

**TERMS AND CONDITIONS IN RELATION TO SUBSCRIPTION AND IMPLEMENTATION SERVICES TO BE SUPPLIED BY MY DIGITAL ACCOUNTS LIMITED (“MDA”)**

These Terms were last updated on 7 July 2020. If you would like to see copies of earlier versions of these terms, please email us at [admin@mydigitalaccounts.com](mailto:admin@mydigitalaccounts.com)

**1. BACKGROUND**

- 1.1 MDA has developed the My Digital Accounts software application which it makes available to business users through the internet on a pay-per-use basis.
- 1.2 MDA's 'My Digital Accounts' software service enables named business users to access the service on their internet-enabled device and view real-time financial information, raise invoices, receive and generate financial reports (including cash-flow, profit and loss accounts and balance sheets) and calculate tax liabilities (the **Purpose**).
- 1.3 The Customer wishes to use MDA's 'My Digital Accounts' service in order to provide:
- (a) Umbrella company services to individuals who are the recipients of umbrella payroll services from the Customer, usually paid with full deduction of employment taxes through traditional umbrella services (each an **Umbrella Client**); and/or
  - (b) personal service company services to individuals operating as the single director and shareholder of a limited liability company (and which provides the services of that individual to third parties under a contract for services) who retain the services of the Customer (each a **PSC Client**),
- (together the **Clients** and each a **Client**).
- 1.4 MDA has agreed to provide and the Customer has agreed to take and pay for MDA's 'My Digital Accounts' service (the **Services** as defined below) and the Training, Implementation and Configuration Services (as defined below) subject to the terms and conditions of the contract in consideration of the payment of the Training, Implementation and Configuration Fees and Data Migration Fees (which are fixed-fees) for any Training, Implementation and Configuration Services required by the Customer and the Subscription Fees for the Services (which are calculated and charged based on the total number of Clients, subject always to the payment of the Minimum Subscription Fee), as such fees are further detailed in the Order Form. The Customer acknowledges that the provision of any other services shall be subject to additional charges, all of which will be set out and agreed in a Statement of Work.
- 1.5 The Customer understands that:
- (a) certain aspects of MDA's 'My Digital Account' service may be provided by third parties, and that such services may be provided by the relevant third party subject to its terms and conditions and privacy policy in respect of the access to, collection, use, security and sharing of Customer and Client data and by agreeing to use such services, the Customer (and the Client) will accept and be bound by those third parties' terms and conditions and privacy policy;

- (b) MDA is not responsible for any services which are provided by third parties direct to the Customer or the Client;
- (c) it is the Customer's responsibility to ensure that it has the prior written consent of each Client to use MDA's 'My Digital Account' service on behalf of and for the benefit of that Client and that the Client is fully aware of the basis on which the Services are made available to the Customer, and in particular, the use of Third Party Services (as defined below) and the collection and use of the Client's personal data and all other relevant terms which are set out in the contract; and
- (d) where the Customer uses MDA's 'My Digital Account' service on behalf of and for the benefit of a Client, it is fully authorised by the Client to use MDA's 'My Digital Account' service as envisaged by and subject to the terms of the contract and the Customer shall ensure that the Client shall comply with the terms of the contract as if each Client were a party to it.

## 2. Interpretation

- 2.1 The definitions and rules of interpretation in this clause and in paragraph 1 (Background) apply in the contract.

**Acceptable Use Policy:** MDA's acceptable use policy as displayed on the Website from time to time.

**Account Configuration Fee:** the fee payable by the Customer to MDA for establishing and maintaining the Customer's environment in relation to the Services and enabling Go Live as such fee is set out in the Order Form.

**Affiliates:** any other company which is an associate of the Customer, including all subsidiaries, holding companies and subsidiaries of holding companies, and includes any other companies with whom the directors of the Customer are associated as either directors, employees or as shadow directors (such judgement to be made using reasonable judgement by MDA).

**Agreed Go Live Date:** the date agreed by the parties for Go Live as set out in the Project Plan.

**App:** where requested by the Customer, the mobile application provided by MDA to the Customer as part of the Services under the contract as more particularly described in the Documentation.

**App Fees:** the fees payable by the Customer to MDA for the provision of the App to be used by Umbrella Clients as such fee is set out in the Order Form.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation for the Purpose for the benefit of Clients.

**Back Up Policy:** MDA's back-up policy as displayed on the Website 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.

**Control:** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls, controlled** and the expression **Change of Control** shall be construed accordingly.

**Client:** as detailed in the Order Form.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 14.5.

**Consultancy Services:** any services to be supplied by MDA to the Customer pursuant to the contract in addition to the Services and the Training, Implementation and Configuration 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 Data:** the data inputted by the Customer, Authorised Users, or MDA on behalf of a Client or, where applicable, direct by a Client using the Services for the Purpose.

**Data Migration Fees:** the fees payable by the Customer to MDA in relation to the required data migration element (if any) of the Training, Implementation and Configuration Services as more particularly set out in the Order Form.

**Data Protection Law:** the EU General Data Protection Regulation (Regulation 2016/679) and the Data Protection Act 2018 or any applicable law which replaces, implements or transposes the same;

**Direct Bank Feed Service:** an automated service which enables bank account information to be transposed from a Client's bank account into that Client's My Digital Account (subject to the Client positively electing to use such service within their My Digital Account ).

**Documentation:** the document(s) made available to the Customer by MDA online which can be accessed at the Website which sets out a description of the Services and the user instructions for the Services.

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

**Effective Date:** the date of the Order Form.

**Go Live:** the date on which the Services will be available for use by the Customer other than for testing and training purposes.

**Initial Subscription Term:** the initial term of the agreement as set out in the Order Form.

**MDA API:** the software interface developed by MDA which enables the Services to interact with third party applications.

**My Digital Account:** an account with a unique username and password which is dedicated to the Customer or a Client and which enables the Customer (on behalf of a Client) or, where applicable, a Client to use the Services for the Purpose.

**Minimum Subscription Fee:** the minimum monthly subscription fee payable by the Customer to MDA in relation to certain of the Services as set out in the Order Form.

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

**Order Form:** the order form attached to these Terms setting out details of the contract and containing the Customer's consent to these Terms and which includes, but is not limited to, details of the Subscription Fees payable by the Customer together, if applicable, with any Training, Implementation and Configuration Fees and Data Migration Fees as such order form may be varied by a Supplemental Order Form from time to time and where a Supplemental Order Form has been entered into by the parties, **Order Form** shall also include all such Supplemental Order Forms.

**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, Clients and Authorised Users in connection with their use of the Service, 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.

**Project Plan:** the project plan agreed by the parties setting out the timetable for Go Live, the Agreed Go Live Date and the responsibilities of the parties in relation to Go Live.

**PSC Client:** has the meaning given to it at clause 1.3(a).

**Purpose:** has the meaning given to it at clause 1.2.

**Quicksight Services:** the reporting functionality available through Amazon Quicksight as more particularly detailed at <https://aws.amazon.com/quicksight/>.

**Quicksight Fees:** the fees payable by the Customer to MDA under the contract in relation to the Quicksight Services (if any) as more particularly set out in the Order Form.

