

Agreed terms

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this contract.

Acceptable Use Policy: means the acceptable use policy on the Website.

Account Creation and Implementation Services: the services relating to the creation and implementation of the Texas Account.

Account Creation and Implementation Fees: the fees payable in relation to the Account Creation and Implementation Services as set out in the Order Form.

Active Contractor: a Contractor User who has submitted at least one timesheet using the Subscription Services during a Billing Period.

Additional Services: means any additional business analyst days required in order to complete the Account Creation and Implementation Services in excess of the business analyst days costed for in relation to the Account Creation and Implementation Fees.

Additional Services Fees: means the fees agreed in relation to any Additional Services as set out in the Supplemental Order Form.

Authorised Users: End Client Users, Contractor Users and those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Subscription Services.

Back Up Policy: MDA's back-up policy as notified to the Customer from time to time.

Billing Period: a period running from the day after the first Friday of a calendar month to the first Friday of the next calendar month.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for normal banking business.

Change of Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.6 or clause 10.7.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Contractor User: a person who is providing services to the Customer and in relation to which services that person will submit timesheets to the Customer using the Subscription Services.

Contract Year: each 12 month period commencing on: (i) the Effective Date; and, (ii) each anniversary of the Effective Date during the Subscription Term.

Customer: as detailed in the Order Form.

Customer Data: the data inputted by the Customer, Authorised Users, or MDA on the Customer's behalf for the purpose of using the Subscription Services or facilitating the Customer's use of the Subscription Services.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Development Services: other than the Account Creation and Implementation Services, any development services which MDA has agreed to supply to the Customer pursuant to this contract in relation to the development of the Texas Account as set out in the applicable Schedule of Works.

Development Services Fees: the fees payable in relation to the Development Services as set out in the applicable Statement of Works.

Documentation: the document made available to the Customer by MDA online via the Website which sets out a description of the Services.

Due Date: the date on which payment of any charges which are to be paid by the Customer under this contract must be paid to MDA.

End Client Users: those clients of the Customer to which the Customer provides services and who are authorised by the Customer to use the Subscription Services via the Texas Account in order to authorise relevant timesheets and payment in respect of those services.

Effective Date: the date of the Order Form.

Excess Usage Fee: has the meaning given to it at clause 8.2 (b)(iii).

Fees: means:

- (a) the Account Creation and Implementation Fees;
- (b) the Subscription Fees;
- (c) the Additional Fees (if applicable); and
- (d) the Development Fees (if applicable).

Go Live Date: means the date on which the Customer Northgate first uses the Subscription Services other than for testing and training purposes.

Initial Term: the initial term of this contract as set out in the Order Form.

MDA: My Digital Accounts Limited (company number: 9514488) trading as Texas.

Normal Business Hours: 9.00 am to 5.30 pm local UK time, each Business Day.

Order Form: the order form setting out the Services to be supplied by MDA to the Customer pursuant to this contract as at the Effective Date together with any Supplemental Order Form.

parties: the Customer and MDA.

Privacy Policy: MDA's privacy policy which is displayed on the Website from time to time and which confirms the categories of personal data which MDA collects from the Customer and Authorised Users in connection with their use of the Subscription Services, the purposes for which such personal data is used by MDA, the parties with whom MDA shares such personal data, any transfers of such personal data outside the EEA and the security measures which MDA has implemented and maintains in order to safeguard such personal data against unauthorised access and use.

Renewal Period: the period described in clause 14.1.

Statement of Works: the statement of works setting out the details of the Development Services agreed to be supplied by MDA to the Customer pursuant to this contract and the Development Services Fees.

Services: the services which MDA shall perform pursuant to this contract including, but not limited to:-

- (a) the Account Creation and Implementation Services;
- (b) the Subscription Services;
- (c) the Additional Services (if applicable); and
- (d) the Development Services (if applicable).

Software: the online software applications provided by MDA as part of the Services.

Subscription Fees: the Texas Account Fee and the Usage Fees.

Subscription Services: the subscription services provided by MDA to the Customer via the Texas Account to enable the processing of timesheets and expenses as more particularly described in the Documentation and on the Website.

Subscription Term: has the meaning given in clause 14.1 (being the Initial Term together with any subsequent Renewal Periods).

Supplemental Order Form: means the supplemental order form entered into by the parties after the Effective Date and which sets out the details of any Additional Services and Additional Services Fees.

Termination Sum: the amount to be paid by the Customer in the event of early termination as calculated in clause 14.4(e).

