

## General Terms and Conditions - Hosting/Managed Services

### 1. Agreement

1.1 These Terms and Conditions should be read in conjunction with a completed Service Order, which sets out the Services, pricing and other details specific to the contract between the Client and Morcan. Signature of a Service Order on behalf of both Client and Morcan creates a legally binding Agreement. Morcan will not be bound by any Service Order until it is accepted and signed by Morcan. The Agreement overrides and excludes any other terms including any terms stipulated, or purported to be incorporated or referred to by the Client (including in any of the Client's purchase order documentation), or in any negotiations and any course of dealing established between the parties, or otherwise. In the event of a conflict between the provisions of any documents comprising the Agreement, the conflict shall be resolved in the following order of priority:

- 1) Service Order
- 2) These Terms and Conditions
- 3) Any Schedules, annexes, appendices or attachments to the Service Order, other than these Terms and Conditions
- 4) Any other documents expressly incorporated by or with Morcan's approval in writing into the Agreement.

The Client is responsible for the accuracy of all information provided by it including as contained in Service Orders.

1.2 All quotations are deemed to be subject to these Terms and Conditions. Quotations shall be valid for 14 days unless otherwise stated on the quotation. Morcan reserves the right to withdraw or amend any quotation at its discretion prior to the Agreement.

1.3 Morcan reserves the right to cancel, withdraw or amend (including by increasing the Charges in respect of) any Service Order (or the terms applicable to the same) in whole or part at any time following the entry into of the Agreement by notice to the Client where:

- 1.3.1 products or services are withdrawn by any supplier; or
- 1.3.2 the supplier increases the charges for products or services to Morcan, including any increase by reference to the Client's power or other consumption in relation to the Services; or
- 1.3.3 the terms on which any supplier provides products or services are amended or updated;
- 1.3.4 specifications of products or services are varied by the Supplier; or
- 1.3.5 there is any Change in Law: (a) that results in an increase in the cost to Morcan of providing all or any of the Services; or (b) such that Morcan is no longer entitled by Law to sell/supply all or any of the Services ordered to the Client in the jurisdiction in which the same have been ordered or are to be delivered; or (c) and the impact of the change or its implementation is such that tariffs, levies,

taxes, imposts or duties or trade barriers are imposed upon or increased in respect of the sale, licensing or provision of all or any of the Services from the jurisdiction from which the same are supplied to the jurisdiction in which they are to be delivered or accessed; or (d) and the impact of the change or its implementation is such that Morcan's ability to deliver all or any of the Services is hampered or likely to result in any delay.

## 2. Definitions

In the Agreement the following terms shall have the following meanings:

**Affiliate** in relation to any body corporate means any subsidiary or holding company of that body corporate or any subsidiary of any such holding company and for the purposes of this definition the terms "subsidiary" and "holding company" shall have the meanings given to them by section 1159 Companies Act 2006;

**Agreement** means the legally binding contract between the Client and Morcan comprising:

- a. the Service Order signed by Client and Morcan;
- b. these Terms and Conditions;
- c. any schedules, annexes, appendices or attachments to the Service Order; and
- d. any other documents expressly incorporated by or with Morcan's approval in writing into such contract;

and in each case as the same may be amended from time to time in accordance with its terms;

**Business Day** means a day other than a Saturday or Sunday or bank or other public holiday in England and Wales;

**Change in Law** means any change in any Law occurring after the Effective Date;

**Charges** means the fees, charges, and expenses payable by the Client to Morcan under the Agreement in respect of the Services and the price for any equipment supplied by Morcan;

**Client** means the person identified as the Client on the Service Order;

**Client Data** means any data or information (including any personal data relating to the staff, clients or suppliers of the Client) provided by or on behalf of the Client to Morcan, which is stored or otherwise processed by Morcan as part of the Services under the Agreement;

**Client Equipment** means any hardware (including cabinets and racks) or other equipment or software/system provided by or on behalf of the Client, which as part of any Service, Morcan permits the Client to install or operate at any Supplier Premises;

**Client Site(s)** means the Client locations at or in respect of which Services are to be provided as set out in the Service Order, or as otherwise may be accepted in writing by Morcan;

**Confidential Information** means all data, information, and material in any medium or format relating to the business, customers, suppliers, licensors, employees, officers, finances, systems or affairs of the Disclosing Party or its Affiliates (including Morcan Know How where Morcan is the Disclosing Party) that is or has been (before, on, or after the Effective Date) disclosed by or on behalf of the Disclosing Party to the Receiving Party under or in

connection with the Agreement, whether orally, electronically, in writing or otherwise (including by observation), including copies of such information;

**Data Service** means any Service which provides the Client with a means of storing, processing, backing up and/or restoring Client Data, including hosted virtual machines (VMs) and long term data storage;

**Disclosing Party** means the party making disclosure of Confidential Information;

**Effective Date** means the date specified as such in the Service Order;

**End-Users** means Client's end-users, clients, agents or any other third parties who utilise or access the Services or Client Equipment;

**Force Majeure Event** means :

- a. act of God or public enemy, acts of terrorism, civil war, riots or commotion, war, military action (or preparation for the same), imposition (or threat of imposition) of sanctions or embargo or a breaking-off of diplomatic relations;
- b. an epidemic or a pandemic;
- c. natural events or disasters of any kind including storms, lightning, flood, drought, other extreme weather conditions, earthquake/seismic activity;
- d. any law made or any action taken by any state, government or public authority (including revocation or refusal of licences or permissions);
- e. collapsing buildings, fire, explosion, malicious acts, vandalism or accident, failure or non-availability of public networks, electricity or other utilities, accident or breakdown of machinery, damage or disruption to cables or infrastructure, unavailability of supplies;
- f. any labour dispute, strike, industrial action or lockout; or
- g. any other cause, event or circumstance affecting the performance by a party of its obligations under the Agreement which is beyond its reasonable control;

**Initial Service Term** means in respect of each Service the initial period from and including the Service Commencement Date during which that Service is to be provided as set out in the Service Order, subject to earlier termination in accordance with the Agreement;

**Insolvency Event** means in respect of any person, its bankruptcy, insolvency or entry into liquidation, administration or similar proceeding or entry into of any agreement or composition with creditors generally or the appointment of a receiver over all or substantially all of its assets and undertaking, or the occurrence of any event analogous to any of the foregoing in any jurisdiction;

**Intellectual Property Rights** means any of the following rights:

- a. patents, trademarks, service marks, logos, trade dress, get-up, trade, business or domain names, rights in designs, copyrights and related rights including rights in computer software and databases, database rights, topography rights;
- b. rights in inventions, know-how, trade secrets and other confidential information; and
- c. any other intellectual property or similar proprietary rights which may exist at any time in any part of the world.

