solvent amalgamation of the other Party with one or more other companies or the solvent reconstruction of the other Party);
 - 13.6.3 a moratorium is declared in respect of any indebtedness of the other Party;
 - 13.6.4 a petition is filed, a Notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other Party (other than for the sole purpose of a scheme for a solvent amalgamation of the other Party with one or more other companies or the solvent reconstruction of the other Party);
 - 13.6.5 an application is made to court, or an order is made, for the appointment of an administrator, a Notice of intention to appoint an administrator is given, or an administrator is appointed over the other Party;
 - 13.6.6 an administrative receiver, a receiver or a compulsory manager is appointed over the assets of the other Party or a person becomes entitled to make any such appointment;
 - 13.6.7 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen days;
 - 13.6.8 any event occurs or step is taken in respect of the other Party in any jurisdiction to which it is subject which event or step is equivalent or similar to those set out in this clause 13.6;
 - 13.6.9 the other Party ceases (or threatens to cease) for any reason to carry on all or a substantial part of its business or takes or suffers any similar action which in the opinion of the Terminating Party means that the other Party may be unable to pay its debts.

14 Consequences of Termination

- 14.1 The expiry or termination of a Statement of Works (for any reason) will not affect:
- 14.1.1 any rights or obligations of either Party that have accrued prior to such expiry or termination; or
 - 14.1.2 any provision of the Statement of Works which is expressly or by implication intended to come into or to continue in force on or after such expiry or termination.
- 14.2 Upon the expiry or termination of the Statement of Works, each Party will promptly, and in event within ten Business Days of such expiry or termination, deliver up to the other Party or destroy (at the absolute discretion of the other Party) any and all copies of Confidential Information (other than copies of these Conditions or any of its terms) of which it is the Recipient then in its (or any of its Permitted Disclosers') possession or control and provide the other Party with written confirmation, signed by a duly authorised officer, certifying that it has complied with its obligations under this Clause 14.2. The obligation to destroy any Confidential Information pursuant to this clause 14.2 includes an obligation to permanently delete from any information technology system any copies of that Confidential Information held there in electronic form.

15 Force Majeure

A Party that is subject to a Force Majeure Event will not be in breach of these Conditions and/or the Statement of Works or liable for any failure or delay in the performance of any obligations under these Conditions and/or the Statement of Works to the extent that such failure or delay is attributable to the Force Majeure Event.

16 Notices

16.1 Where any Notice is to be given under the Statement of Works or these Conditions, it must be in English and in writing, signed by a duly authorised signatory of the Party giving it. Where Notice is sent in accordance with Clause 16.1.2, it must be sent by a duly authorised representative of the Party giving it. Notices must be:

- 16.1.1 delivered personally or by commercial courier or sent by first class post or recorded delivery, to the Party's registered address, or to any other address and marked for the attention of any individual that either Party may nominate in writing for these purposes from time to time; or
- 16.1.2 sent by email, to Legal@mti.com for Notices to Us, and to You the email address of Your representative provided that within twenty-four hours of sending it by email, the Notice is also delivered or posted to the Party concerned in accordance with Clause 16.1.1.

16.2 Any Notice given in accordance with Clause 16.1 will be treated as having been received:

- 16.2.1 at the time of delivery, if delivered personally;
- 16.2.2 at the time of signature by the recipient of the courier's receipt, if delivered by commercial courier;
- 16.2.3 at 0900 hours on the second Working Day following the date of posting the Notice, if sent by post; and
- 16.2.4 immediately on completion of successful transmission, if sent by email.

However, where in any case, these rules would result in a Notice being treated as having been received on a day which is not a Business Day, or after 1700 hours on a day which is a Business Day, it will be treated as having been received at 0900 hours on the next Business Day afterwards.

16.3 To prove the giving of a Notice it will be sufficient to show it was sent in accordance with Clause 16.1.

16.4 The provisions of this clause do not apply to the service of any process in any legal action or proceedings which may be served in any manner competent under applicable law.

17 Assignment

17.1 You may not assign, novate or otherwise transfer or sub-contract or otherwise deal in any of Your rights and/or obligations under the Statement of Works, whether in whole or in part, without MTI's prior written consent, such consent not to be unreasonably withheld or delayed.