Texas Account: an account with a unique username and password which is dedicated to the Customer and which enables the Customer and its Authorised Users to use the Services for the Purpose.

Texas Account Fee: the fee payable in relation to the Texas Account during each Billing Period as set out in the Order Form.

this contract: means together:

- (a) the Order Form;
- (b) the Supplemental Order Form(s) (if applicable);
- (c) the Schedule(s) of Works (if applicable); and
- (d) these terms.

these terms: means these terms and conditions as amended by MDA from time to time.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Usage Fees: the fees payable in relation to each Billing Period for the use of the Subscription Services during that Billing Period and which is calculated on the basis of a fee charged for each Active Contractor during that Billing Period as such fee is set out in the Order Form.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any

- programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
- Website:** means the website which can be found at www.mydigitalaccounts.com/texas (or any other URL which MDA notifies to the Customer from time to time either in writing (including by e-mail) or by publishing details on the Website).
- 1.2 References to clauses are to the clauses of this contract and clause headings shall not affect the interpretation of this contract.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns and a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this contract and a reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this contract under that statute or statutory provision.
- 1.6 A reference to writing or written excludes faxes and e-mail.
2. **Varying these terms**
The Customer agrees that MDA may vary these terms from time to time and the Customer agrees to accept any changes made to these terms and conditions as such terms can be found on the Website. MDA may advise the Customer in writing of any proposed changes to these terms and the Customer should ensure that it reviews the terms as found on the Website regularly so that it is aware of any changes made to these terms.

3. **Right to use the Subscription Services**
- 3.1 the other terms and conditions of this contract, MDA hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Subscription Services during the Subscription Term solely for the Customer's internal business operations.
- 3.2 The Customer shall not, and shall procure that its Authorised Users shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
- otherwise breaches: (i) the Acceptable Use Policy; or (ii) the terms of any contract to which MDA is a party and which is necessary for the performance of the Services, or is otherwise illegal or causes damage or injury to any person or property, and MDA reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 3.3 The Customer shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this contract:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - (c) use the Services and/or Documentation to provide services to third parties; or
 - (d) subject to clause (A)(d), license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.
- 3.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify MDA.
- 3.5 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
4. **The Services**
- 4.1 In consideration of:
- (a) the payment of the Account Creation and Implementation Fees, MDA shall perform the Account Creation and Implementation Services and if the Customer has not paid the Account Creation and Implementation Fees by the Due Date, MDA shall be entitled to suspend the delivery of the Account Creation and Implementation Services until payment has been made in full in cleared funds; and
 - (b) the payment of the Subscription Fees, MDA shall, during the Subscription Term:
 - (i) provide the Subscription Services and make available the Documentation to the Customer on and subject to the terms of this contract; and
 - (ii) provide telephone and helpdesk support during Normal Business Hours.
- 4.2 MDA shall use commercially reasonable endeavours to make the Subscription Services available twenty-four (24) hours a day, seven (7) days a week, except for:
- (a) planned maintenance carried out during MDA's maintenance window (i.e. anytime outside Normal Business Hours); and
 - (b) unscheduled maintenance performed during Normal Business Hours, provided that MDA has used commercially reasonable endeavours to give the Customer at least six (6) Normal Business Hours' notice in advance; or
 - (c) unscheduled emergency maintenance in respect of any security or other emergency reasons including events which are outside MDA's reasonable control.
- 4.3 MDA may provide the Customer with Additional Services as specifically agreed by the parties in consideration for payment of the Additional Services Fees as detailed in the applicable Supplemental Order Form.
- 4.4 MDA may provide the Customer with Development Services as specifically agreed by the parties in consideration for the payment of the Development Services Fees as detailed in the applicable Schedule of Works.
- 4.5 Unless otherwise agreed in writing by the parties, MDA hereby retains all right, title and interest in and to any deliverables which are provided under this contract including any and all intellectual property rights in such deliverables. MDA grants to the Customer a non-exclusive, non-transferable and perpetual licence to use any deliverables created under this contract in conjunction with the Services for its own internal business purposes (subject to MDA having received full payment for the deliverables in accordance with the charges set out in this contract.).
5. **Customer data**
- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