In each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them, and where applicable any goodwill in any of the above;

**Law** means:

- a. any law, statute, regulation, by law, ordinance or subordinate legislation in force from time to time;
- b. the common law as applicable to the parties to the Agreement from time to time;
- c. any binding court order, judgement or decree;
- d. any legally binding industry code or standard.

**Malicious Activity** means sending/distributing Viruses or information regarding the creation/distribution of Viruses, ping, flooding, mail bombing, or denial of service attacks, or other activities that disrupt the use of or interfere with the ability of others to effectively use networks, systems, services, software or equipment;

**Morcan** means Morcan Limited (registered in England no. 04205110) of 3<sup>rd</sup> Floor, 86-90 Paul Street, London EC2A 4NE or such Affiliate of Morcan Limited as is shown as the Morcan contracting entity on the Service Order;

**Morcan Know How:** means general ideas, working methodologies, general knowledge and experience, processes, techniques, tools or internal processes or systems, source code, systems, platforms, solutions, know-how, data, documents, reports, records, works of authorship or creative works, specifications, system concepts, designs, samples, models, plans, sketches or drawings or other materials which have been or are acquired or developed by or on behalf of Morcan or its Affiliates or their respective suppliers or licensors before, on or after the Effective Date and any modifications, enhancements or derivatives of any of the same;

**Proposed Service Commencement Date** means the date specified as such on the Service Order;

**Receiving Party** means the party receiving Confidential Information;

**Relief Event** has the meaning given to that term in clause 14;

**Renewal Period** means the period specified as such in the Service Order;

**Service Commencement Date** means in relation to each Service the date on which that Service is first available for use by the Client as notified to the Client by Morcan in accordance with Clause 3.2. If Services are to be provided at more than Client Site the Service Commencement Date shall be the date on which the relevant Service is available for use at the first Client Site to be commissioned and notified to the Client by Morcan in accordance with Clause 3.2;

**Services** means the services provided by Morcan and/or its licensors, suppliers and contractors as set out in the Service Order (as may be amended from time to time in accordance with the Agreement);

**Service Order** means a service order form issued by Morcan and signed on behalf of the Client and Morcan that includes details of the specific Services ordered by the Client and related pricing;

**Service Description** means in relation to each Service the applicable service description for the same as set out in the Service Order;

**Service Term** means in relation to each Service the period from the Service Commencement Date to the date of termination or expiry of the Agreement in respect of that Service (including any Renewal Periods);

**Service Levels** means the service levels (if any) for a Service as set out in the SLA Schedule;

**SLA Schedule** means the service level schedule (if any) applicable to the individual Services described in it and attached as a Schedule to the Service Order;

**Supplier Equipment** means any equipment used in the provision of a Service and installed at the Client's, or Morcan's or Morcan's suppliers/contractors' premises or otherwise placed in the possession of the Client and owned by Morcan or Morcan's suppliers/contractors;

**Supplier Premises** means any premises of Morcan, its suppliers or contractors made available to the Client pursuant to a Service Order including any such premises at which Client Equipment is located;

**Supplier Systems** means any software, system or infrastructure owned by Morcan or its third party providers/licensors/contractors and used in the provision of a Service;

**Taxes** means all taxes, imposts, duties, levies, or fees of any kind payable to any governmental, fiscal or taxing authority in the United Kingdom or elsewhere and includes value added, sales and similar taxes. The definition of Taxes includes any penalties, additions, fines or associated interest. The words **Tax** and **Taxation** and similar expressions will be interpreted in accordance with this definition;

**Transfer Regulations** means the Acquired Rights Directive 2001/23/EC (as it may be further amended, re-enacted or extended or consolidated from time to time) including in any jurisdiction (whether in the European Union or not), TUPE or any other legislation which incorporates the Acquired Rights Directive 2001/23/EC (as amended from time to time) into local law or any other legislation dealing with the transfer by operation of law of the employment of employees from one employer to another;

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) and/or any other laws or regulations which replace or amend the same;

**Virus** means any virus, worm, trojan horse, or any other software program, code or device intended to destroy, interfere with, corrupt or have a disruptive effect on programs, data or equipment, , whether or not its operation is immediate or delayed, and whether introduced wilfully, negligently or without knowledge of its existence.

In the Agreement words denoting the singular include the plural and vice versa; words denoting any gender include all genders; references to a **month** means a calendar month, and **monthly** shall be interpreted accordingly; reference to a **person** includes a corporate or unincorporated body (whether or not having separate legal personality); any reference to a statute, statutory provision, subordinate legislation or code of practice is a reference to that statute, statutory provision, subordinate legislation or code of practice as amended, modified or re-enacted from time to time; any reference to a regulatory body includes a reference to any successor or replacement regulatory body; and any phrase or list introduced by the words **including, includes, in particular** or **for example** or similar shall be

construed as illustrative and shall not limit the generality of the related general words.

