

# General Terms and Conditions - IT Support/Consultancy Services

## 1. Agreement

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 exclude 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. Client is responsible for the accuracy of information provided by it and contained in Service Orders.

## 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 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, enactment, order, regulation, directive, code of practice or other similar instrument occurring after the Effective Date and which results in an increase in the cost to Morcan of providing the Services;

**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;

**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 that is or has been (before, on, or after the Effective Date) and including (where Morcan is the Disclosing Party) Morcan Know How: (i) 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;

**Client Equipment** means the hardware (including cabinets and racks) or other equipment/devices and software/systems of the Client, in respect of which the Services are to be provided as agreed by Morcan;

**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;

**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 utilize or access the Services or Client Equipment;

**Force Majeure Event** means any cause, event or circumstance affecting the performance by a party of its obligations under the Agreement which is beyond its reasonable control including: (a) 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, cyber crime, cyber attacks or accident, failure or non-availability of internet, telecommunications, networks, electricity or other utilities, accident or breakdown of machinery, unavailability of supplies; or (f) any labour dispute, strike, industrial action or lockout;

**Initial Service Term** means in respect of each Service the 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, 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.

**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 licensors before, on or after the Effective Date and any modifications, enhancements or derivatives of any of the same;

**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 the date specified as such in the Service Order;

**Service Hours** means the hours specified as such in the Service Order;

**Services** means the services provided by Morcan and/or its licensors and contractors as set out in the Service Order;

**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 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 and owned by Morcan or Morcan's suppliers/contractors;

**Supplier Systems** means any software or system 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, using reasonable skill and care. Unless otherwise specifically stated in the Service Order Form (or otherwise specifically agreed by Morcan in writing), the Services shall only be provided during Service Hours and only in respect of the Client Equipment at the Client Sites. 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 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;
  - c) provide and maintain such access(including remote 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, network, internet, communications and systems/facilities/utilities(including the remote access link) necessary to maintain the proper environment for any equipment, software or systems located at the Client Sites and which are required for Morcan to fulfil its obligations to provide the Services. The Client shall be solely responsible for supervising and controlling the use of Client Equipment and, maintaining all necessary physical and network security measures which comply with good industry standards;
  - 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. Client shall ensure that any information that it supplies to Morcan which is required for Morcan to provide the Services is complete, accurate and in the format agreed by the parties. If the Client discovers that such information is incorrect or inaccurate it will promptly notify Morcan of such errors and provide a correction as soon as reasonably practicable;
  - f) only use within and connect equipment and/or networks to the Client Equipment that comply with all relevant Laws, standards and licence requirements;
  - g) 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;
  - h) inform Morcan in writing of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's locations that Morcan may visit as part of the Services and take all reasonable precautions to protect the health and safety of Morcan's officers, employees, agents, subcontractors, consultants and engineers whilst at such locations;
  - i) obtain and maintain all permissions, consents, approvals, certificates, licences and authorities (of whatever nature) necessary for the receipt of the Services and the access to, use and provision of Services by Morcan and its contractors/suppliers in respect of the Client Equipment. The Client shall enter into all applicable licence agreements directly with the relevant licensor and shall comply with any and all terms of such licence agreements;
- 3.3 The Client shall not insert or include, or permit the insertion or inclusion of any Virus into any 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 or Supplier Systems.
- 3.4 The Client shall not store, distribute or transmit any material through the Client Equipment that: is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities; or causes or is likely to cause harm to either or both parties or any third party.

#### **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 ("Term"). 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 thirty ( 30 ) 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 one year renewal periods (each a **Renewal Period**). Either party may terminate the Agreement with effect from the end of a Renewal Period upon not less than thirty ( 30 ) days prior written notice to the other in each case to expire at the end of that Renewal Period.

## **5. Supplier 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 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. 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 rearrange 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 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 Access by the Client and its representatives to any premises of Morcan (or its suppliers) 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 as notified to the Client.
- 5.3 Where as part of any Service Morcan permits installation of any Client Equipment at any premises of Morcan or its suppliers, such permission is 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) and shall not create any relationship of landlord and tenant between Morcan (or its suppliers) and the Client and any such installation is solely at the Client's risk. The Client shall insure accordingly.

