

MSA: Terms and 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 **"Services"** means 'Services' as described in the Order.
- 1.13 **"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.
- 1.14 **"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.
- 1.15 **"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 'Services'.
- 1.16 **"Minimum Term"** means the period identified in the Order as the 'Minimum Term' (measured from the Effective Date).
- 1.17 **"Order"** means the first invoice issued by the Supplier.
- 1.18 **"Renewal Term"** means the shorter of: (a) the period, equal in length, to the Minimum Term; and (b) one year.
- 1.19 **"Services"** means those services supplied by the Supplier and described in the Sellerdeck Service Descriptions.

- 1.20 **"Set-up and Implementation Services"** means 'Set-up and Implementation Services' as described in the Order.
- 1.21 **"SLA"** means the 'Service Level Agreement' set out as a Schedule to this Contract.
- 1.22 **"Software"** means the Supplier Software, and any software supplied pursuant to this Contract, including all new releases, new versions, updates, and modifications thereto.
- 1.23 **"SOW"** means a contract for specified professional services that is made in accordance with Clause 4.2.
- 1.24 **"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 13), updates, and modifications thereto, and as specified in the SLA.
- 1.25 **"Supplier"** means Sellerdeck Ltd, a Company incorporated in England and Wales (No. 03221222), with registered offices at 107, Cheapside, London, England, EC2V 6DN.
- 1.26 **"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.
- 1.27 **"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. LICENCE

- 2.1 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 the authorised users to install and use any Supplier Software (that is delivered to the Client for installation on the Client Infrastructure) for the Licensing Purpose and at all times in compliance with the Law, subject to the licensing parameters set out in the Order Form; (b) use the Materials and Deliverables for the duration of the licence granted under this Clause 2.1 and for the Licensing Purpose.
- 2.2 If the Order indicates that testing will be applicable to the Supplier Software, the parties shall mutually agree in writing the acceptance criteria that will be used to determine whether the Software is Accepted or Rejected (**"Acceptance Criteria"**), and in the absence of such agreement, the Acceptance Criteria shall be such criteria recommended by the Supplier that demonstrate that the Software complies with its published specifications.
- 2.3 If the Order indicates that testing will be applicable to the Supplier Software, the Client shall undertake and complete user acceptance testing in an environment in accordance with good industry practice and the Supplier's reasonable recommendations promptly (**"Tests"**).
- 2.4 If the Software fails the Tests: (a) the Supplier shall promptly, and in any event within fourteen (14) days, endeavour to remedy such failure (noting that the Supplier will have limited control over such Software that is supplied by third parties) and resubmit the Software for a second cycle of Tests in accordance with Clause 2.3; or (b) the parties may agree to vary some or all of the Acceptance Criteria in relation to the Software and following which the Supplier shall promptly submit the Software for a second cycle of Tests in accordance with Clause 2.3.
- 2.5 If the Software fails a second cycle of Tests, the parties agree that the cycle at Clause 2.4 shall be repeated.
- 2.6 If the Software fails a third cycle of Tests, within thirty (30) days of such failure, the Client shall be entitled to reject the software, which: (a) in respect of Tests immediately following (or part of) the Set-Up and Implementation Services, will entitle the Client to terminate this Contract by giving to the Supplier not less than ten (10) days prior written notice, whereupon the Client shall be entitled to receive a refund of all pre-paid Fees under this Contract that relate to Software and/or Set-Up and Implementation Services; or (b) in respect of Tests immediately following (or part of) the installation/implementation of new releases and/or new versions of Software, will entitle the Client to remain on the previous release/version (as applicable).
- 2.7 Software shall be deemed accepted if: (a) the Client signs an acceptance certificate; (b) the Client does not exercise its rejection rights in accordance with Clause 2.6; (c) the Client puts the Software into live or operational use.
- 2.8 The Client's rights at Clause 2.6 shall be its exclusive remedies in respect of rejection. In no circumstances shall the Client be entitled to compensation and/or damages (with the exception of the refund(s) set out at Clause 2.6).
- 2.9 The Client shall install and/or implement new releases and/or new versions of Software promptly, but prior to live or operational use shall undertake the test cycle set out a Clauses 2.2 to 2.7 above in respect of such new releases/versions.
- 2.10 The Supplier may disable, revoke, or deactivate any Software's licence key issued to the Client at any given time, on expiry or termination of

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the licence, by providing to the Client not less than fourteen (14) days' prior written notice.