**Writing** or **written** includes email.

### 3. Services

- 3.1 Morcan will provide the Services in accordance with the Agreement. Where requested by Morcan, access to equipment and software installed at any Client Site may include remote access. Where Morcan agrees to provide Services in respect of Client Sites outside the United Kingdom such Services shall be provided remotely, unless otherwise specifically agreed in writing by Morcan, and shall be subject to additional Charges. For all Services provided on-site at any Client Sites outside central London underground zones 1 and 2, travelling time (at Morcan's then standard hourly rate) and travel and subsistence expenses shall be chargeable to the Client.
- 3.2 Morcan shall notify Client of the date (**Service Commencement Date**) that an ordered Service is available and ready for use pursuant to the Service Order. Morcan shall endeavour to provide the ordered Service ready for use on the Proposed Service Commencement Date but gives no guarantee or other assurance in respect of the same and time shall not be of the essence.
- 3.3
- a. If the Service does not meet in all material respects the Service Description (including technical specifications) for that Service contained in the Service Order then the Client shall notify Morcan of such non-compliance (together with the results evidencing such non-compliance) within 2 Business Days of the Service Commencement Date. If the Client fails to provide such notice, or makes any use of the Services other than for testing purposes then the Client shall be deemed to have accepted the Service with effect from the Service Commencement Date;
  - b. If the Client provides such notice, Morcan will test the Service for non-compliance. If Morcan (acting reasonably) verifies the non-compliance, then Morcan shall, as the Client's sole remedy, use reasonable efforts to correct the non-compliance and shall provide the Client with a new Service Commencement Date as soon as is reasonably practicable.
  - c. If non-compliance is attributable to Client Equipment, the Client's system or network or otherwise due to the act or omission of Client, Morcan shall be entitled to invoice the Client for any costs incurred in investigating or dealing with the matter.
- 3.4 The Client shall in each case at no cost to Morcan and in a timely manner:
- a. co-operate with Morcan in all matters relating to the Services;
  - b. complete any preparation activities set out in the Service Order or that Morcan may otherwise request to enable the Client to receive the Services, including obtaining all lines or circuits the Client requires from third party carriers to receive the Services;
  - c. provide such access to the Client's personnel, premises, systems and data, and such facilities as may reasonably be requested by Morcan, for the purposes of providing the Services, including access to enable Morcan to install, change,

maintain, repair, replace or upgrade equipment and software or, on termination or expiry of the Agreement or any applicable Service for any reason (or when no longer required), to remove Supplier Equipment from any Client Sites. The Client shall not deny Morcan or any third party access to any Client Sites in such circumstances (even where the parties are in dispute);

- d. without limiting any of (a) to (c) above provide and maintain, at its own expense, the level of power (including necessary fittings and installations), heating, air conditioning, communications and systems/facilities/utilities necessary to maintain the proper environment for any equipment, software or systems located at the Client Sites;
- e. provide such information as Morcan may reasonably request, in order to carry out the Services and shall keep Morcan informed of any special legal or other requirements applicable to the provision of the Services to the Client;
- f. act in accordance with all reasonable instructions issued by Morcan in relation to the Services. The Client shall consult with Morcan with respect to the procurement of any hardware, device or software that it would wish to include in the Client Equipment, or the removal of any hardware, device or software from Client Equipment and shall comply with any requirements notified by Morcan or Morcan's supplier in relation to the installation of Client Equipment at Supplier Premises;
- g. obtain and maintain all permissions, consents, approvals, certificates, licences and authorities (of whatever nature) necessary for the access to, receipt and use of the Services and the access to, use and provision of Services by Morcan and its contractors/suppliers in respect of the Client Equipment.

If the Service Commencement Date for any Service is delayed beyond the Proposed Service Commencement Date as a result of any act or omission by the Client or its officers, employees, other personnel, representatives or contractors, including any failure to comply with this clause 3.4 Morcan shall be entitled at its discretion (without prejudice to any other remedy) to charge Charges with effect from the Proposed Service Commencement Date in respect of the Services (whether or not the Client is able to use the same) and to treat the Proposed Service Commencement Date as the Service Commencement Date for the purposes of the Agreement (including calculation of the Service Term).

- 3.5 The Client may use Services for its own benefit or for the purposes of using the Services to provide its business services to third parties but may not resell, sublet or provide any bureau or similar service in respect of the Services to any third party.
- 3.6 The Client shall not insert or include, or permit the insertion or inclusion of any Virus into any Supplier Equipment or Supplier Systems and will use up-to-date, industry accepted anti-virus software to check for and prevent any Virus being introduced into any Client Equipment, Supplier Equipment or Supplier Systems.
- 3.7 The Client shall conduct its operations and shall use the Service in a manner that does not interrupt, impair or interfere with the operations of the Morcan network, infrastructure or systems (or that of any Morcan supplier), or the use thereof by Morcan



or any other Morcan customer. Without limiting its obligations under clause 3.9, the Client shall comply at all times with any acceptable use policy and other operating procedures and/or interconnection requirements of Morcan or its suppliers as may be notified to the Client from time to time.

- 3.8 The Client accepts full responsibility for all usernames and passwords provided to it or generated by it in connection with the Services. The Client must ensure that usernames and passwords are kept confidential and only accessed or used by persons authorised by the Client.
- 3.9 In relation to any parts of the Services provided by third party suppliers the Client shall comply with all applicable third party supplier terms in force from time to time. The Client shall be responsible for informing itself of any updates to such terms. The Client hereby agrees to indemnify Morcan and hold it harmless in respect of (and shall pay on demand) all losses, liabilities, awards, damages, claims, costs and expenses (including any fines, and legal and advisers' fees and expenses) that may be suffered or incurred by Morcan as a result of any breach by the Client of this clause 3.9.
- 3.10 Should any condition exist that may impair the integrity of Supplier Systems or Supplier Equipment or otherwise damage or disrupt the Services or the network, infrastructure, systems or services of Morcan's other customers, Morcan or its suppliers may initiate and co-ordinate emergency maintenance, which may include disconnection of all or any part of the Services. From time to time planned maintenance will be carried out which may affect the Services. To the extent reasonably practicable Morcan shall give the Client advance notice of maintenance works but shall have no liability in respect of the same.