**Renewal Period:** the period described in clause 19.1.

**Security Policy:** MDA's security policy as displayed on the Website from time to time.

**Service Credit:** the service credit payable by MDA for failing to meet a Service Level and as more particularly set at Schedule 1 and **Service Credits** shall be construed accordingly.

**Services:** the subscription services provided by MDA to the Customer under the contract which are made available by accessing the Website (or any other website notified to the Customer by MDA from time to time) or the App using the Customer and/or, where applicable, the Client's unique user name and password combination, as more particularly described in the Documentation.

**SLA:** the service level agreement which is set out in Schedule 1 and **Service Level** shall mean any of the service levels set out in the SLA.

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

**Statement of Work:** each statement of work which is agreed in writing and signed by the parties from time to time for Consultancy Services or any other services or deliverables which are specified and agreed in such statement of work and **Statements of Works** shall be construed accordingly.

**Subscription Fees:** the subscription fees payable by the Customer to MDA for the User Subscriptions, in accordance with clause 12, as such subscription fees are set out in the Order Form but subject to MDA's right to increase such fees after expiry of the Initial Subscription Term in accordance with clause 12.9 together, if applicable and subject always to the Minimum Subscription Fee.

**Subscription Term:** has the meaning given in clause 19.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Supplemental Order Form:** means (if any) a supplemental order form entered into by the parties after the Effective Date and which sets out any changes to the Order Form.

**Support Request:** a request for support in relation to any problems or issues with the Services made by raising a ticket with the MDA helpdesk strictly in accordance with the Support Services Policy.

**Support Services Policy:** MDA's policy for providing support in relation to the Services as displayed on the Website from time to time.

**the contract:** means together the Order Form, the Statements of Works (if any) and these Terms.

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

**Third Party Services:** means any services which are provided to the Customer or a Client by a third party and which are not provided directly by MDA as part of the Services.

**Third Party Sites:** any website which is operated by a third party.

**Third Party Terms:** the terms and conditions and privacy policies for any Third Party Services which the Customer accepts in connection with the Customer's use of Third Party Services which MDA informs the Customer of from time to time, including, as of the Effective Date, those set out in the Appendix to the contract.

**the contract:** means:

- (a) the Order Form;
- (b) Statements of Works (if any); and
- (c) these Terms.

**Training, Implementation and Configuration Services:** the training, implementation and configuration services in relation to the Services including, where agreed, any services in relation to data migration, agreed to be provided by MDA to the Customer pursuant to the contract.

**Training, Implementation and Configuration Fees:** the fees payable by the Customer to MDA under the contract for the Training, Implementation and Configuration Services as set out in the Order Form.

**Umbrella Client:** has the meaning given to it at clause 1.3(a).

**User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 12.1 which entitle the Customer to access and use the Services and the Documentation to perform the Purpose on behalf of and for the benefit of Clients.

**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](http://www.mydigitalaccounts.com) (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).

- 2.2 Terms used in the Order Form shall apply to these Terms, save where the context requires otherwise.
- 2.3 The Schedules and clause 1 (Background) shall form part of, and are incorporated into, the contract.
- 2.4 Clause, schedule and paragraph headings shall not affect the interpretation of the contract.
- 2.5 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.
- 2.6 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.9 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the contract.

- 2.10 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the contract under that statute or statutory provision.
- 2.11 A reference to writing or written includes faxes but not e-mail, unless otherwise expressly stated in the contract.
- 2.12 References to clauses and schedules are to the clauses and schedules of the contract; references to paragraphs are to paragraphs of the relevant schedule to the contract.

### **3. Varying these Terms**

Save in relation to the Subscription Fees set out in the Order Form and which shall apply for the duration of the Initial Subscription Term, 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 as such terms can be found on the Website from time to time. 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.

### **4. User Subscriptions**

- 4.1 If the Customer applies for a My Digital Account to be created on behalf of a Client or the Customer uses a My Digital Account or the Services on behalf of or for the benefit of a Client, the Customer shall ensure that:
- (a) it has received the prior written authorisation of the Client to open a My Digital Account and use the My Digital Account and the Services on behalf of and for the benefit of the Client (which shall include making the Client aware before the Client provides such consent of the terms and conditions set out in the contract and any Third Party Terms which relate to the Client, including in particular, any conditions regarding collection and use of the Client's data in accordance with the contract and any applicable Third Party Terms);
  - (b) it has the irrevocable authority to act as the Client's agent in respect of the Customer's access to and use of the My Digital Account and Services including the right to receive and use the Client's unique user name and password to access the Website where applicable, to access each Client's My Digital Account, to use the Services for the benefit of the Client and to make decisions on behalf of the Client regarding access to and use of Third Party Sites, Third Party Services, Third Party Terms and use of the MDA API);
  - (c) it has received a written waiver from the Client pursuant to which each Client acknowledges that it is aware of the terms and conditions of the contract, that it appoints the Customer to use the Service on the Client's behalf (and at the sole risk of the Client) and shall waive any rights or remedies which it may have against MDA to the extent that such rights or remedies arise from any breach by the Customer of the contract and shall be bound by the limitations and exclusions of MDA's liability as set out in the contract as if the Client were a party to the contract,

and following a written request from MDA, the Customer shall provide copies of such authorisations and waivers to MDA.

- 4.2 MDA reserves the right, at its absolute discretion, not to accept an application to create a My Digital Account including in circumstances where there is a technical constraint, legal or regulatory reason or commercial reason such that MDA is unable or unwilling to provide the Services or any of them to or for the benefit of the Client. No charge will be made by MDA where an application for a My Digital Account is declined. MDA does not accept any obligation to provide reasons or enter into correspondence or communications with the Customer (or any Client) regarding any application for a My Digital Account which MDA chooses to decline.
- 4.3 At all times during the Subscription Term, the Customer shall be responsible for (and shall procure that the Client shall) ensure that Client details which are submitted to MDA using the Services are kept up-to-date, accurate and complete and that any changes are made as soon as reasonably practicable following any change. The Customer acknowledges that it can add or change such information using the 'edit' function on the 'Company Details' or 'People' pages of the Website.
- 4.4 The Customer acknowledges and agrees that each My Digital Account is to be used by or for the benefit of a single Client only and the Customer shall not use any My Digital Account for the benefit of multiple Clients. In the event that MDA, acting reasonably, believes that a My Digital Account is being used for the benefit of multiple Clients, it shall have the right to suspend the Services, to terminate the contract and/or to continue to perform its obligations under the contract subject to the Customer paying charges for the Services which have been used for the benefit of multiple Clients.