3. CLIENT'S RESPONSIBILITIES

- 3.1 The Client shall: (a) undertake all reasonable enquiries to satisfy itself that the Services are suitable for its needs before entering into this Contract; (b) adopt such processes and make such changes to its working practices as are necessary to make effective use of the Services; (c) have in place appropriate Client Infrastructure and Connectivity Infrastructure necessary for the provision of Services; (d) maintain, upgrade, change and/or replace 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) 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; (j) not reverse engineer or decompile the Software (or attempt to do the same), save to the extent permitted by Law.
- 3.2 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.
- 3.3 It is the Client's responsibility that name, phone numbers, physical address, email address and other data is accurate, and any changes are made known to the Supplier by the Client through the standard communication channels. The Supplier shall not be held responsible for the unsuccessful delivery of emails and phone calls due to inaccurate contact data.

4. SERVICES

- 4.1 Services will be provided pursuant to this Contract if and to the extent that such Services are specified in the Order.
- 4.2 This Contract also operates as a framework under which 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.
- 4.3 The Supplier shall provide Services using reasonable care and skill and in accordance with good industry practice. Both parties shall use their reasonable endeavours to meet the timescales specified in 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.

5. PAYMENT

- 5.1 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).
- 5.2 The Supplier shall be entitled to raise invoices in accordance with the Order and any SOWs.
- 5.3 The Client shall pay the Supplier's invoices either: (a) within thirty (30) days of the date of the invoice (or within such shorter period as specified in the Order); or (b) immediately by direct debit or standing order or credit/debit card (if applicable; and if specified in the Order).
- 5.4 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.
- 5.5 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).
- 5.6 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.

- 5.7 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 eight per cent (8%) 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 Effective Date) and the effective date of the Indexed Increase.
- 5.8 The Supplier shall be entitled to increase Fees under Clause 5.7(b) beyond the eight per cent (8%) 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.

6. PROPERTY RIGHTS

- 6.1 Full and unencumbered title (with full title guarantee) in Deliverables shall vest in the Supplier absolutely upon creation and the Supplier and its licensors owns 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 6.1.
- 6.2 For the purpose of clarity, ownership of the graphical designs and other brand-related image files and supplied by the Client will not be transferred to the Supplier under the terms of this Contract.

7. TERM AND TERMINATION

- 7.1 This Contract is formed (and becomes legally binding) upon payment of the Order by the Client. This Contract shall commence on the Effective Date and shall continue unless and until terminated by either party in accordance with this Clause 7.
- (i) Either party shall be entitled to terminate this Contract within fourteen (14) days from the Order by giving to the other party written notice. Upon termination the Client shall pay fees due to the value of the Services provided by the Supplier.
- (ii) Either party shall be entitled to terminate this Contract on expiry of the Minimum Term specified in the Order and subsequent Renewal Term by giving to the other party not less than fourteen (14) days' prior written notice.
- (iii) 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 fourteen (14) days of written notice of that breach, provided that: (a) the fourteen (14) 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.
- 7.2 **SOW(s).** The SOW(s) shall commence in accordance with Clause 3.2 and shall terminate on completion of the Services or in accordance with this Clause 7.2.
- (i) Either party shall be entitled to terminate any SOW(s) immediately by giving to the other party not less than thirty (30) days' prior written notice. Upon termination the Client shall pay fees due to the value of the services used as defined by SDL.
- (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.
- 7.3 **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

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assets, or a court or arbiter with authority to so determine, determines that the debtor is unable to pay its debts.