#### **4. Term**

- 4.1 The term of the Agreement will commence on the Effective Date and continue until the expiration of the last Service Term, unless earlier terminated in accordance with the Agreement. Morcan shall provide each Service from the Service Commencement Date for the applicable Initial Service Term, unless earlier terminated in accordance with the Agreement. After the expiration of the Initial Service Term, unless otherwise stated in the Service Order or unless terminated by either party upon not less than sixty ( 60 ) days prior written notice to the other to expire at the end of the Initial Service Term the relevant Service shall, subject to earlier termination in accordance with the Agreement, automatically continue in effect for additional Renewal Periods. Either party may terminate the Agreement with effect from the end of a Renewal Period upon not less than sixty ( 60 ) days prior written notice to the other to expire at the end of that Renewal Period.

#### **5. Supplier Equipment, Client Equipment and Supplier Premises**

- 5.1 Supplier Equipment and Supplier Systems used to deliver Services shall remain the sole and exclusive property of Morcan or its supplier/contractor/licensor, and nothing contained in the Agreement shall give or transfer to Client any right, title or interest whatsoever in such Supplier Equipment or Supplier Systems. Client shall not modify, tamper with, remove or conceal any identifying plates, tags or labels affixed to the equipment showing Morcan's (or its applicable contractor's/supplier's/licensor's) ownership of it. The Client shall bear all risk of loss or damage to all Supplier Equipment



and Supplier Systems in its possession or control until returned to Morcan. Morcan may at any time at its discretion substitute, change or re-arrange equipment, systems or software used in providing Services as long as service quality is not materially impaired. Client shall promptly return all Supplier Equipment and Supplier Systems to Morcan at Morcan's request and in any event upon expiry or termination (however arising) of the Agreement, or where the same is being used for a particular Service promptly upon expiry or termination (however arising) of the Agreement in respect of that Service.

- 5.2 Without limiting the Client's obligations under clause 3.9 access by the Client and its representatives to any Supplier Premises shall be subject to Morcan's prior approval and any such access shall at all times be subject to compliance with Morcan's (and the relevant supplier's) health and safety, access and security policies for the time being in force. The Client shall be fully responsible for all acts or omissions of its officers, employees, or its other personnel, contractors or representatives as if they were its own acts or omissions.
- 5.3 Where as part of any Service Morcan permits installation of any Client Equipment at any Supplier Premises, such permission is a non-exclusive, non assignable licence limited to the Service Term of the Service in question (or such shorter period as such equipment is required to be so installed for the provision of the Services), for use only by the Client (and not any other person) and shall not create any relationship of landlord and tenant between Morcan (or its suppliers) and the Client or grant to the Client any ownership or other interest in the Supplier Premises. Any such installation is solely at the Client's risk.
- 5.4 Morcan and its suppliers shall be entitled to access any Client Equipment (including any held in locked racks/cabinets) located at Supplier Premises at any time for maintenance or other works to be provided as part of the Services, to monitor the Client's compliance with the Agreement, for health and safety reasons, or in emergency. The Client shall provide Morcan with all necessary security/access codes, passes or keys for that purpose.
- 5.5 Unless otherwise specifically provided in the Service Order the Client shall be solely responsible for the provision, installation, configuration and maintenance of all Client Equipment and shall ensure that such equipment is properly maintained. Risk of loss or damage to Client Equipment shall remain with the Client at all times. The Client will at all times, at its own cost and expense, obtain and maintain with reputable insurers "All Risk" insurance covering all Client Equipment located in Supplier Premises in an amount not less than its full replacement cost and public liability insurance sufficient to cover any liability of the Client under clause 5.1 and 7.3 (at a minimum of £1 million per claim unless otherwise specifically agreed by Morcan). The Client will provide to Morcan certificates of such insurances and evidence that all premiums have been paid, promptly following request by Morcan at any time.
- 5.6 The Client shall:
  - 5.6.1 not perform or permit any act, which causes or is likely to cause any interference, nuisance, annoyance, inconvenience, loss or damage to Morcan, its suppliers or its/their respective customers;
  - 5.6.2 not make any alterations to Supplier Equipment or Supplier Systems without Morcan's specific prior written consent;

- 5.7 Morcan shall have the right from time to time on not less than 14 days prior written notice to require the Client Equipment to be moved and to be installed in another suitable space at the Supplier Premises or at another suitable premises, including to meet the requirements of Morcan's suppliers/contractors. Morcan shall use commercially reasonable efforts to mitigate any disruption and/or interference to the Client in connection with such relocation. The Client shall cooperate in relation to any such relocation, including the provision of personnel, taking of back ups and compliance with Morcan's or its supplier's/contractor's instructions in relation to such re-location.
- 5.8 Morcan has a general and particular lien over any and all Client Equipment installed at the Supplier Premises for all money due and owing by the Client (**Unpaid Charges**). If any Unpaid Charges exist at any time, Morcan shall have the right to exercise its lien over Client Equipment by delivery of written notice thereof to Client. If the Client does not pay all Unpaid Charges within three (3) Business Days' after the date of such notice, then Morcan shall have the right to sell the Client Equipment and apply any proceeds of sale towards the satisfaction of the Unpaid Charges and any other costs and expenses incurred by Morcan.

## 6. Charges and Payment

- 6.1 The Client shall pay the Charges in accordance with the Agreement. Unless otherwise specified in the Service Order the payment currency is British Pounds (GBP).
- 6.2 Except as provided otherwise in the Service Order:
- a. initial set-up, installation or other non-recurring charges and charges for any equipment or software supplied, each as shown in the Service Order, will be invoiced in advance and shall be due and payable upon the date shown on the invoice. Charges for additional supplies of equipment or software shall be due and payable in advance of delivery;
  - b. weekly/monthly/quarterly/annual service charges will be billed in advance as provided in the Service Order and shall be due and payable in full on the due date for payment as shown on the invoice for the same (or if no due date is shown on the invoice within 14 days of the date of the invoice). No credit or refunds shall be given in respect of any unused allocation of time/Services included in such service charges as at termination or expiry of the Agreement and unused allocations of time/Services may not be rolled over from the Initial Service Term to any Renewal Period or from any Renewal Period to another Renewal Period. Charges for additional hours/services/travel and expenses over those covered in the charges described in (b) (including chargeable items described in 3.1) and ad hoc charges shall be payable monthly in arrears and shall be due and payable within 14 days of the date of the invoice.
- 6.3 All Charges are quoted exclusive of Taxes, which shall be payable in addition by the Client at the same time as the charges to which they relate. the Client shall pay each invoice in full and in cleared funds without any deduction, set off or withholding and free of currency exchange costs, or bank charges. To the extent that any deduction or withholding is required by applicable Law, the Client shall increase the amount of such payment to ensure that Morcan receives the amount it would have received had no deduction or withholding been required. The Client will be responsible for all Charges

incurred in respect of the Services even if such Charges were incurred through, or as a result of, fraudulent or unauthorised use of the Services. Morcan may, but is not obliged to, detect unauthorised or fraudulent use of the Services.