## **5. Right to use the Services**

- 5.1 In consideration of the Customer paying the Subscription Fees and, where applicable, the App Fees (and subject at all times to the Customer's compliance with the restrictions set out in this clause 5 and the Customer's compliance with the other terms and conditions of the contract and any applicable Third Party Terms), MDA hereby grants to the Customer a personal, non-exclusive, non-transferable, revocable licence to the Customer which permits the Customer (and its Authorised Users) to access and use the Services and the Documentation solely for the Purpose and solely for the benefit of and on behalf of each Client during the Subscription Term only. The Customer shall also be entitled to permit the Affiliates to use the Services and Documentation solely for the Purpose and solely for the benefit and on behalf of their own Clients during the Subscription Term to the same extent as the Customer, provided always that the Customer shall at all times be responsible for the acts and omissions of such Affiliates and payment of all amounts (including Subscription Fees) in relation to Affiliates (notwithstanding any agreement to invoice the Affiliates directly). MDA shall be entitled to suspend access to the Services and Documentation by any Affiliate upon providing written notice to the Customer.
- 5.2 The Customer acknowledges and agrees that:
- (a) it is not granted any right to sub-licence the rights which are granted to it by the Supplier in clause 5.1;
  - (b) to the extent that Authorised Users have been granted the right to use the Services and the Documentation this right shall only be for purpose of enabling the Customer to provide services to its Clients for the Purpose;
  - (c) it does not have, (nor does any Client have) any right or interest in the underlying source code which is used to deliver the Services and the rights granted to the

Customer are limited to a right to access the Services and Documentation using each allocated user name and password, subject to the terms of the contract; and

- (d) with respect to any Affiliates which it allows to use the Services and Documentation (pursuant to clause 5.1), the Customer shall ensure that such Affiliates are made aware of the terms of the contract, including any applicable Third Party Terms, and shall be responsible for ensuring that such Affiliates comply with the obligations set out in the contract as though they were the Customer under the contract.

5.3 In relation to each My Digital Account, the Customer undertakes that:

- (a) it will not allow or suffer any My Digital Account to be used by or for the benefit of more than one individual Client, unless it has been reassigned in its entirety to another Client, in which case, the Customer shall have no right to use the Services and/or Documentation for the benefit of the previous Client and where applicable, the prior Client shall no longer have any right to access or use the Services and/or Documentation;
- (b) where applicable, each Client shall be provided with a secure password for each Client's use of the Services and Documentation (which the Customer shall ensure the Client permits MDA to provide to the Customer for use on behalf of the Client) and the Customer shall procure that the Client shall change the password no less frequently than monthly and shall keep the password confidential;
- (c) it shall maintain a written, up to date list of current Clients and provide such list to MDA within 1 Business Day of MDA's written request at any time or times;
- (d) it shall permit MDA to audit the Services, the My Digital Accounts and the Customer's and (where applicable) Client's use of the Services and My Digital Accounts in order to establish My Digital Account usage and the name and password of each Client. Such audit may be conducted no more than once per quarter, at MDA's expense, and this right shall be exercised with no less than two (2) Business Days' notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (e) if any of the audits referred to in clause 5.3(d) reveal that the Services have been provided for the benefit of any individual who is not a Client, then without prejudice to MDA's other rights, the Customer shall promptly disable any access such individual has to the Services (including passwords) and MDA shall not provide the Services for the benefit of (including the issuing of any new passwords) to any such individual; and
- (f) if any of the audits referred to in clause 5.3(d) reveal that the Customer has underpaid Subscription Fees to MDA, then without prejudice to MDA's other rights and remedies, the Customer shall pay to MDA an amount equal to such underpayment as calculated in accordance with the charges set out in the Order Form within five (5) Business Days of the date of MDA's demand.

5.4 The Customer shall not, and shall procure that its Clients and Authorised Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services or use the Services for any purpose 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;
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property; or
- (g) 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 (iii) any applicable Third Party Terms,

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 (including the right to suspend access to and use of the Services entirely or partially for such period as MDA shall determine in its absolute discretion).

5.5 The Customer shall not, and shall procure that each Client and Authorised User shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion or by agreement in writing between the parties:
  - (i) and except to the extent expressly permitted under the contract, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Website, the Services (including the software which enables the provision of the Services) and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services (to the extent that the Services are software-enabled); or
- (b) use the Services and/or Documentation to provide services to third parties (save for the provision of services to Clients for the Purpose); or
- (c) subject to clause 28.1, 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
- (d) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 5.

5.6 The Customer shall ensure that there is no unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any unauthorised access or use, the Customer shall

immediately notify MDA and co-operate with MDA to mitigate the consequences of any unauthorised access or use (including prompt and diligent compliance with any reasonable instructions of MDA).

- 5.7 The Customer acknowledges that the Customer shall only be permitted to allow PSC Clients to have access to the Services and Documentation via a unique user name and password to access the Website, and the Customer shall not be entitled to permit Umbrella Clients to have such access. Notwithstanding this, the Services may be used for the benefit of all Clients.

## 6. Services

6.1 In consideration of:

- (a) the payment of the Training, Implementation and Configuration Fees, MDA shall provide the Training, Implementation and Configuration Services;
- (b) the payment of the Subscription Fees and, where applicable, the App Fees, MDA shall, during the Subscription Term:
  - (i) provide the Services and make available the Documentation to the Customer on and subject to the terms of the contract;
  - (ii) provide support services in accordance with the Support Services Policy during Normal Business Hours;
  - (iii) use its commercially reasonable endeavours to perform the Services in accordance with the SLA;
  - (iv) provide reasonable use of MDA's customer support line (to be determined at the sole discretion of MDA). If the use of MDA's support line is deemed excessive (determined at the sole discretion of MDA), additional fees will apply and these will be applied using the fees set out in in the Order Form;
- (b) the payment of the Quicksight Fees, MDA shall provide the QuickSight Services;
- (c) the payment of the Consultancy Fees, MDA shall provide the Consultancy Services.

6.2 MDA shall use commercially reasonable endeavours to make the 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;
- (c) unscheduled emergency maintenance in respect of any security or other emergency reasons including events which are outside MDA's reasonable control.

- 6.3 MDA may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at MDA's then current rates.
- 6.4 MDA may provide the Customer with consulting, training, development and other professional and consultancy services as specifically set forth in a Statement of Work.
- 6.5 Unless otherwise specified in a Statement of Work, MDA hereby retains all right, title and interest in and to any deliverables which are provided under a Statement of Work 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 a Statement of Work 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 the Statement of Work).
- 7. Customer data**
- 7.1 In this clause 5, "controller", "data controller", "data processor", "data subject", "personal data", "process", "processor" and "special categories of data" shall have the meaning given to them by Data Protection Law.
- 7.2 MDA's Privacy Policy is incorporated into the contract by reference and applies to those Services that are not specified in clause 7.15 as having separate privacy policies. 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 Client is aware of the Privacy Policy and provides its prior written consent to the Customer which shall confirm that the Client has seen and agrees to the Client's personal data being used by MDA in accordance with the Privacy Policy.
- 7.3 The Customer, as data controller/controller appoints MDA as a data processor/processor to process the personal data described in the contract (the **Data**) for the purposes described in the contract (the **Permitted Purpose**). Each party shall comply with the obligations that apply to it under Data Protection Law.
- 7.4 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.
- 7.5 MDA shall not transfer the Data outside of the European Economic Area (**EEA**) unless it has taken such measures as are necessary to ensure the transfer is in compliance with Data Protection Law. Such measures may include transferring the Data to a recipient in a country that the European Commission has decided provides adequate protection for personal data, to a recipient that has achieved binding corporate rules authorisation in accordance with Data Protection Law, or to a recipient that has executed standard contractual clauses adopted or approved by the European Commission.
- 7.6 MDA shall ensure that any person it authorises to process the Data (an **Authorised Person**) shall protect the Data in accordance with MDA's confidentiality obligations under the contract.
- 7.7 MDA shall implement technical and organisational measures to protect the Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the Data (a **Security Incident**).