8. CONSEQUENCES OF TERMINATION

- 8.1 On termination of this Contract or any SOW(s) howsoever caused: (a) the rights and duties created by Clauses 5, 6, 9, 10, 11, 14, 15, and 16 shall survive; (b) the rights of either party which arose on or before termination shall be unaffected.
- 8.2 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 30 days has elapsed from the effective date of termination of this Contract.
- 8.3 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.

9. CONFIDENTIALITY

- 9.1 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 9.2, or 9.3; 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**").
- 9.2 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 9 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 9. 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.
- 9.3 If required by Law, the Receiving Party may disclose Confidential Information to a court or regulatory authority or agency, provided that the Receiving party shall (if legally permissible) provide reasonable advance notice to the Disclosing Party and co-operate with any attempt by the Disclosing Party to obtain an order for providing for the confidentiality of such information.

10. DATA

- 10.1 The Supplier shall not own (or claim ownership rights in respect of) User Data.
- 10.2 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 10.2, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this Clause 10.2.
- 10.3 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**").

- 10.4 The parties shall comply with the data processing provisions, set out as a Schedule to this Contract.

11. LIABILITY

- 11.1 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.
- 11.2 Subject to Clause 11.1, 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.
- 11.3 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).
- 11.4 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 11.1; or (b) excluded pursuant to Clauses 11.2 and 11.3.
- 11.5 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 11.1; (b) excluded pursuant to Clauses 11.2, 11.3, and 11.4.
- 11.6 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.
- 11.7 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.

12. ASSIGNMENT AND SUBCONTRACTING

- 12.1 Neither party shall assign or otherwise transfer this Contract or any of its rights and duties under this Contract without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that the Supplier shall be entitled (and the Client hereby irrevocably consents) to assign in whole or in part, or novate the entirety of this Contract, to any Affiliate as part of a bona fide corporate restructuring by providing not less than seven (7) days' prior written notice to the Client.
- 12.2 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.
- 12.3 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.

13. CHANGES

- 13.1 Subject to Clause 13.2 changes to this Contract or the SOW(s) shall be valid unless made in writing and signed by the authorised representatives of both parties.
- 13.2 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.
- 13.3 A Change will be effective when it is documented in writing in a standard Supplier change control form.

14. NON-SOLICITATION

- 14.1 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).

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14.2 If a party breaches Clause 14.1, 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.

15. DISPUTES

15.1 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.

15.2 Where the Dispute is not resolved within forty (40) days of the start of discussions in accordance with Clause 15.1 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.

15.3 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.

15.4 Clauses 15.1 to 15.3 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.

16. GENERAL PROVISIONS

16.1 **Terms.** From time to time, the Supplier may revise the terms of this Contract by notifying the Client. Unless the Client objects to the updated contract terms within thirty (30) days of notification, it will be bound by the updated contract terms.

16.2 **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).

16.3 **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.

16.4 **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.

16.5 **Entire Agreement.** This Contract supersedes any prior contracts, arrangements, and undertakings between the parties in relation to its subject matter, including but not limited to any Software licences previously granted (which for the avoidance of doubt are hereby terminated), and constitutes the entire contract between the parties relating to the subject matter.

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16.7 **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.

16.8 **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.

16.9 **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.

16.10 **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 16.10; (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 16.10. 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.

16.11 **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.

16.12 **Injunctive Relief.** Nothing in this Contract shall prevent or preclude either party from seeking injunctive relief.

16.13 **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. Notwithstanding the foregoing, the Supplier shall be entitled to give notice under Clauses 12.1 and 16.1 by means of a notification available from the Supplier's website (www.sellerdeck.co.uk), which shall be deemed served fourteen (14) days after publication.

16.14 **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.

16.15 **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.

16.16 **Law.** This Contract is governed by the laws of England.

