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MTI TECHNOLOGY LIMITED – MANAGED AND SUPPORT SERVICES TERMS AND CONDITIONS (“CONDITIONS”)

- 1 MTI shall perform the services specified in the schedule of work for the managed services and/or support services (“the Service Schedule”) agreed between MTI and the client identified in the Service Schedule (“the Client”).
- 2 MTI shall perform the managed services and/or support services (“the Services”) and the Client shall pay to MTI the sums specified in the Service Schedule and all other sums payable hereunder (“the Price”).
- 3 The Client shall perform its obligations under the Service Schedule and these Conditions (“the Client Obligations”).
- 4 The Services, the Price and the Client Obligations are subject to these Conditions.

Terms and Conditions for the Services

1 Price

- 1.1 The Price and all other sums payable hereunder are exclusive of Value Added Tax and all taxes or duties which may be levied or based upon the Price or such sums or upon the Managed and Support Services, or any part thereof. Value Added Tax and all such taxes or duties (with the exception of any tax levied or based upon the income of MTI) shall be paid by the Client as additional charges hereunder.

2 Payment

- 2.1 Invoices shall be submitted by MTI in accordance with the payment schedule specified in the Service Schedule. Payment of each invoice shall be made by the Client within thirty days of the date of issue.
- 2.2 If the Client fails to pay any sum due under these Conditions, interest shall be charged thereon from the date of issue of the applicable invoice until the date payment be made at the rate of four per cent per annum over the Base Rate of Barclays Bank plc from time to time in force.
- 2.3 Subject to clause 9.4, if the Client fails to pay any sum due under these Conditions, MTI may, without prejudice to any other remedy, after giving the Client fourteen days' notice of its intention so to do, withdraw the provision of the Services or any part of them until the payment is made.
- 2.4 Unless specifically agreed otherwise in writing, the Price shall be subject to annual review and may be increased by MTI on thirty (30) days' prior written notice to the Client, but not more than once in any year. Any such increase shall not in any given year exceed (when measured in percentage terms against the relevant charge as it applied prior to the increase taking effect) the percentage increase in RPI in:
 - (a) the year immediately preceding the date of the notice of increase;
 - (b) or the period:
 - (i) since the last such increase took effect; or



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(II) if no such increase has previously taken effect, the period since the start date as per the Service Schedule;

whichever period is the longer, provided that any such increase shall only be applied following consultation with the Client.

2.5 Without prejudice to any other right or remedy it may have, the Client shall not have the right to set off any liability it has to MTI against any liability that MTI may have to the Client.

3 **Employees**

3.1 The parties agree that they are each responsible for their own employees, consequently when the employees of one party are present on the premises of the other party they shall comply with any rules and regulations for the conduct of employees on those premises which are notified to them.

3.2 MTI employees engaged in the Services shall at all times remain under the direction and control of MTI.

3.3 The Client agrees that during a period from the commencement of the Services to twelve months after the expiry or termination of these Conditions it shall not employ or engage on any other basis or offer such employment or engagement to any of MTI's staff who have been associated with the provision of the Services without MTI's prior agreement in writing.

3.4 The Client agrees that if it employs or engages any person contrary to Clause 3.3 it shall be liable to pay to MTI liquidated damages in an amount equal to such person's salary per annum at the time of leaving the employment of MTI.

3.5 For the avoidance of doubt, reference to employees shall include any employees of MTI's Affiliates, which may provide the Services pursuant to these Conditions. "Affiliates" means any subsidiary or holding company of MTI, and any subsidiary of such holding company.

4 **The Managed and Support Services**

4.1 MTI will provide the Services to the Client in accordance with the Services Schedule in all material respects. Unless otherwise agreed in the Services Schedule, there will be no service credits for the failure to achieve target SLA's identified in the Service Schedule.

4.2 Either party may request at any time during these Conditions that a change be made to the Services. Each party shall have the right to reject any change requested by the other party but shall not exercise such right unreasonably. Change requests must be made in writing.

2.5 When the parties agree to implement a change requested to the Services, the details of that change shall be specified and confirmed in writing by the parties. MTI shall not be obliged to implement any change until it has been confirmed in this way and until any revision to the Price and any timetable of work and/or delivery dates has also been agreed in writing.

2.6 Where MTI are providing any third-party support and maintenance with the Services, this delivery is subject to MTI's general Terms and Conditions which can be found at <https://mti.com/tcs/>.