- 7.8 The Customer consents to MDA engaging third party subprocessors to process the Data for the Permitted Purpose provided that: (i) MDA maintains an up-to-date list of its subprocessors and shall notify the Customer of any change in subprocessors at least 10 Business Days' prior to any such change; (ii) MDA imposes data protection terms on any subprocessor it appoints that require it to protect the Data to the standard required by Data Protection Law; and (iii) MDA remains liable for any breach of this clause that is caused by an act, error or omission of its subprocessor. If the Customer objects to a proposed sub-processor on the data protection compliance grounds, it shall notify MDA within 5 Business Days of receipt of MDA's notice and shall specify the grounds on which it objects and the Customer may terminate the contract by serving notice within 10 Business Days of MDA's notice, subject to payment of the Termination Sum. As at the Effective Date, MDA processes personal data of its clients using AWS Europe as its sub-Processor and the Customer acknowledges and agrees that MDA shall be entitled to appoint AWS Europe as its sub-processor to process personal data in respect of which the Customer is the controller under the contract during the Subscription Term.
- 7.9 MDA shall provide reasonable and timely assistance to the Customer (at the Customer's expense) to enable the Customer to respond to: (i) any request from a data subject to exercise any of its rights under Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to MDA, MDA shall promptly inform the Customer providing full details of the same.
- 7.10 If MDA believes or becomes aware that its processing of the Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform the Customer and provide reasonable cooperation to the Customer (at the Customer's expense) in connection with any data protection impact assessment that may be required under Data Protection Law.
- 7.11 If MDA becomes aware of a confirmed Security Incident, MDA shall:
- (a) inform the Customer without undue delay and shall provide reasonable information and cooperation to the Customer so that the Customer can fulfil any data breach reporting obligations it may have under (and in accordance with the timescales required by) Data Protection Law; and
  - (b) take any reasonably necessary measures and actions to remedy or mitigate the effects of the Security Incident; and
  - (c) keep the Customer informed of all material developments in connection with the Security Incident.
- 7.12 Upon termination or expiry of the contract, MDA shall (at the Customer's election) destroy or return to the Customer all Data in its possession or control. This requirement shall not apply to the extent that MDA is required by applicable law to retain some or all of the Data, or to Data it has archived on back-up systems, which Data MDA shall securely isolate and protect from any further processing except to the extent required by such law.
- 7.13 On request by the Customer, MDA shall:

- (a) contribute to audits and inspections of any written records which MDA maintains in respect of its compliance with this clause 7 by permitting the Customer to audit and inspect such records; and
- (b) respond to any written audit questions submitted to it by the Customer in respect of MDA's compliance with this clause 7,

provided that the Customer's rights under this clause 7.13 shall be exercised no more than once per Contract Year and any inspection shall take place during Normal Business Hours on Business Days and the Customer shall take all reasonable measures to prevent any unnecessary disruption to MDA's operations.

- 7.14 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.
- 7.15 The following Third-Party Services will be governed by the following terms of use and subject to the following privacy policies (and the Customer shall ensure that each Client is aware of each privacy policy and provides its written consent to the Customer which shall confirm that the Client has seen and agrees to the Client's personal data being collected and used by each Third-Party Supplier in accordance with each Third-Party Supplier's privacy policy):

Service	Web address of privacy policy
Direct Bank Feed Services	<a href="http://www.yodlee.com/privacy-notice">http://www.yodlee.com/privacy-notice</a>

- 7.16 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data (and shall procure that each Client shall maintain Client Data so that it remains accurate, complete and up-to-date at all times).
- 7.17 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 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). The Customer shall ensure that each Client is aware of MDA's Back-Up Policy and obligations with regard to the restoration of Customer Data.
- 7.18 MDA shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data, as such documents may be amended from time to time by MDA in its sole discretion.
- 7.19 The Customer consents (on behalf of itself and each Client) to MDA collecting and using technical information about the devices and related software, hardware and peripherals for

Services that are internet-based or wireless to improve its products and to provide any Services to the Customer.

## **8. Third party providers**

- 8.1 The Services may contain links to other independent third-party websites (**Third Party Sites**). Third Party Sites are not under MDA's control, and MDA is not responsible for and does not endorse their content or their privacy policies (if any). The Customer will need to make its own independent judgement regarding your interaction with any Third Party Sites, including the purchase and use of any products or services accessible through them.
- 8.2 MDA makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such Third Party Site, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any Third Party Site is between the Customer and the relevant third party, and not MDA. MDA recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant Third Party Site. MDA does not endorse or approve any Third Party Site nor the content of any Third Party Site.
- 8.3 The Services can interact with third party applications where the Customer enables the MDA API. Where the Customer enables the MDA API, use of the MDA API is subject to the following conditions:
- (a) the Customer has received the express prior written permission of the Client (and has notified the Client of the conditions relating to use of the MDA API as set out in the contract);
  - (b) the Customer acknowledges and agrees that (and shall procure that the Client acknowledges and agrees that) any third party application which the Customer selects to access the Services has the ability to access to Customer Data and is outside of MDA's control;
  - (c) before enabling the MDA API and using any third party application, it is the sole responsibility of the Customer and the Customer shall (and shall procure that the Client shall) carefully assess whether or not the Customer (and the Client) understands and is willing to accept the risks associated with use of each third party application, the terms and conditions on which the third party application will be provided (including any privacy policy which sets out the manner in which the third party will collect and use Customer Data) and any assurances provided by the third party regarding the Customer's (and the Client's) privacy and security.
- 8.4 The Customer acknowledges and agrees that it is the Customer's decision as to whether or not it enables the MDA API and that the Customer has the right to disable the MDA API at any time by modifying the preferences for the relevant My Digital Account.
- 8.5 As third party applications which the Customer (and Client) may use to access the Services are provided by third parties and used at the election of the Customer (and the Client), MDA does not accept any responsibility for any loss suffered by the Customer (or the Client) as a result of the Customer's (or the Client's) use of any third party application to access the Services.

8.6 The Customer acknowledges that the Direct Bank Feed Service may be provided by a third party as a Third Party Service and that the Customer (and the Client) uses the Direct Bank Feed Service solely at its own risk. If the Customer does not wish to use the Direct Bank Feed Service, it can elect not to do so and can receive the same functionality from the Services by arranging to import data from a bank account using a .csv file (and in so doing, neither the Customer nor the Client is required to use the Direct Bank Feed Service). If the Customer (or Client) wishes to use the Direct Bank Feed Service, the Client must positively elect to use such Direct Bank Feed Service through their My Digital Account and the Customer and the Client shall comply with the conditions in clause 9 (in addition to the conditions set out in this clause 8).