- 6.4 If the Client fails to make any payment due to Morcan under the Agreement by the due date for payment, then, without limiting Morcan's other remedies Morcan may charge (and the Client shall pay) daily interest on late payments in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 for the period beginning on the date on which payment is due and ending on the date payment is actually made (unless and then only to the extent otherwise prohibited by Law). Additionally, the Client agrees to reimburse Morcan on demand for reasonable costs incurred in connection with the recovery and collection of any unpaid amounts under the Agreement, including legal and other advisers' fees and court costs and any interest or other sums payable to its suppliers in respect of amounts paid late by the Client .
- 6.5 Notwithstanding any other provision to the contrary Morcan may increase all or any of the Charges applicable to any Service provided under the Agreement at any time in the following events/circumstances:
- a. Where provided in the Service Order; or
  - b. Where any third party supplier or service provider increases its charges to Morcan, Morcan shall be entitled to increase the relevant Charges by an amount equal to the increase in charges payable by Morcan to the relevant third party supplier/service provider by giving not less than fourteen days' written notice to the Client; or
  - c. In the event of any Change in Law occurring that results in an increase in the cost to Morcan of providing all or any of the Services Morcan shall be entitled to increase the Charges by a reasonable amount to reflect the increased cost to Morcan of providing the Services as a result of that Change in Law by giving not less than twenty-eight days' written notice to the Client; or
  - d. Without limiting its rights under clauses 6.5 (a) to (c) and (e) Morcan may increase the Charges in relation to any Renewal Period by not less than 60 days notice to the Client; or
  - e. As a result of a Relief Event (see clause 13.2). Morcan shall be entitled to bill for the Service from the originally anticipated delivery date for that Service (irrespective of actual delivery) if the reason that Morcan is unable to deliver is due to a Relief Event and shall be entitled to increase the Charges on not less than 7 days notice to the Client to reflect any additional costs, expenses or charges incurred by Morcan arising in connection with, or as a result of the Relief Event.

## **7. Compliance with laws and Data Protection**

- 7.1 Each party shall comply with all Laws applicable to the provision (in the case of Morcan) and access, receipt and use (in the case of Client) of the Services provided under the Agreement.

- 7.2 Without limiting its obligations under clause 7.1 the Client will not use or access (or permit the use or access of) the Services or any Supplier Equipment, Supplier Systems or Supplier Premises:
- a. for any Malicious Activity or in a manner or for a purpose that is discriminatory, offensive, abusive, obscene, pornographic, indecent, menacing, malicious, a nuisance or defamatory; or
  - b. to send, receive, upload, download, store, display or use any material which is discriminatory, offensive, abusive, obscene, pornographic, indecent, menacing, malicious, a nuisance or defamatory, or which is in breach of confidence or privacy, or an infringement of any other third party right, including the Intellectual Property Rights of any person; or
  - c. to send or provide unsolicited advertising or promotional material or “spam” or to knowingly receive responses from such material or “spam” sent by the Client or any third party acting on its behalf, or to solicit, collect or harvest in a surreptitious manner any personal data of any other person; or
  - d. in an unlawful manner (including for any fraudulent or other criminal purpose or for any terrorist activity) or in contravention of any Laws or licence conditions, third party rights or any reasonable instructions of Morcan from time to time regarding the use of any Service;
  - e. in a manner or for a purpose that interferes with or harms the Supplier Premises, Supplier Equipment, Supplier Systems or Morcan’s infrastructure, or that of any third parties;
- 7.3 The Client shall indemnify and hold Morcan harmless in respect of (and shall pay on demand) all losses, costs, claims, actions, liabilities and expenses (including legal and other advisers’ fees) of any nature that may be suffered or incurred by Morcan or any of its other customers, contractors or suppliers or their respective personnel as a result of:
- a. breach by the Client of any of its obligations under clause 7.1 or 7.2. or
  - b. i. any death or personal injury; or ii. any loss, damage or destruction to Supplier Premises, equipment (including Supplier Equipment or Supplier Systems), data, or other property caused by the Client or its employees, or its other personnel, contractors or representatives or by Client Equipment; or
  - c. the use of the Services by the Client or its End-Users; or
  - d. claims of third parties for any loss or misuse of data by the Client or its end-users (save to the extent that such claims have arisen as a result of breach by Morcan of its obligations under this clause 7);
- 7.4 For the avoidance of doubt, Morcan does not monitor, and will have no liability for the contents of, any Client Data, materials or communications transmitted by virtue of the Services. Morcan shall be entitled to report the Client and provide information relating to the Client (including Client Data), and information relating to the Client’s use of the Services to the relevant authorities, regulators and law enforcement agencies in the event of any breach by the Client of clause 7.1 or 7.2, or at any other time if legally required to do so.

The provisions of Schedule 2 (Data Protection) shall apply.