17.2 MTI may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions and/or the Statement of Works without Your consent.

18 Severance

18.1 If any provision of these Conditions and/or the Statement of Works is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

19 Waiver

No failure or delay by a party to exercise any right or remedy provided under a Statement of Works or these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20 Variation

No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21 Exclusive Remedy

The remedies set out in these Conditions and the relevant Statement of Works are Your sole and exclusive remedies.

22 Disputes

22.1 If a dispute arises out of or in connection with these Conditions and/or a Statement of Works, or the performance, validity or enforceability of either of them (**Dispute**) then the Parties shall follow the procedure set out in this clause:

22.1.1 either Party shall give to the other written Notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the persons identified in the Statement of Works for First Stage Dispute shall attempt in good faith to resolve the Dispute;

22.1.2 if the above are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the persons identified in the Statement of Works for Second Stage Dispute who shall attempt in good faith to resolve it; and

22.1.3 if the above are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Dispute shall be referred for determination as follows:

22.1.3.1 if the dispute is of a technical nature which is related to the provision of the IT Supplies and/or the Project, to an expert (an "**Expert**"), who will act as expert and not as arbitrator, in accordance with Clause 22.2 to Clause 22.5; or

22.1.3.2 in all other cases, mediation and/or arbitration in accordance with Clause 22.6 and Clause 22.8.

22.2 The Expert will be selected and appointed by agreement of the Parties. If the Parties fail to appoint the Expert within 10 Business Days, the Expert will be chosen and appointed on the instructions of either Party using CEDR Solve who shall appoint an Expert who is suitably qualified and experienced to determine the issue in dispute.

22.3 The Expert will be instructed to deliver his or her decision to the Parties in writing within 30 days or such other period as may be agreed in writing of the date on which his or her appointment takes effect.

22.4 Each Party will fully comply with any instructions issued by the Expert in accordance with the terms of his or her appointment and otherwise co-operate with the Expert, including by providing him or her with any information in its possession which he or she requests for the purposes of considering the issue in dispute and reaching his or her decision.

22.5 Each Party will bear its own costs in relation to the reference to the Expert. The fees and costs of the Expert will be borne by the Parties in whatever proportion he or she decides having regard (amongst other things) to the conduct of the Parties.

22.6 If Clause 22.1.3.2 applies and/or the Parties cannot agree that the Dispute is of a technical nature, the Parties shall first seek settlement of the Dispute by mediation in accordance with the LCIA Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.

22.7 If the Dispute is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall agree in writing, the Dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause there shall be one arbitrator and the seat, or legal place, of arbitration shall be England.

23 Brexit

23.1 If, as a result of Brexit:

23.1.1 MTI delays in delivering the IT Supplies;

23.1.2 MTI delays in achieving identified milestones under these Conditions and/or a Statement of Work;

23.1.3 MTI incurs an increase in its third-party costs; or

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23.1.4 there is any other adverse impact on MTI's ability to perform its obligations in accordance with these Conditions,

this will not be considered a breach by MTI of these Conditions for the purposes of clause 13 (Termination) and MTI shall have the right to make any reasonable changes to these Conditions and/or a Statement of Work, including a change to the Fees (to reflect the increase in costs) at its discretion.

24 No Partnership or Agency

These Conditions or a Statement of Works does not and is not intended to create a partnership or joint venture between the Parties to it, nor authorise either Party to act as agent for the other. Except to the extent otherwise agreed expressly in a Statement of Works or otherwise in writing, neither Party will have authority to act in the name of or on behalf of or otherwise to bind the other Party in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power), nor will they purport to so act or to so bind the other Party.

25 Counterparts

A Statement of Works may be entered into in any number of counterparts and by the Parties on separate counterparts, each of which, when executed and delivered, shall constitute a duplicate original, but all the counterparts together shall together constitute the one agreement.

26 Third Party Rights

These Conditions and the Statement of Works are made for the benefit of the Parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by anyone else.

27 Entire Agreement

27.1 The Statement of Works and any other documents that may be referred to in it or annexed to it, constitutes the entire agreement between the Parties in relation to its subject matter and supersedes any prior arrangement, understanding or agreement between them in relation thereto.

