

1. DEFINITIONS

In these Conditions:

“**Confidential Information**” means the Contract and all information obtained by one party from the other under the Contract.

“**Contract**” means the agreement for the supply of Services.

“**Client**” means the legal entity for whom the Company has agreed to provide the Services by these Conditions.

“**Company**” means “MBS IT Ltd” a company registered in England and Wales with number 817 66 91 whose registered office is at Crewe Alex Football Club, The Railwaymen Suite (Old Ticket Office), Gresty Road, Crewe, Cheshire, CW26EB.

“**Engagement Instruction**” means the Contract.

“**Services**” means the services to be provided by the Company to the Client, as set out in the Contract, by these Conditions.

“**Writing**” includes facsimile transmissions and e-mails.

1.2 In these Conditions words importing gender include each other gender; references to persons include individuals, bodies corporate, firms and unincorporated associations; the singular includes the plural and vice versa; and references to clauses are to clauses of these Conditions.

1.3 References to all or any part of any statute or statutory instrument include any statutory amendment, modification or re-enactment in force from time to time and references to any statute include any statutory instrument or regulation made under it.

1.4 The headings in these Conditions are included for convenience only and shall not affect their interpretation.

2. BASIS OF AGREEMENT

2.1 The Company shall provide the Services to the Client subject to these Conditions, which shall govern the Contract to the exclusion of any other terms put forward by the Client.

2.2 No variation of these Conditions shall be binding unless agreed in Writing between the Client and a duly authorized representative of the Company.

2.3 The Company’s employees and agents are not authorized to make any representations concerning the Services unless confirmed by a duly authorized representative of the Company in Writing. In entering the Contract, the Client acknowledges that it does not rely on any such representations that are not so confirmed.

2.4 The Company may at any time correct without liability any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by it.

2.5 Where these Conditions conflict with the Contract or other agreed Engagement Instruction, the Engagement Instruction will apply.

3. ACCEPTANCE OF REQUESTS FOR SERVICES

3.1 All quotations made, and price lists supplied, by the Company shall be invitations to treat only.

3.2 No request for services submitted by the Client shall be deemed accepted, and the Contract shall not come into force, until the Company has dispatched a confirmation in Writing, signed by a duly authorized representative of the Company, to the Client stating that it has accepted the request for the services concerned.

3.3 No request for services which has been accepted by the Company shall be cancelled by the Client except with the agreement in Writing of the Company, signed by a duly authorized representative of the Company and in terms that the Client shall indemnify the Company in full against all loss, costs, damages, charges and expenses incurred by the Company.

3.4 The Company reserves the right to accept, refuse, modify or renegotiate the request for services in the event of any conditions arising which affect the charges, quotes or procedures of the Company, and are beyond the Company's control.

3.5 The Client shall be responsible to the Company for ensuring the accuracy of the terms of any request for services (including any applicable specification) submitted by the Client and for giving the Company the necessary information relating to the Services within a sufficient time to enable the Company to perform the Contract by its terms.

3.6 The description of, and any specification for, the Services shall be those set out in the Company's quotation (if accepted by the Client) or the Client's request for services (if accepted by the Company). In the event of any inconsistency, the latter shall prevail.

3.7 The Company reserves the right to make any changes to the specification of the Services which are required to conform with any applicable safety or other statutory requirements.

4 THE COMPANY'S UNDERTAKINGS

4.1 Subject to payment of the requisite charge the Company shall provide the Client with the Services as specified in the Contract.

4.2 The Company shall devote to its obligations set out in the Contract such of its time, attention, expertise and skill as may be necessary for the proper performance of those obligations by the standards generally observed in the industry for similar services provided with reasonable skill and care. For the avoidance of doubt, the obligation set out in this clause does not negate or in any way vary the Company's obligations to the Client under the Supply of Goods and Services Act 1982.

4.3 The Company undertakes to use its reasonable endeavors to provide the Services by the time schedules agreed to between the Client and the Company provided always that time shall not be of the essence in this regard.

4.4 While the Company's method of work is its own, the Company shall comply with the reasonable requests of the Client.

4.5 The Company shall assign to the Services for the duration of the Contract only such personnel as are qualified, skilled and experienced in their several professions, trades and callings.