5 **Client Obligations**

5.1 The performance by MTI of the Services is dependent upon the Client's prompt performance of the Client Obligations which include any obligations set out in the Services Schedule and the responsibilities described in this Clause 5.



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- 5.2** The Client agrees to make available to MTI an authorised representative who shall:
- (a) be authorised to make binding decisions for the Client with regard to these Conditions, including any change to the Services or other variation;
 - (b) provide MTI with all information concerning the Client's operations and activities which MTI may require to perform the Services; and
 - (c) if requested by MTI, nominate an individual who shall act as the point of contact with respect to the provision of the Services.
- 5.3** Where participation by, or access by MTI to, the Client's own employees is necessary for the performance of the Services, the Client agrees that such employees shall:
- (a) be available at the times agreed between the two parties;
 - (b) possess the appropriate skills and experience for the tasks assigned to them; and
 - (c) exercise proper skill and care in following any fault finding procedures laid down by MTI.
- 5.4** Unless otherwise agreed in the Services Schedule, the Client shall keep full back up copies of the Supported System(s) (as defined in the Service Schedule) and any associated databases.
- 5.5** Neither the Client nor any third party shall make any modifications or enhancements to the Supported System(s), without informing MTI in writing prior to such modifications or enhancements taking effect and providing full details of those modifications and/or enhancements. The Client acknowledges that modifications and/or enhancements to the Support System(s) may require a change control to the services being provided.
- 5.6** The Client agrees at MTI's request, to provide MTI's employees with such facilities and access to the Client's premises as may be reasonably necessary for MTI to perform the Services.
- 5.7** The Client shall supply MTI without charge throughout the period of the Services with a complete copy of the latest issue of all documentation and other material notified by MTI from time to time as being necessary for MTI to perform its obligations under these Conditions.
- 5.8.** The Client shall ensure that it has any required third party support and maintenance on the Supported Systems and any associated databases. The Client acknowledges that where there is no support and maintenance, MTI may require a change control to the services being provided and/or additional charge.
- 5.9** The Client warrants that it has all necessary authorities required to permit MTI throughout the duration of these Conditions to receive and use the documentation and material detailed at clause 5.7, including the right to modify or enhance the source code of the application system and the Client undertakes to fully indemnify MTI against any liability arising from a breach or alleged breach of this warranty.
- 6 Additional Work or Expense: Client Default**
- 6.1** If the Client fails or delays in fulfilling any Client Obligation, MTI may revise the Price and any timetable of work. If this happens, MTI shall promptly following the failure or delay provide the Client with a notice describing in reasonable detail the additional costs and expenses that have been or are likely to be incurred by MTI as a result of the Client's failure or delay and the Client shall pay MTI for additional costs and expenses incurred by MTI on a time and materials basis at MTI's then current fee rates.

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7 Property Rights

- 7.1** To the extent that the Services are being provided with respect to software and systems originally provided under a separate agreement, the title and all intellectual property rights in any document, material, idea, data or other information constituting an original item developed and supplied as part of the Services shall be vested on the same terms as those detailed in that separate agreement.
- 7.2** To the extent that any document, material, idea, data or other information constituting an original item is developed by MTI and supplied as part of the Services, title thereto and all intellectual property rights specifically developed by MTI to provide the Services shall be vested in MTI.
- 7.3** MTI licences all such rights as described in Clause 7.2 above to the Client free of charge and on a non-exclusive, worldwide basis to such an extent as is necessary for the Client to use for the purpose of receiving the Services. If MTI terminate a Service Schedule, or these Conditions in accordance with Clauses 9.1, 9.2 and 9.3, this licence shall automatically terminate.