## 9. Direct Bank Feed Service

9.1 If the Customer (or the Client) wishes to use the Direct Bank Feed Service, in addition to any Third Party Terms, the Customer shall (and shall procure that the Client shall) comply with the following conditions and grant the following rights to MDA and/or any third party which provides the Direct Bank Feed Service as a Third Party Service, and their respective service providers in relation to the Direct Bank Feed Service (each a "**Supplying Party**"):

- (a) **Provide Accurate Information.** The Customer shall (and shall procure that each Client shall) provide true, accurate, current and complete information about the Customer and the Client, about the Customer and Client's accounts maintained at other web sites and the Customer and the Client shall not misrepresent their identity or their account information and shall account information up to date and accurate.
- (b) **Proprietary Rights.** The Customer and each Client are only permitted to use content delivered to them through the Direct Bank Feed Service only on the Direct Bank Feed Service and using the Services for the Purpose. The Customer shall not (and shall procure that each Client shall not) copy, reproduce, distribute, or create derivative works from such content and shall not reverse engineer or reverse compile any of the Direct Bank Feed Service technology, including but not limited to, any Java applets associated with the Direct Bank Feed Service.
- (c) **Content You Provide And Is Derived by Use of the Service.** The Customer (and the Client) shall grant a licence to the Supplying Parties to any information, data, passwords, materials or other content (collectively, **Content**) which the Customer or the Client provides through or to the Direct Bank Feed Service. The Supplying Parties may use, modify, display, distribute and create new material using such Content to provide the Direct Bank Feed Services to the Customer and the Client. The Supplying Parties may also use, sell, license, reproduce, distribute and disclose aggregate, non-personally identifiable information that is derived through the Customer's and the Client's use of the Direct Bank Feed Service. By submitting Content, the Customer and the Client automatically agrees, or promise that the owner of such Content has expressly agreed that, without any particular time limit, and without the payment of any fees, the Supplying Parties may use the Content for the purposes set out above. As between MDA and any other Supplying Parties, MDA owns the Customer's and Client's confidential account information.
- (d) **Third Party Accounts.** By using the Direct Bank Feed Service, the Customer and the Client authorise the Supplying Parties to access third party sites designated by the Customer or the Client, on behalf of the Customer and the Client, to retrieve information

requested by the Customer and the Client, and to register for accounts requested by the Customer or the Client. For all purposes hereof, the Customer and the Client hereby grant the Supplying Parties a limited power of attorney, and hereby appoints the Supplying Parties as the Customer and the Client's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for the Customer and the Client and in the Customer and Client's name, place and stead, in any and all capacities, to access third party internet sites, servers or documents, retrieve information, and use the Customer and the Client's information, all as described above, with the full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection with such activities, as fully to all intents and purposes as the Customer and the Client might or could do in person. The customer and the client acknowledge and agree that when the Supplying Parties access and retrieve information from third party sites, the Supplying Parties are acting as the customer and client's agent, and not the agent or on behalf of the third party. The Customer and the Client agree that third party account providers shall be entitled to rely on the foregoing authorisation, agency and power of attorney granted by you. You understand and agree that the service is not endorsed or sponsored by any third party account providers accessible through the service.

- (e) Disclaimer of warranties. The Customer and the Client expressly understand and agree that:
- (f) The Customer and the Client's use of the Direct Bank Feed Service and all information, products and other content (including that of third parties) included in or accessible from the Direct Bank Feed Service is at the Customer's and the Client's sole risk. The service is provided on an "as is" and "as available" basis. The Supplying Parties expressly disclaim all warranties of any kind as to the service and all information, products and other content (including that of third parties) included in or accessible from the service, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and noninfringement.
- (g) the Supplying Parties give no warranty that (i) the Direct Bank Feed Service will meet the Customer's or the Client's requirements, (ii) the Direct Bank Feed Service will be uninterrupted, timely, secure, or error-free, (iii) the results that may be obtained from the use of the Direct Bank Feed Service will be accurate or reliable, (iv) the quality of any products, services, information, or other material purchased or obtained by the Customer or the Client through the Direct Bank Feed Service will meet the Customer's or the Client's expectations, or (v) any errors in the technology will be corrected.
- (h) Any material downloaded or otherwise obtained through the use of the Direct Bank Feed Service is done at the Customer's and the Client's own discretion and risk and the Customer and the Client are solely responsible for any damage to their computer system or loss of data that results from the download of any such material. No advice or information, whether oral or written, obtained by the Customer or the Client the Supplying Parties through or from the Direct Bank Feed Service will create any warranty not expressly stated in these terms.
- (i) Limitation of liability. Subject to clause 16.4 the Customer and the Client agree that neither the Supplying Parties nor any of their affiliates, account providers or any of their affiliates will be liable for any harms or losses, resulting from: (i) the use or the inability

to use the Direct Bank Feed Service; (ii) the cost of getting substitute goods and services, (iii) any products, data, information or services purchased or obtained or messages received or transactions entered into, through or from the Direct Bank Feed Service; (iv) unauthorized access to or alteration of your transmissions or data; (v) statements or conduct of anyone on the Direct Bank Feed Service; (vi) the use, inability to use, unauthorized use, performance or non-performance of any third party account provider site, even if the provider has been advised previously of the possibility of such damages; or (vii) any other matter relating to the Direct Bank Feed Service.

- (j) Indemnification. The Customer and the Client agree to protect and fully compensate the Supplying Parties and their affiliates from any and all third party claims, liability, damages, expenses and costs (including, but not limited to, reasonable attorneys' fees) caused by or arising from the Customer's and Client's use of the Direct Bank Feed Service, the Customer or the Client's violation of the terms in this clause 9 or the Customer's or the Client's infringement, or infringement by any other user of a My Digital Account, of any intellectual property or other right of anyone.

## **10. Supplier's obligations**

10.1 MDA shall provide the Services and any other services supplied under the contract substantially in accordance with the Documentation with reasonable skill and care.

10.2 Clause 10.1 shall not apply to the extent of any non-conformance which is caused by:

- (a) use of the Services and any other services supplied under the contract contrary to MDA's instructions;
- (b) modification or alteration of the Services or any other services supplied under the contract by any party other than MDA or MDA's duly authorised contractors or agents;
- (c) the Customer's or Client's breach of the contract (or any Third Party Terms);
- (d) use of the Services for any purpose other than the Purpose.

10.3 If the Services or any other services supplied under the contract do not conform with clause 10.1, 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 clause 10.1.

10.4 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.

10.5 The 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 the contract.

10.6 MDA warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the contract.

## **11. Customer's obligations**

11.1 The Customer shall (and shall procure that each Authorised User and each Client shall):

(a) provide MDA with:

(i) all necessary co-operation in relation to the contract; and

(ii) all necessary access to such information as may be required by MDA;

in order to provide the Services, the Training, Implementation and Configuration Services and any other services to be supplied under the contract, including Customer Data, security access information and configuration services;

(b) comply with all applicable laws and regulations with respect to its activities under the contract;

(c) carry out all other Customer and Client responsibilities set out in the contract and the Project Plan in a timely and efficient manner (and MDA shall be relieved from the performance of and liability for breach of its obligations to the extent attributable to the Customer's breach of the contract or failure to perform the Customer responsibilities in a timely and efficient manner);

(d) obtain and shall maintain all necessary licences, consents, and permissions necessary for MDA, its contractors and agents to perform their obligations under the contract, including without limitation the Services;

(e) ensure that its network and systems comply with the relevant specifications provided by MDA from time to time; and

(f) be solely responsible for procuring and maintaining 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.