4.6 Subject to clause 8.3, the Company shall use its reasonable endeavours to ensure that the personnel it has assigned to the Services continue in the functions and responsibilities to which they are initially assigned for the duration of the Contract. However, if for any reason, including at the reasonable request of the Client, any person employed in carrying out the Services ceases to carry out the Services, the Company will use its reasonable endeavours to provide as promptly as possible in the circumstances a suitable substitute.

4.7 The Company shall make an additional charge by its standard scale of charges from time to time in force for any services provided by the Company.

(a) at the request of the Client but which the Company is not required to provide or

(b) at the request of the Client but which the Company finds is not necessary

For the avoidance of doubt, nothing in this clause shall impose any obligation on the Company to provide services which the Company is not specifically contracted to provide, as set out in the Contract.

4.8 Where the Contract includes a description of “unlimited” this relates to the number of times the Company is obligated to resolve any matters arising under the Contract. This will be subject to a “fair use” policy were the same or similar matter is required to be dealt with by the Company repeatedly because of an issue with the client’s equipment or processes, the Company will continue to provide time and personnel to resolve that matter under the terms of the Contract but will levy an additional charge to the Client based on the Company’s standard hourly and/or other charges in respect of the excess occurrences.

5. CLIENT’S OBLIGATIONS

5.1 In addition to its obligations set out elsewhere in these Conditions, and as set out in the Contract, the Client shall:

(a) make available to the Company such office and work areas as may be necessary to perform the Services.

(b) provide, where necessary, a suitable parking facility for use by the Company’s personnel when visiting the Client’s premises, which is free from any legal restrictions.

(c) maintain in place all proper and usual insurances for the Client's property or otherwise where the Client requires the Company’s personnel to provide the Services, and any equipment, fixtures and fittings of the Client or otherwise on which the Company’s personnel may be required to provide the Services, in respect of liability to customers, staff and the Company’s personnel and other visitors to the Client's property or otherwise, where the Client requires the Company’s personnel to provide the Services, and employer's liability insurance, as may be necessary to provide full cover against such risks and to produce the policies and receipts for current premiums to the Company for inspection upon reasonable notice.

(d) ensure that its employees co-operate fully with the Company's personnel about the provision of the Services and that such employees will be qualified to carry out any tasks which may be assigned to them about the performance of the Services or otherwise as required under the Contract.

(e) promptly furnish the Company with such information and documents as it may reasonably request for the proper performance of its obligations under the Contract and be responsible for ensuring that such information is true, accurate, complete and not misleading in any material respect.

5.2 If the Client shall fail to perform any of its obligations under the Contract, then the Company will not be responsible for any delay, cost, expense or other consequences arising from such failure, and the Client shall reimburse the Company for all costs and expenses incurred as a direct or indirect result of such failure.

6. PERSONNEL

6.1 The Client and the Company shall each appoint a representative who shall have full authority to take all necessary decisions relating to the provision of the Services including the written variation of the Contract.

6.2 The Client and the Company shall procure that their representatives shall meet, on such occasions as are reasonably appropriate, during the continuance of the Contract to discuss and minute the Services.

7. FEES, EXPENSES AND PAYMENT

7.1 The Client shall pay the Company for the time spent by the Company's employees and sub-contractors in providing the Services at the charge-out rates (on either an hourly or a daily or other basis, as notified by the Company to the Client from time to time) in respect of the functional responsibilities designated for the employee or sub-contractor utilised to provide the Services as notified by the Company to the Client from time to time, or otherwise on a fixed fee basis as provided in the Contract.

7.2 The charge-out rates (on either an hourly or a daily or other basis, as notified by the Company to the Client from time to time) for any additional Services that the Client wishes the Company to provide (in accordance with clause 4.7) from time to time shall be as notified in Writing to the Client by the Company.

7.3 In addition, all costs and expenses incurred by the Company in providing the Services will be payable by the Client. Costs and expenses include but are not limited to, local and national travel, hotel accommodation and subsistence, and support costs. Travel expenses will include mileage by car at the current HMRC rates and standard train fares.

7.4 Unless otherwise agreed in Writing between the Client and a duly authorised representative of the Company, the Company shall be entitled at any time and from time to time to vary any or all of such charge-out rates to accord with its standard scale rates in force from time to time, provided that no such variation shall have effect unless and until notice in Writing thereof is given to the Client. The Company shall endeavour to provide a minimum of one month's notice to the Client of any change in respect of this Clause.

7.5 The Company shall render invoices, in line with an agreed schedule (together with relevant expenses, receipts or vouchers) to the Client in respect of the said charges and shall show any Value Added Tax separately on such invoices.