## **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) 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. 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.

- 6.3 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.
- 6.4 Notwithstanding any other provision to the contrary Morcan may increase all or any of the Charges applicable to any Service provided under the Agreement 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 twenty-eight days' written notice to the Client; or
  - c) In the event of any Change in Law occurring 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) Morcan may increase the Charges in relation to any Renewal Period by not less than 45 days notice to the Client; or
  - e) as a result of a Relief Event (see clause 14.2) on not less than 7 days notice to the Client to reflect any additional costs 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 and regulations applicable to the provision (in the case of Morcan) and receipt and use (in the case of Client) of the Services provided under the Agreement.
- 7.2 The Client shall ensure that a safe working environment is provided for all Morcan personnel and those of its contractors and suppliers while on site at any Client premises. The Client shall notify all such personnel in advance of applicable health and safety and security policies and procedures. 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 contractors or suppliers or their respective personnel as a result of (i) any death or personal injury; or (ii) any loss, damage or destruction to Morcan's (or any of its suppliers/licensors/contractors') 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 Client Sites.
- 7.3 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, during any period during which any overdue sums are due to it from the Client. Morcan shall have no liability or responsibility to the Client or otherwise whatsoever for, or for any consequences of, such suspension, in respect of which the Client hereby indemnifies Morcan. 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, collection costs 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.
- 8.2 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 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 if:
- a) the Client breaches clause 3.2(i), clause 7 or schedule 2;
  - b) 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) required to do so by a regulator or court order.
- 8.5 Expiry or termination of this Agreement shall be without prejudice to the accrued claims or rights of either party. Upon expiry or termination of this Agreement or any Service, Morcan shall be entitled to recover payment for all Services rendered through the date of expiry or termination (including for work in progress).
- 8.6 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. The Client shall comply with its obligations under clause 5.1.
- 8.7 The provisions of clauses 1, 3.2c), 5, 6, 7.3, 8 to 18 (inclusive) and schedule 2 shall survive the expiry or termination of the Agreement however arising.

## **9. Entire Agreement and Disclaimer of Warranties**

- 9.1 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.

## 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 a party 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 Neither party excludes or limits its liability to the other:
- 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 Subject to Clauses 10.2 and 10.3, 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 whichever is the greater of the total amount paid by the Client to Morcan under the Agreement for the Services in respect of that Year and £10,000 (ten thousand pounds). For the purposes of this clause 10.4 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.
- 10.5 Morcan shall have no obligation to rectify faults or errors in the Client Equipment 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.
- 10.6 The Client acknowledges and agrees that where the Services include cyber security services of any kind such Services are designed to mitigate the risk of a cyber security incident occurring in respect of the Client's business and systems, but Morcan gives no guarantee or assurance that the Client will not suffer a successful cyber security incident or attack during the Term of this Agreement. Without limiting the above Morcan shall have no liability to the Client for any costs, liabilities, losses or damages incurred by the Client as a result of zero day exploits, vulnerability or attacks and the Client shall make its own arrangements to prevent any permanent loss or corruption of the Client's data.

## 11. Intellectual Property Rights

11.1 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 Confidential 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;
- b) is or becomes generally available to the public through no breach of the Agreement or other wrongful act by the Receiving Party;
- c) can be evidenced to have been received from a third party without confidentiality 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; (b) discloses only such Confidential Information as is required to comply; and (c) uses commercially reasonable endeavours to obtain confidential treatment for any Confidential Information so disclosed.

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.

12.6 Nothing in this clause 12 shall prevent Morcan 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**

13.1 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 Except with respect to Client’s payment obligations, neither party shall 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) 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:

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
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	

**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.

#### **16. 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 shall indemnify each Morcan Entity and keep each Morcan Entity indemnified against 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 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.

#### **17. 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. The parties may amend or terminate the Agreement without the consent of any person who is not a party to it.

18.4 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.