27.2 Each of the Parties acknowledges and agrees that in entering into the Statement of Works and the documents referred to in it or annexed to it, it does not rely on the statement, representation (whether innocent or negligent), assurance or warranty (whether in writing or not) of any person (whether party to this agreement or not) other than as expressly set out in the Statement of Works or those documents.

28 Governing Law and Jurisdiction

28.1 These Conditions, the Statement of Works and any dispute or claim arising out of or in connection with them or their subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

28.2 Subject to Clause 23, the Parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions, the Statement of Works or its or their subject matter or formation (including without limitation non-contractual disputes or claims).

SCHEDULE 3 TERMS FOR THE DELIVERY OF SOFTWARE, HARDWARE AND THIRD PARTY SUPPORT**29 Basis of Sale**

29.1 MTI shall resell, and you shall purchase the Software, Hardware and/or Third Party Support in accordance with any written quotation of MTI, or any written order of Yours which is accepted by MTI, subject to these Conditions, which shall govern the sale to the exclusion of any other terms and conditions.

29.2 The terms of this Schedule 3 of these Conditions apply to and are deemed incorporated within all Statement of Works where within the IT Supplies there is a reference to Software, Hardware and/or Third Party Support, to the exclusion of any terms and conditions or other contractual terms or arrangements proposed by You.

30 Orders and Specifications

30.1 All Software, Hardware and/or Third Party Support provided by MTI shall be in accordance with:



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- 30.1.1 the current edition of the relevant Published Specifications as published from time to time by the Manufacturer (copies of which are available from MTI upon request) and;
- 30.1.2 those further specifications or descriptions (if any) expressly listed or set out on the face of the Order. No other specification, descriptive material, written or oral presentation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Order.
- 30.2 Where Third Party Support is resold as part of the IT Supplies, it will be delivered subject to the relevant Third Party's terms and conditions and/or service description.
- 30.3 You shall be responsible to MTI for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by You, and for giving MTI any necessary information relating to the Software, Hardware and/or Third Party Support to enable MTI to perform the Order in accordance with its terms.
- 30.4 The quantity and description of and any specification for the Software and/or Hardware shall be those set out in MTI's quotation (if accepted by the You) or the Your Order (if accepted by MTI). MTI reserves the right to make any changes in the specification of the IT Supplies which are required to conform with any applicable safety or other statutory requirements or, where the IT Supplies are to be supplied to MTI's specification, which do not materially affect their quality or performance.
- 30.6 No Order that has been accepted by MTI may be cancelled by You except with the agreement in writing of MTI. If MTI agrees to cancel an Order the following fee will be payable by You calculated according to the number of days remaining between MTI receiving written Notice of cancellation and the agreed delivery date.
 - 30.6.1 more than 60 days - no charge;
 - 30.6.2 30-60 days - 10% of shipment value.
 - 30.6.3 15-30 days - 40% of shipment value; or
 - 30.6.4 0-15 days - 70% of shipment value.

31 Price and Payments

- 31.1 The Price of the Software, Hardware, and/or Third Party Support shall be stated in the Order and unless otherwise agreed in writing by You, shall be exclusive of value added tax, where applicable import duty and tax and for supply of Software and/or Hardware outside of the UK, the relevant Local Sales Tax. MTI shall invoice You upon dispatch of the Software, Hardware, and/or Third Party Support.
- 31.2 MTI shall be entitled to requote prices at the time of the Order being placed to take into account increases in costs including (without limitation) costs of any goods, material, carriage, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates.