8 Confidentiality and Publicity

- 8.1** Each party undertakes at all times to hold in confidence for the other party, to use only for the purposes hereof and not to print, publicise or otherwise disclose to any third party, Confidential Information of the other party.
"Confidential Information" of the other party means any document, material, idea, data or other information which relates to either MTI's or the Client's research and development, trade secrets or business affairs or which is marked as confidential and disclosed by either party to the other for the purposes of these Conditions. "Confidential Information" of the other party does not however include any document, material, data, or other information which:
- (a) is known to the receiving party, under no obligation of confidence, at the time of disclosure by the other party; or
 - (b) is or becomes publicly known through no wrongful act of the receiving party; or
 - (c) is lawfully obtained by the receiving party from a third party who in making such disclosure breaches no obligation of confidence to the other party; or
 - (d) is independently developed by the receiving party; or
 - (e) is disclosed by the other party to a third party under no obligation of confidence.
- 8.2** Notwithstanding Clause 8.1 above, nothing in these Conditions shall be construed to prevent or restrict MTI from disclosing or using in the course of its business any technical knowledge, skill or expertise of a generic nature acquired by MTI in the performance of these Conditions.
- 8.3** MTI may refer to the Client in MTI's publicity material as being a client of MTI, but shall not, without the Client's permission (which shall not be unreasonably refused), publicise MTI's work under these Conditions. The Client undertakes not to publicise work undertaken by MTI through the use of MTI's name without the prior consent of MTI, which consent shall not be unreasonably withheld.

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9 Term and Termination

9.1 Unless specified to the contrary elsewhere herein or in the Services Schedule, these Conditions shall come into force on the date of full execution and shall continue in force until the end date as identified in the Service Schedule, this period being the “Initial Term”. Either party may terminate these Conditions and any Service Schedule at the end of the Initial Term by giving the other not less than three (3) months prior written notification. MTI may terminate these Conditions and any Service Schedule at any time by giving not less than thirty (30) days prior written notice.

9.2 Unless terminated under clause 9.1 above, on expiry of the Initial Term, these Conditions and any Service Schedule shall automatically renew for one-year (“Renewal Term”) until terminated, by either party giving the other not less than three (3) months prior written notification to expire on the anniversary of any Renewal Term.

9.3 Either party may terminate these Conditions forthwith by written notice to the other:

- (a) If the other party commits a material breach of any of its obligations under these Conditions and shall not have remedied such breach within thirty days of receiving written notice of the breach; and
- (b) If the other party becomes bankrupt or enter into liquidation (other than for reconstruction or amalgamation) or have a receiver appointed of its assets or any part thereof or an administration order is served upon it.

9.4 Where MTI has exercised its right to suspend the Service for non-payment under clause 2.3, MTI may terminate these Conditions at any time during this period by thirty days written notice to the Client, if payment of the Price (or any part of it) is still outstanding.

9.5 For the avoidance of doubt and unless otherwise agreed in the Service Schedule, MTI shall use reasonable endeavours to meet a target SLA identified in the Service Schedule, but a failure to achieve a SLA shall not in itself be a material breach. A breach of the SLA's shall only be considered a material breach under these Conditions where MTI has persistently failed to meet the same SLA on at least the number of occasions in the period prescribed in the Service Schedule.

9.6 Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

10 Warranty and Limitation of liability

10.1 MTI warrants that it will use reasonable skill and care to provide the Services.

10.2 Except as aforesaid, MTI to the fullest extent permitted by law, excludes all other warranties, conditions and other terms implied by statute and common law whether express or implied (this includes but is not limited to, warranties or conditions of merchantable quality or fitness for particular purpose).

10.3 Except as provided in Clause 10.5 below and unless any other amounts are agreed in writing in the Service Schedule, the Client agrees that MTI's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with performance or contemplated performance of the Services under these Conditions or the Service Schedule shall be limited in the aggregate to 120% of the total of the Price paid or payable during the twelve (12) months preceding the incident which gave rise to the claim. If the claim arises within the first twelve (12) months of the Service Schedule, it shall be limited in the aggregate to 120% of the total Price scheduled to be paid in that first year of the Service Schedule.



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10.4 Subject to clause 10.5, MTI shall not in any circumstances be liable, whether in tort, contract, misrepresentation or otherwise for;

(a) loss of profits; or

(b) loss of business; or

(c) depletion of goodwill or similar losses; or

(d) loss of anticipated savings; or

(e) loss of contract; or

(f) loss of use; or

(g) loss or corruption of data or information; or

(h) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

10.5 The limitations and exclusions set out in this clause 10 shall not apply to personal injury, including death, caused by either party's negligence.

11 Data Protection

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

11.2 In this clause 11 "Applicable laws" means (for so long as and to the extent that they apply to the MTI) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law. "Domestic UK" Law means the UK Data Protection Legislation and any other law that applies in the UK.