7.6 Unless otherwise stated in the Contract, payment for services by the Client must be made as follows:

(i) For single fee Contracts:

- (1) 100% of the agreed Contract Fee plus VAT at least when placing an order with MBS IT Ltd.
- (2) Where staged payments of a Contract fee plus VAT have been agreed, such staged payments must be made on or before the agreed payment date as stated on the invoice via a bank payment facility, such as BACS.

(ii) For retainer Contracts:

- (1) Where monthly support services have been agreed, payment of such must be made on or before the agreed payment date as stated on the invoice via a bank payment facility such as BACS.

7.7 All charges payable by the Client shall be paid after receipt by the Client of the Company's invoice or as otherwise agreed in Writing between the Client and the Company, and without any set-off or other deductions whatsoever, by banker's draft, electronic payment to a bank account designated by the Company or other cleared funds.

7.8 If the Client fails to make any payment on the due date, then without prejudice to any other right or remedy available to it, the Company may:

- (a) cancel the Contract and cease the provision of the Services to the Client.
- (b) suspend the provision of the Services to the Client.
- (c) appropriate any payment made by the Client to such invoices as the Company may think fit (notwithstanding any purported appropriation by the Client).
- (d) charge the Client interest (both before and after judgment) on the amount outstanding daily at the rate of [15] % per annum above the Bank of England base lending rate from time to time in force until all outstanding amounts are paid in full and/or
- e) bring an action against the Client for recovery of the invoice value.
- f) Charge £25 per statement after the first 30-day statement has been sent.
- g) To levy an administration charge of £75 or 15% of the outstanding invoice value whichever is greater.

7.9 If the recovery of any sums outstanding from the Client to the Company is passed to a debt collection agency, the Client shall pay on an indemnity basis the Company's costs incurred in instructing such debt collection agency and all legal and other costs ancillary thereto.

8. VARIATION OR SUSPENSION OF THE SERVICES

8.1 In the event that a change to the nature or scope of the Services is identified as being desirable by either the Company or the Client, a request may be submitted to the other party to effect such change. Any such request shall be sufficiently detailed to enable the other party to assess the impact of the proposed change, and no such change will become effective until agreed in Writing between the Client and a duly authorised representative of the Company.

8.2 When expedited performance or completion of the Services, or any part thereof, is requested by the Client and agreed to by the Company, the Client shall pay to the Company any additional costs incurred for such expedited performance or completion.

8.3 If the performance of the Contract is suspended at the request of the Client, or delayed through default of the Client for 14 days or more, the Company shall be entitled to invoice the Client for any additional costs thereby incurred, and the Company shall not be obliged to make available the same personnel to perform the contract after the suspension or delay as performed before the suspension or delay.

8.4 If the performance of the Contract is suspended at the request of the Client for 14 days or more, the Company shall be entitled to terminate the Contract by immediate notice in writing.

8.5 If the Company or the Client wishes to terminate a retainer Contract, termination shall be made in writing on one month's notice. Any invoice due and payable within the notice period by the Client will still be due and payable.

8.6 Where a schedule of delivery and specific dates have been agreed upon (including a single fee Contract) and the Client terminates the Contract or asks the Company to provide the Services on an alternative date the following charges shall be paid by the Client:

Where Hardware has been ordered and/or is at the MBS IT site awaiting delivery/ installation. 100% of the hardware is payable. This would be the case at any time during the pre-order and installation period.

Where a change is requested up to 2 weeks before the start date, 50% of the agreed fee shall be payable (excludes mileage charge) and 100% of any hardware that has been dispatched by the supplier.

Where a change is requested up to 1week before the start date, 75% of the agreed fee shall be payable (excludes mileage charge) and 100% of any hardware that has been dispatched by the supplier.

Where a change is requested less than one week before the start date 100% of the agreed fee shall be payable (excludes mileage charge) and 100% of any hardware that has been dispatched by the supplier.

8.7 Where the Contract is cancelled before the end of any minimum term(s) under the provisions of this Clause, the Client will remain liable for the payment of the costs for any unexpired minimum period relating to the provision of Services by the Company sourced through a third party. An example of this would be the provision of software licenses by the Company to the Client as provided by a third party. This example is not meant to be in any way limiting such third-party provisions. An invoice for the costs of the unexpired minimum period of third-party services will be issued to the client on termination or suspension of the Contract which will be payable within 30 days of the invoice date.