MSA: Schedule 1 - SLA

CONTACTING THE COMPANY

- 1.1 The Supplier's support operates during the "Support Hours": from 09:00 – 17:30, Monday – Friday, excluding public holidays in England).
- 1.2 The Client may only contact the Supplier in respect of support queries as follows: (a) email: such email address as published by the Supplier; (b) telephone: such telephone number as published by the Supplier; (c) where available (as published by the Supplier), support requests can be submitted using a custom form within the Supplier app.
- 1.3 References to hours in this Service Level Agreement do not include hours outside the Support Hours.

SERVICE LEVELS

- 1.4 The Supplier will assign a reported incident with a unique support number. If the Supplier determines that the reported incident is a fault or error with the Hosted Services and/or the Supplier Software and is within the scope of paragraph 1.4 (above) it will: (a) categorise the incident in accordance with the incident categories detailed at paragraph 1.15 (below); and (b) deliver Solutions in accordance with the response times detailed below.
- 1.5 "Solutions" are fixes or workarounds that eliminate the incident or move the incident into a lower incident category, which are provided remotely and which may (or may not) include the Supplier providing Maintenance.
- 1.6 If and when a Solution moves an incident into a lower incident category, the response times of that lower incident category shall apply from the moment that the incident is re-categorised.
- 1.7 Incident categories and responses:

Incident Category	Response
Priority 0 (Mission Critical)	
The system is <u>not operational</u> .	Reasonable efforts to start work within 1 hour and to provide a Solution within 8 hours of starting work.
Priority 1 (Business Critical)	
<u>Material functionality</u> is not available that is <u>critical</u> to the Client's business and there is <u>no</u> temporary / short term workaround.	Reasonable efforts to start work within 1½ hours and to provide a Solution within 16 hours of starting work.
Priority 2 (Serious)	
Priority 1 where there <u>is</u> a temporary / short term workaround. OR <u>Important</u> but <u>non-material</u> or <u>non-critical</u> functionality is not available and there is <u>no</u> temporary / short term workaround.	Reasonable efforts to start work within 2 hours and to provide a Solution within 40 hours of starting work.
Priority 3 (Normal)	
<u>Important</u> but <u>non-material</u> or <u>non-critical</u> functionality is not available and there <u>is</u> a temporary / short term workaround.	Reasonable efforts to start work within 4 hours and to provide a Solution within 80 hours of starting work.
Priority 4 (Minor)	
Any incident that is not Priority 0, Priority 1, Priority 2, or Priority 3.	Reasonable efforts to start work within 4 hours and to provide a Solution within 160 hours of starting work.

MSA: Schedule 2 – Data Processing

1 DEFINED TERMS

1.1 For the purposes of this Schedule:

- “Data Controller”, “Data Subject”, “Personal Data”, “Data Processor”, and “Process” shall have the meaning specified in the Data Protection Legislation; and
- “Data Protection Legislation” means the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 and any related act or regulation in the UK, including statutory modification or re-enactment of it.

2 DATA PROCESSING TERMS

2.1 In relation to the Processing of any User Data which constitutes Personal Data, the parties agree that the Client and/or its user(s) is/are the Data Controller and the Supplier is the Data Processor.

2.2 This Schedule sets out the subject matter, duration, nature and purpose of the processing by the Supplier, as well as the types and categories of Personal Data and the obligations and rights of the Client.

2.3 The Supplier shall in respect of such Personal Data:

- process that Personal Data during the term of this Contract only on the documented written instructions of the Client (which include this Contract) unless the Supplier is required by Laws to otherwise process that Personal Data. Where the Supplier is relying on Laws as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Laws unless those Laws prohibit the Supplier from notifying the Client;
- 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 Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- not transfer any Personal Data outside of the UK and/or European Economic Area unless the prior written consent of the Client has been obtained and there are appropriate safeguards in relation to the transfer;
- 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;
- notify the Client without undue delay on becoming aware of a Personal Data breach;
- ensure that provisions which are equivalent to those set out in this paragraph 2.3 are imposed upon any subprocessor engaged by the Supplier (acknowledging that the Supplier shall remain primarily liable to the Client for the subprocessor’s compliance with such provisions);
- inform the Client of any intended additions to or replacements of the Supplier’s subprocessors;
- subject to Clause 8.2(e) of the Contract, at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Laws to store the Personal Data; and