"Data Protection Legislation" means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time that apply to a party relating to the use of Personal Data. "UK Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulations ((EU) 2016/679); the UK General Data Protection Regulations; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended. "Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Processing" measures are as defined in the Data Protection Legislation.

11.3 The parties acknowledge that, where there is to be Processing during performance of the Services, for the purposes of the Data Protection Legislation, the Client is the Controller and MTI is the Processor. The Services Schedule will set out the scope, nature and purpose of Processing by MTI, the duration of the Processing and the types of Personal Data and categories of Data Subject.

11.4 Without prejudice to the generality of clause 11.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to MTI and/or lawful collection of the Personal Data by MTI on behalf of the Client for the duration and purposes of these Conditions.

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11.5 Without prejudice to the generality of clause 11.1, MTI shall, in relation to any Personal Data processed in connection with the performance by MTI of its obligations under these Conditions:

- (a) process that Personal Data only on the documented written instructions of the Client as set out in the Service Schedule unless MTI is required by Applicable Laws to otherwise process that Personal Data. Where MTI is relying on Applicable Laws as the basis for Processing Personal Data, MTI shall promptly notify the Client of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit MTI from so notifying the Client;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, 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;
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
- (e) assist the Client, at the Client's 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;
- (f) notify the Client without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 11.

11.6 The Client consents to MTI appointing a third-party processor of Personal Data under these Conditions. 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 that are substantially similar to those set out in this clause 11, and in either case that the Supplier undertakes will reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and MTI, MTI shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.

12 Force Majeure

12.1 Neither party shall be liable for any delay in meeting or for failure to meet any of its obligations under these Conditions due to any cause outside its reasonable control, including, without limitation, strikes, lock-outs, Acts of God, war, riot, malicious acts of damage, fire, acts of any government authority, failure of the public electricity supply, failure or delay on the part of any sub-contractor beyond the sub-contractor's reasonable control or the lack of availability of materials.

12.2 If either party is prevented from meeting any of its obligations due to any cause outside its reasonable control, it shall promptly notify the other party in writing of the circumstances and the other party shall grant a reasonable extension for the performance of these Conditions, provided however that if either party shall have been so prevented from meeting its obligations for more than thirty days following receipt of such notice, then either party may terminate these Conditions forthwith upon written notice.



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In the event of termination for this reason, the Client shall pay MTI a reasonable sum for the Services which shall include the costs and expenses relating to materials or services obtained or ordered in connection with providing the Services which cannot reasonably be defrayed elsewhere.

13 Notices and Other Communications

13.1 Any notice, which expression includes any other communication whatsoever which is made in accordance with these Conditions shall, without prejudice to any other method of giving it, be sufficiently given if it is sent by registered or recorded delivery first class post to the other party to the address stated on the signature page of these Conditions or to such other address as the respective party may advise by notice in writing from time to time.

13.2 Notices shall be deemed to have been properly given after three working days in the case of notices posted from the United Kingdom to a destination therein and eight working days in the case of all other notices posted internationally.

14 Assignment and Delegation

14.1 No right under these Conditions shall be assigned by either party without the prior written approval of the other party. MTI may delegate the performance of any of its obligations hereunder to any of its Affiliates and/or third parties without the Client's consent, provided however that MTI shall remain liable in Agreement for the performance of the Services notwithstanding such delegation. Nothing in these Conditions confers or purports to confer on any third party any benefit or right to enforce any term of these Conditions, and the provisions of the Agreements (Rights of Third Parties) Act 1999 (as amended or modified from time to time) are expressly excluded.

15 Waiver

15.1 No delay or failure of either party in enforcing against the other party any term or condition of these Conditions, and no partial exercise by either party of any right hereunder, shall be deemed to be a waiver of any right of that party under these Conditions.

16 General

16.1 The parties have read and understand these Conditions and the Service Schedule (and any documents attached to or referred to in the Service Schedule) and agree that they together constitute the complete and exclusive statement of the agreement between them with respect to the subject matter hereof which supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between them relating thereto.

16.2 If the scope of any of the provisions of these Conditions is too broad in any respect to permit enforcement to its full extent, then the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly.

16.3 In the event of any conflict or inconsistency between them, the terms of the Services Schedule will prevail over these Conditions.

16.4 No purported variation of these Conditions shall take effect unless made in writing and signed by an authorised representative of each party.

16.5 These Conditions shall be governed by English Law and the parties hereby submit to the jurisdiction of the English Courts.