11.2 The Customer shall:

(a) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the contract and shall be responsible for any Authorised User's breach of the contract;

(b) where applicable, only access a Client's My Digital Account by using a password and username which that Client has expressly authorised the Customer to use in writing;

- (c) only use the Services on behalf of the Client whose My Digital Account the Customer is accessing and solely for money management purposes relating to that Client's own business which are legal;
- (d) ensure that each Client is aware of the terms and conditions and policies subject to which the Services are made available before using them on behalf of a Client (including Third Party Services);
- (e) procure an irrevocable written authorisation from each Client which grants the Customer the right to use the Services on and subject to the terms and conditions of the contract for the benefit of the Client and provide a copy of the Client's written authorisation to MDA upon request (and shall procure that the Client shall do all things which are required by MDA or a third party to comply with the terms of the contract including the grant of any necessary powers of attorney); and
- (f) ensure that each Client complies with the terms of the contract applicable to the Customer as if it were a party to it.

11.3 The Customer shall not (and shall procure that Authorised Users and the Client shall not);

- (a) do anything which could reasonably be expected to damage, disable, overburden, or materially impair the Services or the Website or which is likely to interfere with any other party's use or enjoyment of the Services; and/or
- (b) question or dispute MDA's ownership of the intellectual property rights in the Services or any other services supplied under the contract, the Documentation and the Website.
- (c) employ the services of any employee, contractor, consultant or any associates of MDA either directly or through any third party to undertake work of a similar nature during the term of the contract or on termination of the contract and thereafter for a period of 24 months.

## 12. Charges and payment

12.1 The Customer shall pay to MDA:

- (a) the Training, Implementation and Configuration Fees in relation to the Training, Implementation and Configuration Services; and
  - (b) the Subscription Fees for the User Subscriptions,
  - (c) where the Services include the App, the App Fees;
  - (d) the Quicksight Fees in relation to the Quicksight Services (if any);
  - (e) expenses incurred in relation to the Services,
- in accordance with this clause 12.

12.2 The:

- (a) Training, Implementation and Configuration Fees shall be paid on the date specified in the Order Form (the **Due Date**) and MDA will generally raise an invoice for the Training, Implementation and Configuration Fees on the date of the Order Form and; and
- (b) Subscription Fees and the App Fees shall be paid in relation to each Billing Period in arrear by the Customer by no later than 7 days of the date of invoice (the **Due Date**) and MDA will generally raise an invoice for the App Fees and the Subscription Fees on the Monday following the first Friday of each calendar month; *(Note: a weekly payslip covers 1 pay interval, i.e. 1 week of tax allowances and a monthly payslip covers 4 or 5 pay intervals, i.e. 4 or 5 weeks of tax allowances, depending on the Billing Period.)* and
- (c) Quicksight Fees shall be payable on the same date as the Subscription Fees and the App Fees (the **Due Date**),

and all fees due from the Customer under the contract shall be paid in full and received in cleared funds by MDA on or before the Due Date without application of any right of set-off, counterclaim, deduction or abatement.

12.3 The Customer acknowledges and agrees that:

- (a) the Subscription Fees shall be calculated in relation to each Billing Period in arrears based on the User Subscriptions during that Billing Period, subject always to the liability of the Customer to pay the Minimum Subscription Fee in relation to each Billing Period where such minimum fee is greater than the Subscription Fees for that Billing Period; and
- (b) the Subscription Fees shall be payable from Go Live save where the Agreed Go Live Date is delayed as a result of the Customer's negligence, failure to perform or delay in the performance of any of its obligations under the contract or by reason of a request from the Customer to delay Go Live, in which case MDA may, at its sole discretion, require the Customer to pay the Minimum Subscription Fees from the Agreed Go Live Date.

12.4 The Customer acknowledges and agrees that payment of the Training, Implementation and Configuration Fees and the Subscription Fees by the Due Date is of the essence of the contract.

12.5 Any required travel, accommodation and subsistence expenses will be an additional expense payable by the Customer and will be agreed in advance between the Customer and MDA and added to the next invoice submitted by MDA in relation to Subscription Fees and shall be payable in accordance with clause 12.2(b).

12.6 If MDA has not received payment on the Due Date, and without prejudice to any other rights and remedies of MDA:

- (a) MDA may, without any obligation to notify or liability to the Customer, disable the Customer's password, account and access to all or any part of the Services and My Digital Accounts 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 weekly basis on such due amounts at a rate of 0.5% per week, commencing on the Due Date and continuing until fully paid, whether before or after judgment.
- 12.7 In respect of any additional fees which are agreed pursuant to a Statement of Work (including, but not limited to, in relation to any Consultancy Services), such fees shall be paid on the date specified on the Statement of Work (and where no date is specified, 25% of the fees shall be paid 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).
- 12.8 All amounts and fees stated or referred to in the contract:
  - (a) shall be payable in pounds sterling;
  - (b) are, subject to clause 16.7(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 and paid in addition.
- 12.9 The Subscription Fees and other rates or amounts set out in the contract are fixed for the Initial Subscription Term. After the Initial Subscription Term, the Subscription Fees and such rates will be as notified by MDA to the Customer (and in the absence of any notification, the Subscription Fees shall be as displayed on the Website until such time as MDA notifies the Customer of the applicable changes).
- 13. Proprietary rights**
- 13.1 The Customer acknowledges and agrees that MDA and/or its licensors own all intellectual property rights in the Services, any other services supplied under the contract and the Documentation. Except as expressly stated herein, the contract does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services, such services or the Documentation.
- 13.2 MDA warrants that it has all the rights in relation to the Services, any other services to be supplied under the contract and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the contract.
- 14. Confidentiality**
- 14.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the 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;
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 14.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, 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 the contract.
- 14.3 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 the contract.
- 14.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 14.5 The Customer acknowledges that details of the Services, any other services supplied under the contract including, but not limited to, the Subscription Fees payable in relation to such Services and the results of any performance tests of the Services and any such services, constitute MDA's Confidential Information.
- 14.6 MDA acknowledges that the Customer Data is the Confidential Information of the Customer.
- 14.7 This clause 14 shall survive termination of the contract, however arising.
- 14.8 No party shall make, or permit any person to make, any public announcement concerning the 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.

## **15. Indemnity**

- 15.1 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, any other services supplied under the contract, the Documentation and/or Third Party Services;
  - (b) any breach of the contract including any policies referred to in the contract (and including any claim made by or on behalf of a Client against MDA arising from the Customer's breach of the contract ), excluding any breach by MDA;
  - (c) any breach of any Third Party Terms, excluding any breach by MDA;

- (d) any failure to comply with applicable laws or regulations, the requirements of any regulatory authority or any court Order, excluding any failure by MDA; and/or
  - (e) the infringement of any third party rights (including the rights of any Client), other than by MDA;
  - (f) any act or omission of the Customer or the Client which puts MDA in breach of applicable laws and regulations, the requirements of a regulatory authority, court order or in breach of any contract with any service provider which MDA contracts with to provide the Services or any other services provided under the contract,
  - (g) 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.
- 15.2 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.
- 15.3 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 the contract immediately on notice in writing to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 15.4 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) any breach of the contract; or
  - (d) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from MDA or any appropriate authority.