- maintain complete and accurate records and information to demonstrate its compliance with this Schedule and allow for audits by the Client on reasonable notice and (but without thereby assuming the primary liability of the Client to only issue lawful instructions) immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

2.4 The Supplier shall not give access to or transfer any Personal Data to any third party without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed. The Client consents to the Supplier’s use of the subprocessors identified at www.clearcourse.co.uk/dataprocessing/subprocessors

3 DATA

3.1 Subject matter and duration of the processing of Personal Data: set out in this Schedule and is further detailed in the Supplier’s privacy policy (freely available on request).

3.2 The nature and purpose of the processing of Personal Data: such processing, in accordance with the Client’s instructions, as is necessary to provide the services pursuant to the Contract, which may include: the collection of data; recording of data; organisation of data; storage of data; alteration of data; retrieval of data; consultation with regard to data; use of data; disclosure of data to permitted third parties; combining data; and/or erasure of data.

3.3 The types of Client Personal Data to be Processed: the Client may submit Personal Data in the course of using the Services, the extent of which is determined and controlled by the Client in its sole discretion, which may include, but is not limited to Personal Data relating to the following: name; personal contact details; professional contact details; IP addresses; cookie data; login credentials; and traffic data including web logs.

3.4 The categories of Data Subject to whom the Client Personal Data relates: the Client may submit Personal Data to the Supplier, the extent of which is determined and controlled by the Client in its discretion, and which may include, but is not limited to, Personal Data relating to the following categories of data subjects: the Client’s customers, employees, business partners and suppliers.

3.5 The obligations and rights of the Client: set out in this Schedule and is further detailed in the Supplier’s privacy policy (freely available on request).

4 CLIENT RESPONSIBILITIES

4.1 The Client agrees that, in its role as Data Controller, it:

- shall ensure that only lawful instructions are issued to the Supplier in respect of the Processing of the Personal Data;
- shall obtain and maintain throughout the term of the Contract all necessary permissions, consents and authorisations to enable the Supplier to process the Personal Data in accordance with the provisions of the Contract;
- has reviewed and approved the Supplier’s technical and organisational measures as being suitable for the Client’s purposes before entering into the Contract;
- has granted to the Supplier general authorisation to sub-contract its Processing of Personal Data to third parties on the terms set out in paragraph -;
- may be considered to have no objections if it has not advised otherwise in writing within ten (10) days of notification under paragraph -; and
- shall promptly issue its instructions in writing to the Supplier, regarding return or deletion of the Personal Data, upon termination or expiry of the Contract (acknowledging the provisions of Clause 8.2(e) of the Contract).

MSA: Schedule 3 – Specific Order Additional Provisions

1 INTRODUCTION

- 1.1 The provisions of this Schedule apply to the extent identified in the Order Form/SOW (as applicable).