## 8. Suspension and Termination

- 8.1 Without prejudice to any of its other rights or remedies Morcan may immediately by notice to the Client restrict or suspend all or any of the Services, without any liability to the Client (including to pay service credits):
- a. to carry out maintenance. Morcan shall give such advance notice of suspension for this purpose as is reasonably practicable in the circumstances; or
  - b. during any period during which any overdue sums are due to it from the Client.
  - c. if there is, or Morcan reasonably believes there is the likelihood of:
    - i. a breach of any of the Client's obligations under clauses 3.4(g), 3.5 to 3.7 (inclusive), clause 7 or Schedule 2;
    - ii. a threat to the security or integrity of, or risk of damage to the Services or Morcan's, its customers', suppliers' or any other person's equipment, infrastructure, systems, premises or services; or
  - d. where Morcan is obliged to comply with any Law or an order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority.
- 8.2 Morcan shall have no liability or responsibility to the Client or otherwise whatsoever for, or for any consequences of, such suspension. The Client hereby agrees to indemnify and hold Morcan harmless in respect of (and shall pay on demand) all claims, losses, liabilities (including fines and penalties), damages, and expenses that may be suffered or incurred by Morcan as a result of or in connection with any such suspension. Following suspension of Services for non-payment, Morcan is not required to reinstate Services to the Client until the Client has paid in full all Charges then due, including any late fees, interest charges, and any cost of reinstating the Services. Morcan shall have the right to charge for any extra expenses or additional work resulting from such suspension, which shall be for the Client's account. The Client shall remain liable to pay the Charges during any period of suspension pursuant to clause 8.1.
- 8.3 Either party may terminate the Agreement with immediate effect by written notice to the other:
- a. if the other materially breaches its obligations under the Agreement and (if such breach is capable of remedy) does not remedy that breach within 30 days after receipt of written notice from the other party to remedy such breach; or
  - b. an Insolvency Event affecting the other party occurs.
- 8.4 Morcan may terminate the Agreement with immediate effect by written notice to the Client:
- a. if the Client breaches any of its obligations under clause 3.4(g), clauses 3.5 to 3.7 (inclusive) clause 7 or Schedule 2; or

- b. if any Charges or other sums payable by the Client are not paid on the due date and the Client does not remedy that breach in full within 7 days after receipt of written notice from Morcan to remedy the same; or
  - c. if required to do so by Law or by order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority; or
  - d. if Morcan has restricted or suspended the Services under clause 8.1 (c)ii.; or
  - e. in the circumstances described in clause 1.3.
- 8.5 Expiry or termination of this Agreement in whole or part shall be without prejudice to the accrued claims or rights of either party as at expiry/termination. When the Agreement expires or terminates as a whole or in respect of any Service:
- 8.5.1 Morcan will immediately stop providing the Service(s). Following the date on which the provision of a Data Service expires or terminates the Service will be completely decommissioned by Morcan in accordance with the timescales set out in the Service Order or, if not so stated, within 7 days of expiry/termination, and all data stored by Morcan in connection with the use of the Data Service will be deleted. In the event that the provision of any Data Service expires or is terminated for any reason the Customer will remove its data by use of the Data Service during the relevant notice period. The Client may by written notice to Morcan before the date of termination request retrieval of the Client Data carried out by Morcan using a portable disk (or such other means as may be agreed by Morcan in writing). If at its discretion Morcan agrees to such request the Client must pay immediately all Charges which may be outstanding at the date of expiry/termination and the then current Charge for the provision of such retrieval. Morcan shall have no obligation to permit the use of the Data Service beyond the expiry/termination date so that the Customer may retrieve its data;
- 8.5.2 the Client must immediately return to Morcan in good condition all Supplier Equipment and Supplier Systems. In the event that the Client fails to return all Supplier Equipment and Supplier Systems, then the Client shall allow Morcan or its supplier(s) reasonable access, without charge, to its premises to recover the Supplier Equipment and Supplier Systems. Morcan may charge the Client for all costs incurred in repossessing or acquiring replacement Supplier Equipment or Supplier Systems which the Client has failed to return to Morcan or which are returned to Morcan in a damaged or defective condition;
- 8.5.3 the Client shall pay Morcan on demand:
- a. charges for all Services rendered through or relating to the period up to and including the date of expiry or termination (including for work in progress);
  - b. any termination fees and termination costs as provided in the Service Order, and shall further reimburse Morcan on demand for any third party cancellation/termination charges associated with the Services terminated.
- 8.6 Following expiry or termination of this Agreement (or the relevant Service) and subject to clause 5.8 Morcan shall be entitled, without prejudice to any other remedies it may

have under the Agreement or at law or equity, at the sole risk of the Client, to remove the Client Equipment from the Supplier Premises, deliver the same to the Client at the Client's address given in the Service Order and restore the Supplier Premises and any associated Supplier Equipment to the same condition in which it existed at the Service Commencement Date, fair wear and tear excepted, and the Client shall reimburse Morcan on demand for all costs and expenses incurred in doing so. Morcan will have the right to retain any Client Equipment in its possession or control until receipt of all sums due or payable to Morcan. If Morcan has not received such sums due or payable within a reasonable time frame to be determined by Morcan, Morcan reserves the right to sell any Client Equipment necessary, at such price as it is able to obtain in the open market, to recoup all sums due or payable to it.

- 8.7 Subject to clause 8.5.1 upon expiry or termination of the Agreement each party shall immediately cease to use either directly or indirectly, any Confidential Information of the other, and shall forthwith return to the other party any documents or materials in its possession or control which contain or record any Confidential Information of the other party.
- 8.8 Termination or expiry of this Agreement or any Service shall not affect any provision of this Agreement which is expressly or by implication intended to come into or remain in effect on or after such termination or expiry including the provisions of clauses 1, 3.3(a), 3.3(c), 3.4(c), 3.6 to 3.10 (inclusive), 5,6,7.3,8.2, 8.5 to 8.8 (inclusive), 10 to 18 (inclusive) and Schedule 2 shall survive the expiry or termination of the Agreement however arising.

## **9. Service Levels**

- 9.1 Subject to clause 10.4 the Services shall be provided in accordance with any applicable Service Levels as set out in the SLA Schedule, subject to the exclusions, limitations and other provisions in the SLA Schedule.

## **10. Limitation on Liability**

10.1 The limitations and exclusions in this clause 10 apply in respect of all claims, causes of action and liabilities (including any liability of Morcan for the acts and omissions of its employees, agents, subcontractors and Affiliates) arising under or in connection with the Agreement or the Services, whether arising in contract (including under indemnity), tort (including negligence), breach of statutory duty, restitution, misrepresentation, or otherwise.