- 5.2 MDA shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy, as such document may be amended by MDA in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against MDA shall be for MDA to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by MDA in accordance with the archiving procedure described in its Back-Up Policy. MDA shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by MDA to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under clause 5.10). The Customer shall ensure that each of its Authorised Users is aware of the Back Up Policy and MDA's obligations with regard to the restoration of Customer Data.
- 5.3 The Privacy Policy is incorporated into this contract by reference and applies to the Subscription Services. The Customer acknowledges and agrees that Customer Data shall be collected and used by MDA in accordance with the Privacy Policy and shall ensure that each Authorised User is aware of the Privacy Policy and provides its prior written consent to the Customer which shall confirm that each Contractor User and End Client User has seen and agrees to that party's personal data being used by MDA in accordance with the Privacy Policy. MDA shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data.
- 5.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 5.5 The Customer shall not disclose (and shall not permit any data subject to disclose), any sensitive personal data/special categories of personal data to MDA for processing.
- 5.6 The parties acknowledge that where MDA processes any personal data as described in this contract on the Customer's behalf when performing its obligations under this contract, and for the purposes of this Contract, the Customer is the controller and MDA is the processor for the purposes of the Data Protection Legislation.
- 5.7 Without prejudice to the generality of clause 5.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer of the personal data to MDA for the duration and purposes of this contract so that MDA may lawfully use, process and transfer the personal data in accordance with this contract on the Customer's behalf.
- 5.8 Without prejudice to the generality of clause 5.4, MDA shall, in relation to any personal data processed in connection with the performance by MDA of its obligations under this contract:
- (a) process that personal data only on the documented written instructions of the Customer unless MDA is required by the laws of any member of the European Union or by the laws of the European Union applicable to MDA and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where MDA is relying on Applicable Laws as the basis for processing personal data, MDA shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit MDA from so notifying the Customer;
 - (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - (i) the Customer or MDA has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) MDA complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) MDA complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

- (c) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (d) notify the Customer without undue delay on becoming aware of a personal data breach;
 - (e) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of this contract unless required by Applicable Law to store the personal data; and
 - (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and immediately inform the Company if, in the opinion of the MDA, an instruction infringes the Data Protection Legislation.
- 5.9 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 5.10 The Customer consents to MDA appointing AWS Europe as a third-party processor of personal data under this contract. MDA confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business and which reflect the requirements of the Data Protection Legislation. As between the Customer and MDA, MDA shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 5.
- 5.11 The Customer acknowledges and agrees that internet transmissions are never completely private or secure and that any message or information which is sent or received using the Services may be read or intercepted by others, even if a particular transmission is encrypted.
- 5.12 The Customer consents (on behalf of itself and each Authorised User) to MDA collecting and using technical information about the devices and related software, hardware and peripherals for services that are internet or wireless based to improve its products and to provide any Services to the Customer.
6. **Supplier's obligations**
- 6.1 MDA shall provide the Services with effect from the Effective Date on and subject to the terms of this contract.
- 6.2 In supplying the Services, MDA shall provide the Services:-
- (a) substantially in accordance with the Documentation; and
 - (b) with reasonable skill and care.
- 6.3 The undertaking at clause 6.2 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to MDA's instructions, or modification or alteration of the Services by any party other than MDA or MDA's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, MDA will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.2. Notwithstanding the foregoing, MDA:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
 - (c) does not warrant that the Services will be free from Viruses (but it will use industry standard software to detect and eradicate Viruses, where reasonably possible).
- 6.4 This contract shall not prevent MDA from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this contract.
- 6.5 MDA warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this contract.
7. **Customer's obligations**
The Customer shall:
- (a) provide MDA with:
 - (i) all necessary co-operation in relation to this contract; and
 - (ii) all necessary access to such information as may be required by MDA, in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
 - (b) without affecting its other obligations under this contract, comply with all applicable laws and regulations with respect to its activities under this contract;
 - (c) carry out all other Customer responsibilities set out in this contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, MDA may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this contract and shall be responsible for any Authorised User's breach of this contract;
 - (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for MDA, its contractors and agents to perform their obligations under this contract, including without limitation the Services;
 - (f) ensure that its network and systems comply with the relevant specifications provided by MDA from time to time; and
 - (g) be, to the extent permitted by law and except as otherwise expressly provided in this contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to MDA's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
8. **Charges and payment**
- 8.1 The Customer shall pay the Fees to the Supplier for the Services in accordance with this clause 8.
- 8.2 The Customer shall pay the Fees as follows:
- (a) the Account Creation and Implementation Fees by the date stated by MDA on the invoice;
 - (b) the Subscription Fees shall be payable in advance and shall be paid on Go Live Date and on the first day of each subsequent Billing Period during the Subscription Term and the Usage Fees shall be calculated and paid on the following basis:
 - (i) in relation to the period from the Go Live Date to the end of the Billing Period during which Go Live Date occurs, the Usage Fees shall be calculated on the estimated number of Active Contractors as notified by the Customer to MDA; and
 - (ii) in relation to each subsequent Billing Period thereafter during the Subscription Term, the Usage Fees shall be calculated on the basis of the number of Active Contractors during the previous Billing Period; and