2 SUPPLIER DISTRIBUTED SOFTWARE AND SERVICES

- 2.1 In this paragraph, the following words have the following meanings: (a) **"Supplier-Distributed Service Providers"** means the third party 'Supplier-Distributed Service Providers' described in the Order Form; (b) **"Supplier-Distributed Service Terms"** means the additional terms applicable to the re-supply by the Supplier of services by Supplier-Distributed Service Providers as set out at paragraph 4 **Error! Reference source not found.**; (c) **"Supplier-Distributed Software Vendors"** means the third party 'Supplier-Distributed Software Vendors' described in the Order Form; (d) **"Supplier-Distributed Vendor Licences"** means software licensing terms in respect of the re-supply by the Supplier of software supplied by Supplier-Distributed Software Vendors as set out at paragraph 3.
- 2.2 The Client acknowledges that: (a) in order to make use of the Hosted Services it must agree to Supplier-Distributed Vendor Licences and Supplier-Distributed Service Terms; and (b) any termination of the Supplier-Distributed Vendor Licence(s) and/or Supplier-Distributed Service Terms may prevent it from making substantial use of the Hosted Services, but shall not entitle it to terminate this Contract and/or receive any refund under this Contract, save that if such termination arises as a result of a breach by the Supplier of paragraph 2.4 below the Supplier shall use all reasonable endeavours to mitigate any adverse impact on the Hosted Services, failing which the Client shall be entitled to terminate this Contract and receive a refund of any prepaid fees covering any period of this Contract that has been shortened due to early termination.
- 2.3 The Client agrees that it will abide by the terms and conditions of Supplier-Distributed Vendor Licences and Supplier-Distributed Service Terms.
- 2.4 The Supplier shall ensure that the Supplier-Distributed Software Vendor and/or Supplier-Distributed Service Provider (as applicable) does not terminate the Supplier-Distributed Vendor Licence or and Supplier-Distributed Service Terms (as applicable) as a result of the Supplier's breach of paragraph 2.5 below.
- 2.5 The Supplier shall make payment to Supplier-Distributed Software Vendors and Supplier-Distributed Service Providers in respect of the grant of Supplier-Distributed Vendor Licences and the provision of services under the Supplier-Distributed Service Terms, subject to the Client's: (a) payment to the Supplier of Fees in respect of Supplier-Distributed Vendor Licences and Supplier-Distributed Service Terms; and (b) compliance, in full, with the terms and conditions of the Supplier-Distributed Vendor Licences and Supplier-Distributed Service Terms.
- 2.6 The Client shall indemnify and hold harmless the Supplier from all Costs arising from a breach of this paragraph 2, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this paragraph 2.
- 2.7 The parties acknowledge that the Supplier's Fees are in part dependent on the costs imposed on it by third party technology and/or infrastructure providers which are outside of its control. As such, the Supplier shall be entitled to increase the Fees at any time by giving the Client not less than thirty (30) days' written notice if any Supplier-Distributed Software Vendor and/or Supplier-Distributed Service Provider has increased its fees or charges in a manner that increases the costs imposed on the Supplier under this Contract, provided that such increase shall be limited to the additional cost imposed on the Supplier as may be apportioned to this Contract. Both parties will work collaboratively to mitigate the impact of any such third party costs and will endeavour to keep such increases to a minimum.

3 SUPPLIER-DISTRIBUTED VENDOR LICENCES

- 3.1 As set out at <https://www.clearcourse.co.uk/third-party-terms>

4 SUPPLIER-DISTRIBUTED SERVICE TERMS

- 4.1 As set out at <https://www.clearcourse.co.uk/third-party-terms>

5 OPEN SOURCE SOFTWARE

- 5.1 In this paragraph, the following words have the following meanings: (a) **"Open Source Licence"** means a licence in respect of the Open Source Software as described in the Order Form; (b) **"Open Source Software"** means the open source software described in the Order Form, including all new releases, new versions, updates and modifications thereto.
- 5.2 The Client acknowledges that: (a) in order to make use of the Hosted Services it must enter into Open Source Licences; (b) the Supplier will have no contractual obligations or responsibilities in respect of Open Source Licences and, in particular, will not be providing patches or fixes in respect of the Open Source Software; and (c) subject to paragraph 5.5, any termination of the Open Source Licences may prevent it from making substantial use of the Hosted Services, but shall not entitle it to terminate this Contract and/or receive any refund under this Contract.
- 5.3 The Client agrees that it will enter into Open Source Licences and will maintain such Open Source Licences for the duration of this Contract and abide by the terms and conditions of Open Source Licences.