10.2 Morcan does not exclude or limit its liability to the Client:

- a. for death or personal injury caused by its negligence; or
- b. for its fraud or fraudulent misrepresentation; or
- c. for any other liability to the extent that it cannot be limited or excluded by law.

10.3 Subject to clause 10.2 Morcan shall not in any circumstances be liable to the Client for any of the following losses or damages howsoever caused and even if such losses and/or damages were foreseen, foreseeable or known, or that party was advised of the possibility of them in advance:



- a. any indirect, special or consequential loss or damage; or
- b. any loss of business or business opportunity, loss of revenue, loss of actual or anticipated profits, loss of contracts, loss of anticipated savings, loss of, damage to, or corruption of data, loss of or damage to goodwill, in each case whether such losses are direct, indirect or consequential.

10.4 Except for any express right to terminate the Agreement that the Client may have as set out in the SLA Schedule, the service credit regime set out in the SLA Schedule will be the sole and exclusive remedy by which the Client will be compensated for any failure (howsoever arising) by Morcan to meet the Service Levels set out in the SLA Schedule.

10.5 Subject to Clauses 10.2, 10.3 and 10.4, in no event shall Morcan's aggregate liability under or in connection with the Agreement or the Services in respect of all claims and liabilities arising in each Year, exceed the total amount paid or payable by the Client to Morcan under the Agreement for the Services in respect of that Year. For the purposes of this clause 10.5:

- a. **Year** shall mean a period of 12 months commencing on the Effective Date of the Agreement or any anniversary thereof; and
- b. the date on which a claim or liability arises will be the date on which the breach or event giving rise to the claim or liability occurred.

The Client acknowledges that the pricing of the Services reflects the intention of the parties to limit Morcan's liability as provided in this clause 10.

10.6 Subject to clause 10.2 Morcan shall have no liability to any of the Client's End-Users in relation to the Service and the Client hereby agrees to indemnify Morcan and hold it harmless in respect of (and shall pay on demand) any and all costs, damages, liabilities and expenses arising out of, or relating to, any claim by any such End-User. Morcan will not under any circumstances be liable to the Client under this Agreement for any claim by any of the Client's customers/clients arising out of the Client's failure to provide any services which the Client has agreed to provide to such customer/client.

10.7 The Client will take all reasonable measures to prevent and mitigate its losses and damages under the Agreement (including those that may be recoverable under an indemnity).

10.8 Morcan shall have no obligation to rectify faults or errors in the Services within a specific time period. Time shall not be of the essence in relation to any times or dates specified or referred to in the Agreement for performance of the Services.

## 11. Intellectual Property Rights

11.1 All Intellectual Property Rights in the Services or in any documents, software or other materials provided by Morcan to the Client shall vest and remain vested in Morcan (or its suppliers/licensors). Subject to payment of the Charges and compliance by the Client with the Agreement the Client will have a non-exclusive, non-transferable, non-sublicensable, revocable licence to use such materials solely for its own internal use to the extent necessary to use the Services (**Permitted Purpose**) but for no other purpose. Such licence shall not entitle the Client to claim title to, or any ownership interest in, the documents, software or materials (or any derivations or improvements thereto) and

the Client will execute any documentation reasonably required by Morcan to document Morcan's (or its supplier's or licensor's) existing and continued ownership of, or right to, the documents/software/materials. If Morcan or its suppliers provide the Client with any software in connection with the Service, the Client agrees that it will not and will not permit others to: (a) copy the software except as permitted by Morcan, except as reasonably required for backup purposes; (b) reverse engineer, decompile or disassemble the software save to the extent that it cannot be prohibited from so doing under applicable law; (c) sell, lease, license or sublicense the software; (d) create, write or develop any derivative software or any other software program based on the licensed software or any Confidential Information of Morcan or its suppliers or licensors; or (e) take any action prohibited by the owner of the software. Without limiting its obligations under clause 3.9 the Client will comply with any third party terms in force from time to time made known to the Client that apply to the use of the software or Services and hereby agrees to indemnify Morcan and hold it harmless in respect of (and shall pay on demand) all losses, liabilities, awards, damages, claims, costs and expenses (including any fines, and legal and advisers' fees and expenses) that may be suffered or incurred by Morcan as a result of any breach by the Client of this clause 11.1.

11.2 All Intellectual Property Rights and other proprietary rights in any Morcan Know How are owned by and will remain owned by Morcan (or its suppliers/licensors) and the Client shall have no rights or entitlement of any nature in respect of the same.

## **12. Confidentiality**

12.1 The Receiving Party shall:

- a. keep Confidential Information of the Disclosing Party confidential and not disclose the Disclosing Party's Confidential Information to any third party except with the prior written consent of the Disclosing Party or in accordance with this clause 12; and
- b. only use the Disclosing Party's Confidential Information to exercise its rights or perform its obligations under the Agreement and not for any other purpose.

12.2. The Receiving Party may disclose the Disclosing Party's Confidential Information to its directors, officers, employees and professional advisers (and Morcan may disclose it to its Affiliates, suppliers, licensors, sub-contractors or other third parties in order to enable Morcan to provide the Services), who have a need to know such Confidential Information in connection with this Agreement. The Receiving Party shall be responsible for ensuring that any such persons to whom it makes disclosure comply with this clause 12.

12.3 The obligations set out in clause 12.1 and 12.2 shall not apply in respect of information that:

- a. can be evidenced to have been in the Receiving Party's possession at the time of disclosure to it and without restriction as to confidentiality; or
- b. is or becomes generally available to the public through no breach of the Agreement or other wrongful act by the Receiving Party; or

- c. can be evidenced to have been received from a third party without restrictions;  
or
- d. is independently developed by the Receiving Party without regard to the Confidential Information of the Disclosing Party.

12.4 The Receiving Party may disclose Confidential Information of the Disclosing Party as required to comply with Laws, the requirements of a government or regulatory authority, or orders of a court of competent jurisdiction, provided that (insofar as legally permissible) the Receiving Party: (a) gives the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy; and (b) discloses only such Confidential Information as is required to comply.