9. CONFIDENTIAL INFORMATION

The Client and the Company shall treat as confidential all Confidential Information. Each of the Client and the Company shall ensure that its employees are aware of and comply with the provisions of this clause.

We will not sell or disclose any personal information to any third party, whether this is for marketing or advertising purposes. We would gather your consent if this unlikely event arose. However, we may disclose your information within the NGL Technology Ltd corporate entity to comply with any legal necessity regarding any User Agreements and to assist with our marketing and advertising activity. Your personal information may also be shared if we are required by law to detect, prevent or investigate any illegal or fraudulent activity that may be related to our services. At all times we will minimise the amount of personal information we disclose and will only share what is relevant and deemed a necessity for the purpose gained.

The foregoing obligations as to confidentiality shall survive any termination or expiry of the Contract.

10. DATA PROTECTION

10.1 The Company shall comply with the Data Protection Act 2018 (DPA 2018), the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) and any other subsequent applicable laws or regulations relating to the processing of personal data (together, the "Data Protection Legalisation"). In performing the Services under the Contract, the Company may process (albeit for diagnostic or investigative purposes only) personal data belonging to the Client. The Company warrants to the Client that in such circumstances it will in respect of such personal data observe all the obligations of a data processor under the Data Protection Act 2018 and will indemnify the Client against all breaches of the Data Protection Act 2018 by the Company in respect of the Client's data.

10.2 The Client undertakes to the Company that about such personal data, it will observe any recommendations made or guidance given by the Data Protection Commissioner, and it will comply at all times with the provisions of the Data Protection Act 2018 and all regulations and requests for services made under that Act.

10.3 Our Privacy Policy and opt-out may be viewed at <https://mbsit.co.uk/terms/privacy-policy.pdf> and [privacy-policy.pdf](#) and is subject to change with no notice.

11. WARRANTIES AND LIABILITIES

11.1 The Company shall use its reasonable endeavours to provide the Services set out in the Contract, Engagement Instruction or the relevant specification or otherwise agreed between the Client and the Company in Writing by the terms of these Conditions, and as far as reasonably possible, at the intervals and within the time frames agreed to between the Client and the Company, but time will not be of the essence in respect of the provision of the Services.

11.2 Subject to clause 11.7, where the provision of the Services (or any part of such provision) is shown to the reasonable satisfaction of the Company to be defective for any reason (including negligence) within a period of 90 days from the date of the original provision, the Company's liability (if any) shall be limited at its sole discretion to either:

- (a) provide additional services sufficient to rectify any such defect to the Client free of charge or
- (b) refund to the Client the appropriate proportion of the charges in respect of the Services or
- (c) grant to the Client a reasonable allowance in respect of such defects.

in which case the Company shall have no further liability to the Client.

11.3 Notwithstanding clause 11.2, but subject to clause 11.7, the Company shall have no liability for any claim by the Client that is based on any defect in the provision of the Services unless the Client notifies the Company, in Writing, within 14 days of becoming aware of any defect in the Services provided.

11.4 Where the Company supplies in connection with the provision of the Services any goods or materials or other services supplied by a third party, the Company does not give any warranty, guarantee, undertaking or other commitment as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person who supplied the goods or materials or services to the Company.

11.5 The Company shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any material, goods or information supplied by the Client, which is incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.

11.6 Subject to clause 11.7, the Company shall have no liability for any loss, damage, costs, expenses or other claims sustained or incurred by the Client or any third party (including, without limitation any loss of use of the Client's computer / IT system or loss of or spoiling of the Client's data) occasioned by or as a result of delay in providing the Services except to the extent that such loss, damage, cost, expense or other claim arises from any unreasonable delay by the Company in providing the Services and then only to the extent not excluded by these Conditions.

11.7 Nothing in these Conditions shall exclude or restrict the Company's liability for death or personal injury as a result of its negligence or any other liability which cannot be limited or excluded by law (for which no limit applies).

11.8 Subject to clause 11.7, the Company shall not be liable to the Client because of any representation (unless fraudulent), or any implied warranty, condition or other term, or duty at common law, or under the express terms of the Contract or because of any breach of any of the foregoing, for:

- (a) any loss of profits or contracts, loss of goodwill or any special, indirect or consequential loss, whether arising from negligence, breach of contract or out of or in connection with the provision of the Services, or their use by the Client or howsoever otherwise; and/or

(b) any sum to the extent that it exceeds £250,000 in respect of any single incident or series of connected incidents.