- 5.4 The Supplier warrants at the Effective Date that the provision of Open Source Software as part of the Hosted Services shall not infringe the terms of the Open Source Licences.
- 5.5 In the event that any Open Source Licence is terminated, or in the reasonable opinion of the Client or the Supplier, use of the Open Source Software infringes the Intellectual Property Rights of a third party, save in respect of such termination or reasonable opinion arising as a result of a breach by either party of this paragraph 5, the parties shall use all reasonable endeavours to mitigate any adverse impact to the Hosted Services (which may include the sourcing of alternative software components), provided that if notwithstanding such mitigation the adverse impact to the performance or functionality of the Hosted Services is substantial, the Client shall be entitled to terminate this Contract on thirty (30) days' prior written notice. Mitigation arising under this paragraph shall be deemed an Event of Force Majeure.
- 5.6 The Client shall indemnify and hold harmless the Supplier from all Costs arising from a breach of this paragraph 6, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this paragraph 6.

6 CLIENT-PROCURED SOFTWARE AND SERVICES

- 6.1 In this paragraph, the following words have the following meanings: (a) **"Client-Procured Services Agreements"** means contracts entered into between Client-Procured Services Providers and the Client; (b) **"Client-Procured Services Providers"** means the third party 'Client-Procured Services Providers' described in the Order Form; (c) **"Client-Procured Software Vendors"** means the third party 'Client-Procured Software Vendors' described in the Order Form; (d) **"Client-Procured Vendor Licences"** means software licensing agreements entered into between Client-Procured Software Vendors and the Client.
- 6.2 The Client acknowledges that: (a) in order to make use of the Hosted Services it must enter into Client-Procured Vendor Licences and Client-Procured Services Agreements; and (b) the Supplier will have no contractual obligations or responsibilities in respect of Client-Procured Vendor Licences and Client-Procured Services Agreements, subject to paragraph 6.4 below; and (c) any termination of the Client-Procured Vendor Licence and/or Client-Procured Services Agreements (other than as a result of a breach by the Supplier of paragraph 6.4 below) may prevent it from making substantial use of the Hosted Services, but shall not entitle it to terminate this Contract and/or receive any refund under this Contract.
- 6.3 The Client agrees that it will enter into Client-Procured Vendor Licences and Client-Procured Services Agreements and will maintain such Client-Procured Vendor Licences and Client-Procured Services Agreements for the duration of this Contract and abide by the terms and conditions of Client-Procured Vendor Licences and Client-Procured Services Agreements.
- 6.4 The Supplier shall ensure that the Client-Procured Software Vendor and/or Services Provider (as applicable) does not terminate the Client-Procured Vendor Licence or and Client-Procured Services Agreements (as applicable) as a result of the Supplier's breach of paragraph 6.5 below.
- 6.5 The Supplier shall make payment to Client-Procured Software Vendors and Client-Procured Services Providers in respect of the grant of Client-Procured Vendor Licences and the provision of services under the Client-Procured Services Agreements, subject to the Client's: (a) payment to the Supplier of Fees in respect of Client-Procured Vendor Licences and Client-Procured Services Agreements; and (b) compliance, in full, with the terms and conditions of the Client-Procured Vendor Licences and Client-Procured Services Agreements.
- 6.6 The Client shall indemnify and hold harmless the Supplier from all Costs arising from a breach of this paragraph 6, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this paragraph 6.
- 6.7 The parties acknowledge that the Supplier's Fees are in part dependent on the costs imposed on it by third party technology and/or infrastructure providers which are outside of its control. As such, the Supplier shall be entitled to increase the Fees at any time by giving the Client not less than thirty (30) days' written notice if any Client-Procured Software Vendor and/or Client-Procured Service Provider, has increased its fees or charges in a manner that increases the costs imposed on or incurred by the Supplier provided that such increase shall be limited to the additional cost imposed on the Supplier as may be apportioned to this Contract. Both parties will work collaboratively to mitigate the impact of any such third party costs and will endeavour to keep such increases to a minimum