12.5 The obligations of the parties under clauses 12.1 to 12.4 shall survive the expiry or termination of the Agreement (however arising) for 3 years, save that the Client's obligations in respect of Morcan Know How shall continue without limit in time and the Client's obligations in relation to the Confidential Information of any Morcan supplier, contractor or licensor shall continue beyond such 3 year period for as long as Morcan remains under obligations of confidentiality in respect of such information.

12.6 Nothing in this clause 12 shall prevent Morcan or its suppliers from using any skills, techniques, processes, ideas or know-how gained during the performance of the Agreement for such business purposes as it sees fit, to the extent that this use does not result in a disclosure of the Client's Confidential Information or an infringement of the Client's Intellectual Property Rights.

### **13. Governing Law**

The Agreement shall be governed by and interpreted in accordance with English law. The parties hereby submit to the exclusive jurisdiction of the courts of England and Wales, but any order or judgement may be enforced by either party through the competent courts or authorities in any jurisdiction.

### **14. Force Majeure and Relief Events**

14.1 Morcan shall not be liable for any delay or failure to perform its obligations under the Agreement due to any Force Majeure Event. If a Force Majeure Event prevents the provision of Services for a consecutive period of thirty (30) days, either party may terminate the Agreement by providing not less than fourteen (14) days written notice to the other party.

14.2 If Morcan's performance of any of its obligations under the Agreement is prevented, hindered or delayed by any act or omission of the Client, its Affiliates, agents, contractors, consultants or employees, or if any assumption contained in the Service Order is untrue or incorrect, or in respect of any consequences arising as a result of Morcan, or its personnel, agents, representatives, consultants or sub-contractors following the instructions of any the Client's personnel (each a **Relief Event**), Morcan shall not be liable for any costs, charges, liabilities or losses sustained or incurred by the Client that arise directly or indirectly from such Relief Event and Morcan shall be relieved of its obligations to provide the Services (including any obligation to meet Service Levels or to pay service credits) to the extent performance of such obligations is

impeded by such events. The Client acknowledges that such prevention or delay may result in additional Charges for the Services.

**15. Notices**

15.1 A notice given to a party under or in connection with the Agreement shall be in writing and sent to the party at the address set out in the Service Order or as otherwise notified in writing to the other party.

15.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand or courier.	at the time the notice is left at the address, save that if not delivered on a Business Day receipt is deemed to take place at 9.00 am on the next Business Day
Pre-paid first class post	9.00 am on the second Business Day after posting
Email	9:00am on the first Business Day after sending subject to receipt by the sender of confirmation of successful transmission
all references to time are to local time in the place of receipt	

**16. Assignment and Subcontracting**

16.1 Neither party shall be entitled to assign or novate any of its rights or obligations under the Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed save that Morcan may by notice to the Client: (a) assign or novate all or any of its obligations under the Agreement to any Affiliate or to any person which acquires the whole or a substantial part of Morcan’s business; or (b) assign or transfer its right to collect payments, receivables or other assets arising as a result of the Agreement.

16.2 Morcan shall be entitled at any time to sub-contract the performance of any of its obligations under the Agreement. The subcontracting of any obligation under the Agreement will not relieve Morcan of its obligations to the Client in respect of the performance of such obligations.

**17. No Transfer of Employees and Non-Solicitation**

17.1 Morcan and the Client agree that it is not intended that there should be any transfer of employees between the Client and Morcan as a result of the entry into or operation of the Agreement or provision of Services. If, at any time, including on the execution or completion of the Agreement or commencement of any part of the Services, any claims, liabilities or obligations arising from or related to the employment of any individual by the Client or its Affiliates or their contractors (a **Client Employee**) or any contract of employment or engagement relating to a Client Employee or any collective agreement have or are alleged to have effect as if transferred to, originally made against or

concluded with Morcan or any of its Affiliates or its or their subcontractors (a **Morcan Entity**) as a result of the provisions of the Transfer Regulations, then the Client hereby agrees to indemnify each Morcan Entity and keep each Morcan Entity indemnified against (and shall pay on demand) all losses, liabilities, awards, damages, claims, costs and expenses (including any fines, and legal and advisers' fees and expenses) (together **Employment Losses**) which any Morcan Entity may suffer or incur in connection with or related to such event or allegations, including Employment Losses incurred in connection with the employment or termination by a Morcan Entity of the employment of any Client Employee.

17.2 During the term of the Agreement and for a period of twelve (12) months thereafter, the Client shall not, directly or indirectly for themselves or on behalf of anybody else, solicit for employment or engagement or employ, or accept services provided by, any current or former employee or independent contractor of Morcan or any of its Affiliates, who performed any work in connection with or related to the Services. This restriction does not apply to employment or engagement of an individual who responds voluntarily to general recruitment advertisements not specifically targeted towards that individual.

## 18. Miscellaneous

18.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

18.2 The Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.

18.3 No person other than a party to the Agreement shall have any rights, under the Contracts (Rights of Third Parties) Act 1999 or otherwise, to enforce it save that any Morcan Affiliate may enforce any of the provisions of this Agreement directly on its own account and suppliers/licensors shall be entitled to enforce their respective terms as referred to in clauses 3.9 and 11.1 directly against the Client. The parties may amend or terminate the Agreement without the consent of any person who is not a party to it.

18.4 Save for any amendments made as permitted in accordance with any other provision of the Agreement no variation of the Agreement shall be effective unless agreed in writing by both parties.

18.5 The parties are independent contractors. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, or constitute any party the agent of another party.

18.6 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.7 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees to the fullest extent permitted by law that it shall have no claim or remedies in respect of any statement, representation, warranty, or assurance of any kind, whether statutory, express, implied or otherwise (including any implied warranty of merchantability, satisfactory quality, fitness for a particular purpose or any representation, warranty or condition from course of dealing or usage of trade) that is not expressly set out in the Agreement. Save that this clause shall not apply to exclude or limit any liability for fraud or fraudulent misrepresentation. Morcan gives no warranty or other assurance that the Services will operate uninterrupted or error free.