15.5 Clauses 15.2, 15.3 and 16.7(b) state 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.

## **16. Limitation of liability**

16.1 The Customer acknowledges and agrees (and shall procure that the Client acknowledges and agrees) that:

(a) the Services have not been developed to meet the Customer's or the Client's individual requirements, and that it is therefore the Customer's and the Client's responsibility to ensure that the facilities and functions of the Services as described in the Documentation meet the Customer's and the Client's requirements;

(b) it is the Customer's and each Client's responsibility to ensure that any information which is submitted using the Services is backed-up or a copy retained and that the Services are not intended to act as the sole repository for all of the Customer's and/or Client's information;

(c) all information which is provided by the Services shall be checked by the Customer and the Client before acting or relying on it and the Services are not intended to be a substitute for professional accountancy and tax advice and the information provided by our Services does not constitute accountancy or tax advice;

(d) as the Services are software-enabled and provided over the internet, the Services are not error-free and may suffer from minor defects and bugs, will not be available on a 24/7/365 basis (and no guarantee is provided as to the availability, speed or performance of the Services) and MDA does not guarantee that the Services will be free from Viruses (but it will use industry standard software to detect and eradicate Viruses, where reasonably possible).

16.2 This clause 16 sets out the entire financial liability of MDA (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

(a) arising under or in connection with the contract;

(b) in respect of any use made by the Customer of the Services and Documentation or any part of them; and

(c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the contract.

16.3 Except as expressly and specifically provided in the contract:

(a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, 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 in connection with the Services, or any actions taken by MDA at the Customer's direction;

- (b) 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 the contract; and
  - (c) the Services and the Documentation are provided to the Customer on an "as is" and "as available" basis.
- 16.4 Nothing in the contract excludes the liability of MDA:
  - (a) for death or personal injury caused by MDA's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 16.5 If MDA fails to comply with any of the Service Levels then, subject to the terms of the contract, the Customer shall become entitled to the Service Credit specified in Schedule 1 corresponding to the relevant failure. The parties acknowledge that each Service Credit is a genuine pre-estimate of the loss likely to be suffered by the Customer and not a penalty and the provision of a Service Credit shall be an exclusive remedy for a particular Service Level failure.
- 16.6 If MDA's performance of its obligations under the contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay (including, but not limited to, any Service Credit, that would have been payable as a result of such prevention or delay).
- 16.7 Subject to clauses 16.3, 16.4 and 16.5:
  - (a) MDA shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any of the following losses or damage (howsoever arising):
    - (i) loss of profits;
    - (ii) loss of business;
    - (iii) depletion of goodwill and/or similar losses or loss;
    - (iv) loss of, damage to or corruption of data or information;
    - (v) fines (including fines levied by a regulatory authority or tax authority) or any costs, expenses or interest;
    - (vi) pure economic loss; or
    - (vii) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the contract; and
  - (b) MDA's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the greater of:

- (i) £5,000 in each Contract Year; or
- (ii) in each Contract Year:
  - (A) the total Subscription Fees paid or payable for the User Subscriptions in such Contract Year where such liability arises in connection with the performance or contemplated performance of the contract in relation to the Services; and
  - (B) where such liability arises in connection with the performance or contemplated performance of the contract in relation to services provided under the contract other than the Services, the total fees paid or payable for such services.

## **17. Suspension and cancellation of My Digital Account**

- 17.1 The Customer can close a My Digital Account in relation to a particular PSC Client at any time by notifying MDA in writing. Subject to the receipt of the Subscription Fees for the My Digital Account for the current Billing Period, no further Subscription Fees will be billed for the closed My Digital Account and no refund will be made of any Subscription Fees already billed and paid in respect of the closed My Digital Account.
- 17.2 MDA may suspend access to or use of the Services or permanently cancel a My Digital Account in the event that:
- (a) the Customer or the Client fails to comply with:
    - (i) the contract;
    - (ii) any of the policies referred to in the contract;
    - (iii) any Third Party Terms;
  - (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;
  - (c) payment of the Subscription Fees is not paid by the Due Date (or any other fees are not paid by the agreed date).
- 17.3 In respect of any suspension or cancellation by MDA pursuant to clause 17.2, no refund of any Subscription Fees for the My Digital Account shall be paid (and the Customer shall be responsible for the payment of twelve (12) months' fees for each suspended or cancelled My Digital Account).

## 18. Non solicitation

- 18.1 The Customer shall not, without the prior written consent of MDA, at any time from the Effective Date until the expiry of 12 months after termination or expiry of the contract, solicit or entice away from the employment of MDA or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of MDA in relation to the provision of the Services at any time.
- 18.2 If the Customer breaches clause 18.1, the Customer agrees to pay on demand to MDA the sum equal to one-year's salary of such employee or sub-contractor, (plus VAT if applicable), it being agreed by the parties that such sum represents a genuine pre-estimate of the loss that MDA would suffer in the event of such breach.

## 19. Term and termination

- 19.1 The contract shall, unless otherwise terminated as provided in this clause 19, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, the contract shall be automatically renewed for successive periods of twelve (12) months (each a "**Renewal Period**"), unless:

- (a) either party notifies the other party of termination, in writing, at least 6 months before the end of the Initial Subscription Term or any Renewal Period, in which case the contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of the contract,

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "**Subscription Term**".

- 19.2 Without affecting any other right or remedy available to it, either party may terminate the 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 the 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 19.2(b) to clause 19.2(h) (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.
- 19.3 Without affecting any other right or remedy available to it, MDA may terminate the contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the contract on the Due Date;
  - (b) the Customer fails to comply with clause 4;
  - (c) a Client does not comply with any of the terms of the contract;
  - (d) the Customer (or a Client) fails to comply with the Third Party Terms;
  - (e) there is a Change of Control of the Customer.
- 19.4 The Customer may terminate the Quicksight Services by giving notice to MDA and MDA shall cease to supply the Quicksight Services on expiry of the Billing Period following the Billing Period during which such notice was given and the Quicksight Fees shall cease with effect from such date.
- 19.5 On termination of the contract for any reason:
- (a) the Customer shall immediately pay to MDA all of MDA's outstanding unpaid invoices and interest and, without prejudice to clause 19.5(f), in respect of any services for which no invoice has been submitted, MDA may submit an invoice, which shall be payable immediately on receipt;
  - (b) all rights and licences granted under the contract shall immediately terminate (including any right to access and use the Services and each My Digital Account);

- (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 unless MDA receives, no later than ten (10) days after the effective date of the termination of the 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 thirty (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 the agreement which existed at or before the date of termination shall not be affected or prejudiced; and
- (f) without prejudice to any other rights or remedies of MDA, in the event of termination other than in accordance with clause 19.1(a) or by the Customer in accordance with clause 19.2, 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 Subscription Term or the current Renewal Period.

## **20. Communication between us**

The Customer may contact MDA by e-mail sent to [admin@mydigitalaccounts.com](mailto:admin@mydigitalaccounts.com) or by prepaid post to MDA at Springfield House, Water Lane, Wilmslow, SK9 5BG. MDA will confirm receipt of this by contacting the Customer in writing, normally by e-mail. MDA may change the address for notice from time to time and will either notify the Customer of any change (normally by e-mail) or by publishing updated details on the Website.

## **21. Events outside our control**

MDA shall have no liability to the Customer or each Client under the contract if it is prevented from or delayed in performing its obligations under the 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, unavailability 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.

## **22. Conflict**

If there is an inconsistency between:

- (a) any of the provisions in the main body of the contract and the Schedules, the provisions in the main body of the contract shall prevail;

(b)

- (i) the Order Form;
- (ii) a Statement of Works; and
- (iii) these Terms,

a term contained in a document higher in the list shall have priority over the one contained in a document lower in the list.