32 Delivery

- 32.1 You accept that MTI is dependent upon the manufacture and supply of Software and/or Hardware by third parties and therefore all times or dates given for delivery are intended to be estimates and time of delivery shall not be of the essence. If no dates are specified then delivery shall be within a reasonable time.
- 32.2 The Software and/or Hardware shall be delivered to Your place of business or such other place of delivery as is agreed by You in writing prior to delivery.
- 32.3 You shall be deemed to have accepted the Software and/or Hardware upon the delivery to the address specified in the order. Unless otherwise stipulated by You deliveries shall only be accepted by You in normal business hours.
- 32.4 You shall prepare the area of delivery and installation for the Software and/or Hardware and provide MTI (including its employees and/or agents and/or subcontractors) with free access to the premises and area of installation and to any information required for the performance of its obligations or services of facilities that it may be required to deliver. Where the same has not been provided MTI shall be entitled to charge You for the same and You shall indemnify MTI in respect of all loss, damage, costs and expenses howsoever incurred in such circumstances.
- 32.5 If You fail to take delivery of the Software and/or Hardware, or fail to give MTI adequate delivery instructions at the time stated for delivery (otherwise than by reason of MTI's fault) then we will serve a written Notice on You specifying details of where You may collect the Software and/or Hardware from. If You have not arranged collection of the Software and/or Hardware within 14 days of receipt of the aforementioned Notice MTI may store the Software and/or Hardware until actual delivery and charge You for the reasonable costs (including insurance) of storage.



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32.6 If MTI is unable through circumstances beyond its control to deliver the goods within 14 days after notification to You or your agent that the goods are ready for delivery, MTI shall be entitled to arrange storage on Your behalf, whereupon delivery shall be deemed to have taken place, all risk in the goods shall pass to You, and delivery of the relevant warehouse receipt shall be deemed to be delivery of the IT Supplies for the purposes of clause 32. All charges incurred by the MTI for storage or insurance shall be paid by You within 30 days of receipt of an invoice.

33 Risk and Title

- 33.1 Risk in the Software and/or Hardware shall pass to You on delivery. Risk of damage to or loss of the IT Supplies shall pass to You, in the case of IT Supplies delivered at Your premises at the time when delivery to You is complete.
- 33.2 Notwithstanding clause 33.1, or any other provision of these Conditions, the legal title to the Software and/or Hardware shall not pass to You until MTI has received in cash or cleared funds payment in full for the Software and/or Hardware.
- 33.3 Until such time as the legal title to the Software and/or Hardware passes to You, MTI shall be entitled in the event of a breach by You of the terms of these Conditions to require You to deliver up the Software and/or Hardware to us and, if You fail to do so forthwith, to enter upon any of Your premises or third party where the IT Supplies are stored and repossess them.

34 Software Licence

- 34.1 We do not own any Intellectual Property Rights in the Software and We do not grant You any rights to use the Software. Where Software is supplied or incorporated as part of delivery of the IT Supplies, it will be supplied subject to a User Licence and any other relevant terms and conditions from the Manufacturer of the Software. You shall sign and return such licence and/or registration card relating thereto (as maybe appropriate) to the Software Manufacturer by return or as otherwise specified.
- 34.2 If You fail either to communicate your acceptance of the terms of the Software Licence in accordance with this clause or to pay any relevant licence fee for the Software, Your right to use the Software shall immediately cease and You shall remove the Software from your computer systems and return all physical copies thereof to MTI and will (upon request) provide a signed declaration that this clause has been complied with. You shall indemnify MTI in respect of all loss, damages, costs and expenses howsoever incurred in such circumstances.
- 34.3 Where only Software is being supplied, the responsibility for the registration of software licences rests solely with You. It is Your responsibility to ensure that licences are registered within the timeframes specified by the manufacturer. MTI accepts no liability should licences expire prior to their registration.

35 Warranty

- 35.1 You acknowledge that MTI is not the manufacturer of the Software and/or Hardware and that each item of Software and/or Hardware is subject to its own warranty with its Manufacturer. MTI will either:-
- 35.1.1 obtain for You the benefit of any standard end-user warranties in respect of the Software and/or Hardware (whether by assignment from MTI or directly from the Manufacturer); or
- 35.1.2 grant You the same warranties that MTI receives from the Manufacturer in respect of the Software and/or Hardware subject to the conditions and limitations relating to those warranties contained in contractual documents between the Manufacturer and the Seller.
- 35.2 Any sums recoverable under Clause 35.1.2 above shall be limited to the sums recovered by MTI from the relevant Manufacturer in respect of the relevant claim. Details of these warranties and the conditions and limitations applicable to them shall be made available to You upon reasonable written request.
- 35.3 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.