- (iii) on termination of this contract (howsoever caused) the Customer shall pay an additional sum due to MDA where the number of Active Contractors during the last Billing Period up to the date of termination exceeds the number of Active Contractors for which the Customer has paid Usage Fees in relation to that Billing Period (the **Excess Usage Fee**) and no refund shall be due to the Customer in the event that the number of Active Contractors during that last Billing Period is less than the number of Active Contractors for which the Customer has paid Usage Fees in relation to that Billing Period ; and
 - (c) the Additional Fees on such date as specified by MDA in the relevant invoice; and
 - (d) the Development Fees on the following basis:
 - (i) where those Development Fees are £1,000 or less, on signature of the Statement of Work; and
 - (ii) where those Development Fees are in excess of £1,000, 25% on signature of the Statement of Work and the remainder shall be paid within 7 days of the date on which MDA notifies the Customer that the relevant services have been completed or the deliverables have been provided.
- 8.3 The Customer acknowledges and agrees that payment of the Fees by the Due Date is of the essence of this contract.
- 8.4 If MDA has not received payment within 30 days after the Due Date, and without prejudice to any other rights and remedies of MDA:
- (a) MDA may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Texas Account and/or the Services and MDA shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at a rate equal to 5% per week commencing on the Due Date and continuing until fully paid, whether before or after judgment.
- 8.5 All amounts and fees stated or referred to in this contract:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 13.3(b), non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to MDA's invoice(s) at the appropriate rate.
- 8.6 After the Initial Term, MDA shall be entitled to increase the Fees at the start of each Renewal Period upon giving 90 days prior notice to the Customer.
9. **Proprietary rights**
- 9.1 The Customer acknowledges and agrees that MDA and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 9.2 MDA confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this contract.
10. **Confidentiality**
- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this contract. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this contract.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this contract.

- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute MDA's Confidential Information.
- 10.7 MDA acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.8 No party shall make, or permit any person to make, any public announcement concerning this contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.9 The above provisions of this clause 10 shall survive termination of this contract, however arising.
11. **Indemnity**
- 11.1 The Customer shall defend, indemnify and hold harmless MDA against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:-
- (a) the Customer's use of the Services and/or Documentation;
 - (b) any breach of this contract including any policies referred to in this contract (and including any claim made by or on behalf of an Authorised User against MDA arising from the Customer's breach of this Contract), excluding breach by MDA;
 - (c) the infringement of any third party rights (including the rights of an Authorised User), other than by MDA;
- (d) any act or omission of the Customer or an Authorised User which puts MDA in breach of applicable laws and regulations, the requirements of a regulatory or authority or Court Order,
 - (e) Provided that:
 - (i) the Customer is given prompt notice of any such claim;
 - (ii) MDA provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (iii) the Customer is given sole authority to defend or settle the claim.
- 11.2 MDA shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) MDA is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to MDA in the defence and settlement of such claim, at MDA's expense; and
 - (c) MDA is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, MDA may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this contract on notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4 In no event shall MDA, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than MDA; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by MDA; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from MDA or any appropriate authority.