### **23. Waiver**

No failure or delay by a party to exercise any right or remedy provided under the 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.

### **24. Rights and remedies**

Except as expressly provided in the contract, the rights and remedies provided under the contract are in addition to, and not exclusive of, any rights or remedies provided by law.

### **25. Severance**

25.1 If any provision (or part of a provision) of the contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

25.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

### **26. Further assurance**

The Customer shall (and shall procure that each Client shall) diligently and promptly following MDA's reasonable request, do all such things (including an obligation to co-operate in good faith with MDA and any third party which it nominates), perform all such acts and sign all such documents as MDA considers to be necessary for the Customer and each Client to comply with the terms of the contract and any Third Party Terms or which is required for MDA to comply with any lawful requirement of a regulatory authority or law enforcement agency, any court Order or the terms of any contract to which MDA is a party and which is necessary for the provision of the Services.

### **27. Entire agreement**

27.1 The contract and any documents referred to in it, constitute the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

27.2 Each of the parties acknowledges and agrees that in entering into the contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding

(whether in writing or not) of any person (whether party to the contract or not) relating to the subject matter of the contract, other than as expressly set out in the contract.

## **28. Assignment**

- 28.1 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 the contract.
- 28.2 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 the contract.

## **29. No partnership or agency**

Nothing in the 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).

## **30. Third party rights**

- 30.1 Subject to clause 30.2, the contract does not confer any rights on any person or party (other than the parties to the contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 30.2 Each Client and each third party supplier of MDA, including the Supplying Parties as set out in clause 9 (each, a "**Permitted Third Party**"), shall have the right to enforce the terms of the contract against the Customer, provided that the consent of a Permitted Third Party shall not be required to amend the terms of the contract or to rescind the contract.
- 30.3 The Customer shall ensure that the Supplying Parties as set out in clause 9 shall have third party beneficiary rights against each Client which uses the Direct Bank Feed Service for any breach of clause 9.

## **31. Notices**

- 31.1 Any notice required to be given under the 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 the contract (and where such notice is sent by the Customer, with a copy to the e-mail or postal address detailed in clause 20), or such other address as may have been notified by that party for such purposes
- 31.2 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.

**32. Governing law**

The 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.

**33. 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 the contract or its subject matter or formation (including non-contractual disputes or claims).

**Schedule 1**

**Service Level Agreement**

**1. Support Requests**

1.1 The Customer may make a Support Request for problems or issues with the Services in accordance with the Support Services Policy. MDA will prioritise Support Requests based on its assessment of the severity level of the problem or issue reported being made.

1.2 The Support Services Policy is currently shown at the following link and Support Requests can be raised using the same link: <https://mydigitalaccounts.atlassian.net/servicedesk/customer/portal/2> Based on the severity level assigned to a Support Request, MDA will use commercially reasonable endeavours to respond to and resolve a Support Requests in accordance with the times set out below:

Severity	Definition	Response Time	Resolution Times
1	A critical error or failure of the Services that prevents payrolls from being run and which: a) material impacts the operations of the Customer's business; or b) disables major functions of the Services from being performed.	1 hour	1 day
2	a) a critical error or failure of the Services for which a work-around exists; or b) a non-critical error or failure of the Services that materially impacts on the operations of the Customer's business.	2 hours	5 days
3	An error or failure of the Services that: a) does not significantly affect functionality; b) may disable only certain non-essential functions; or c) does not materially impact the Customer's business.	5 hours	10 days
4	Any isolated, minor or cosmetic errors.	2 days	As agreed between the parties.

1.3 When measuring compliance with these time periods:

- (a) response times run from when a Support Request is received by MDA;
  - (b) resolution times do include time during which MDA is waiting for input from the Customer or waiting for the Customer to undertake requested actions; and
  - (c) response times and resolution times are measured on Business Days and during Normal Working Hours only.
- 1.4 Where MDA is to provide a resolution for a Support Request, such resolution would include the provision by MDA of a reasonable workaround which does not materially impact on the Customer's operations.
- 1.5 The response and resolution times set out above shall not apply where the Support Request relates to a problem or issue which is as a result of:
- (a) the Customer's breach of the Agreement;
  - (b) any third party software, applications or hardware;
  - (c) any matter which is excluded under the Support Services Policy; or
  - (d) any other cause which is outside of MDA's reasonable control.

**2. Service Credits**

Where MDA has failed to provide a resolution for a Support Request in accordance with the resolution times as set out in paragraph 1.2, the Customer may be entitled to service credits as follows:

Severity	Service Credit
1	<p>In relation to Severity 1 Support Request for which MDA fails to provide a resolution in accordance with the required timescale above:</p> <p><u>for issues or problems which affect Umbrella Clients:</u></p> <ul style="list-style-type: none"> <li>• An amount equal to 50% of the Subscription Fees applicable to each Umbrella Client affected by the problem or issue which is payable in respect of the week of the Billing Period in which the problem or issue occurs</li> </ul> <p><u>for issues or problems which affect PSC Clients:</u></p> <ul style="list-style-type: none"> <li>• An amount equal to 25% of the Subscription Fees applicable to each PSC Client affected by the problem or issue which is payable in respect of Billing Period in which the problem or issue occurs</li> </ul>
2	<p>In relation to Severity 2 Support Request for which MDA fails to provide a resolution in accordance with the required timescale above:</p> <p><u>for issues or problems which affect Umbrella Clients:</u></p> <ul style="list-style-type: none"> <li>• An amount equal to 25% of the Subscription Fees applicable to each Umbrella Client affected by the problem or issue which is payable in respect of the week in the Billing Period in which the problem or issue</li> </ul>

	<p>occurs</p> <p><u>for issues or problems which affect PSC Clients:</u></p> <ul style="list-style-type: none"> <li>An amount equal to 12.5% of the Subscription Fees applicable to each PSC Client affected by the problem or issue which is payable in respect of the Billing Period in which the problem or issue occurs</li> </ul>
3	Not applicable.
4	Not applicable.

- 2.1 The total service credits payable in respect of any Billing Period shall not exceed a maximum of 50% of the total Subscription Fees paid in respect of that Billing Period.
- 2.2 To be entitled to service credits, the Customer must notify MDA of any claim for service credits, which will then be assessed by MDA. Any claim for service credits must be made within thirty (30) days of the end of the Billing Period to which they relate.
- 2.3 For the avoidance of doubt, service credits will not be payable where the Support Request relates to a problem or issue which is as a result of those matters set out in paragraph 1.5.
- 2.4 Any service credits shall be shown as a deduction from the amount due from the Customer in the next invoice then due to be issued under the agreement. The Supplier shall not in any circumstances be obliged to pay any money or make any refund to the Customer.
- 2.5 The service credit mechanism above is the Customer's exclusive remedy for any failure of MDA to provide the Services in accordance with the SLA as required under clause 6.1 or any failure to make the services available as required under clause 6.2.

**Appendix**

**Third Party Terms**

The following Third Party Terms are applicable as of the Effective Date:

<b>Service</b>	<b>Third Party Terms</b>
Direct Bank Feed Services	<a href="http://www.yodlee.com/privacy-notice/">http://www.yodlee.com/privacy-notice/</a>