11.9 The Client shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property right of any other person or any claim of libel or illegality which results from the Company's use of any specification, materials, goods or other information supplied by the Client.

11.10 Any suggestions or recommendations by the Company for any person to act, or in respect of any goods or services, are made in good faith but without any responsibility on the part of the Company.

11.11 The Company shall not be liable to the Client for any loss arising out of (and to the extent caused by) the Client's failure to keep full and up-to-date security copies of the computer programs and data it uses in accordance with best computing practice.

12. FORCE MAJEURE

The Company shall not be liable for any failure to carry out, or any delay in carrying out, the Services for any reason beyond its reasonable control, including (without limitation) acts of God, acts of terrorism, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute.

13. INSOLVENCY OF CLIENT

13.1 If:

(a) the Client makes any Voluntary Arrangement with its creditors or (being an individual) the Client becomes Bankrupt or (being a firm or partnership including a Limited Liability Partnership) any of its members becomes Bankrupt or proposes a Voluntary Arrangement or (being a company) the Client becomes subject to an Administration procedure or goes into any form of Liquidation or Reconstruction or any other process or procedure as defined in the Insolvency Act 1986 or other related Acts.

(b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client.

(c) the Client ceases, or threatens to cease, to carry on business; or

(d) the Company reasonably apprehends that any of the events mentioned above is about to occur about the Client and notifies the Client accordingly.

then without prejudice to its other rights and remedies under these Conditions and/or at law, the Company shall be entitled to cancel the Contract and/or suspend the provision of the Services under the Contract

without liability, and if the Services have been provided and not paid for, the fee for such shall immediately become due and payable.

14. CLIENT WARRANTY

The Client hereby warrants to the Company that the Client has not been induced to enter into the Contract by any prior representations or warranties, whether oral or in writing, except as specifically contained in the Contract and, by entering into the Contract, the Client irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in the Contract or for breach of any warranty not contained in the Contract (unless such misrepresentation or warranty was made fraudulently and was relied upon by the Client) and/or to rescind the Contract.

15. NON-SOLICITATION OF STAFF

The Client undertakes that it shall not during the continuance of the Contract and for one year following its expiry or termination employ or contract the services of any person who is or was employed or engaged by the Company at any time in the provision of the Services.

16. TITLE AND RISK

16.1 The title of all goods and other products ("Goods") supplied by the Company remains with the Company until all sums due under the contract have been paid in full.

16.2 Until title to the Goods has passed to the Client, the Client shall:

(a) store or otherwise hold the Goods separately from all other goods held by the Client so that they remain readily identifiable as the Company's property.

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods.

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery to or collection by the Client.

(d) notify the Company immediately if it becomes subject to any of the events listed in Clause 13.

(e) give the Company such information relating to the Goods as the Supplier may require from time to time.

16.3 The Client may not resell or use the Goods before the title to the Goods passes to the Client in accordance with this Clause unless otherwise agreed in writing between the Client and the Company.

16.4 If before title to the Goods passes to the Client the Client becomes subject to any of the events listed in Clause 13, then, without limiting any other right or remedy the Company may have, the Company may:

(a) require the Client to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

(b) if the Client fails to deliver the Goods within [2] working days of being required to do so, it will allow an authorised representative of the Company to enter any premises of the Client or of any third party where the Goods are stored in order to recover them.

17. GENERAL

17.1 The Contract is personal to the Client who may not assign, transfer, declare a trust in respect of, or otherwise dispose of any of its rights under the Contract to any other person without the prior consent in Writing of a duly authorised representative of the Company.

17.2 Except clause 17.6, nothing in these Conditions is expressly or impliedly intended to confer on any third party any right to enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.

17.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing and addressed to the Company at its registered office and to the Client at the address given on its request for services, or such other address as may at the relevant time have been notified to the party giving notice under this provision.

17.4 No waiver by the Company of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

17.5 Any provision of these Conditions which is held invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of these Conditions.

17.6 The Company may at its discretion perform its obligations and exercise its rights under the Contract through any other person and any such sub-contractors, agents and servants shall have the benefit of these Conditions.

17.7 The Contract is subject to the laws of England and Wales and the Client agrees for the benefit of the Company to submit to the exclusive jurisdiction of the English Courts.