- 11.5 The provisions of this clause 11 and clause 13.3(b) states the Customer's sole and exclusive rights and remedies, and MDA's (including MDA's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
12. **Suspension of the Texas Account**
- 12.1 Notwithstanding the provisions of clause 8.4(a), MDA may suspend access to or use of the Texas Account and the Services (or any of them) in the event that:
- (a) the Customer or any Authorised User fails to comply with:
 - (i) this contract;
 - (ii) any of the policies referred to in this contract; or
 - (b) if the continued used of the Services would result in MDA being in breach of:
 - (i) any applicable laws, regulatory requirements, court orders, the requirements of any regulatory authority or law enforcement agency;
 - (ii) any contract to which MDA is a party and which is necessary for the performance of the Services.
- 12.2 In respect of any suspension by MDA pursuant to clauses 8.4 and 12.1, no refund of any Subscription Fees shall be paid.
13. **Limitation of liability**
- 13.1 The Customer acknowledge and agrees that:-
- (a) the Services and the Documentation are provided to the Customer on an "as is" basis and have not been developed to meet the Customer's individual requirements;
 - (b) the Subscription Services are not intended to be a substitute for professional accountancy advice and the information provided by the Subscription Services does not constitute accountancy advice;
 - (c) the Customer assumes sole responsibility for results obtained from the use of the Subscription Services and the Documentation by the Customer and its Authorised Users, and for conclusions drawn from such use. MDA shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to MDA by the Customer and/or its Authorised Users in connection with the Subscription Services, or any actions taken by MDA at the Customer's direction; and
- (d) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract.
- 13.2 Nothing in this contract excludes the liability of MDA:
- (a) for death or personal injury caused by MDA's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 13.3 Subject to clause 13.1 and clause 13.2:
- (a) MDA shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, fines (including fines levied by a regulatory authority or tax authority) or any costs, expenses or interest, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this contract; and
 - (b) MDA's total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this contract shall be limited to the greater of:-
 - (i) £5,000 in each Contract Year; or
 - (ii) in each Contract Year, the total Subscription Fees paid or payable for the Subscription Services in such Contract Year.
14. **Term and termination**
- 14.1 This contract shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Term and, thereafter, this contract shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:
- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term or any Renewal Period, in which case this contract shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
 - (b) otherwise terminated in accordance with the provisions of this contract,

- and the Initial Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.
- 14.2 Without affecting any other right or remedy available to it, either party may terminate this contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any other term of this contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
 - (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - (f) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
 - (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2 (c) to clause 14.2(g) (inclusive); or
 - (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.3 Without affecting any other right or remedy available to it, MDA may terminate this contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under this contract on the Due Date;
 - (b) the Customer fails to comply with clause 3;
 - (c) an Authorised User does not comply with any of the terms of this contract;
 - (d) there is a Change of Control of the Customer.
- 14.4 On termination of this contract for any reason:
- (a) all licences granted under this contract shall immediately terminate and including any right to access and use the Services and/or the Documentation;
 - (b) the Customer shall pay the Excess Usage Fee (if any) on demand;
 - (c) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

- (d) MDA may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with its Back Up Policy, unless MDA receives, no later than ten days after the effective date of the termination of this contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. MDA shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by MDA in returning or disposing of Customer Data;
 - (e) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this contract which existed at or before the date of termination shall not be affected or prejudiced; and
 - (f) in the event of termination by the Customer other than in accordance with clauses 14.1 and 14.2, the Customer shall pay a Termination Sum being 50% of the Subscription Fees which would have been paid for the remaining Subscription Term, using the highest month of Subscription Fees to date and multiplying this by the number of months remaining of the Initial Term or the current Renewal Period (as the case may be).
- 14.5 Notwithstanding anything else in this clause 14, if a termination notice is served within the first 12 months of the Initial Term, the Customer may terminate this contract by giving to MDA three months' written notice.
15. **Events outside our control**
MDA shall have no liability to the Customer under this contract if it is prevented from or delayed in performing its obligations under this contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of MDA or any other party), failure of a utility service or transport or telecommunications network, interruption or failure of the internet network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.
16. **General**
- 16.1 **Inconsistency.** If there is an inconsistency between these terms and the terms of the Order Form, any Supplemental Order Form or Schedule of Works these terms shall prevail.
- 16.2 **Variation** No variation of this contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.3 **Waiver** No failure or delay by a party to exercise any right or remedy provided under this contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.4 **Rights and remedies** Except as expressly provided in this contract, the rights and remedies provided under this contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 16.5 **Severance**
- (a) If any provision or part-provision of this contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this contract.
 - (b) If any provision or part-provision of this contract is deemed deleted under clause 16.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 16.6 **Entire agreement**
- (a) This contract 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.
 - (b) Each party acknowledges that in entering into this contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this contract.
 - (c) Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligence misstatement based on any statement in this contract.
 - (d) Nothing in this clause shall limit or exclude any liability for fraud.
- 16.7 **Assignment**
- (a) The Customer shall not, without the prior written consent of MDA, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this contract.
 - (b) MDA may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this contract.
- 16.8 **No partnership or agency** Nothing in this contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 16.9 **Third party rights** This contract does not confer any rights on any person or party (other than the parties to this contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 16.10 **Notices**
- (a) Any notice required to be given under this contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this contract, or such other address as may have been notified by that party for such purposes.
 - (b) A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.
- 16.11 **Governing law** This contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 16.12 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this contract or its subject matter or formation (including non-contractual disputes or claims).