

MASTER SERVICES AGREEMENT TERMS AND CONDITIONS (MSA)

This master services agreement (“**MSA**”) applies to all orders at Thinking Fish. In addition, all orders will be subject to Service Agreements specific to individual services (“**Service Agreements**”). These will be referenced in the Order Form.

For these purposes, “**Thinking Fish**” consists of Thinking Fish Limited (Company number: 3637036) and Purple Gateway Limited (Company number: 4437836) whose registered offices are at Concorde House, Grenville Place, London, NW7 3SA. The Company within the Thinking Fish with whom you are contracting is clearly set out on the Order Form that you will sign when you order Services and/or Equipment and, for the purposes of this MSA, that contracting company is called the “**Supplier**”. A separate contract (a “**Service Contract**”) will be formed by each Order Form, comprising the Order Form; Service Agreement; Project Plan (if applicable); and MSA, together with any schedules annexed thereto. In the event of any conflict or inconsistency between the documents comprising a Service Contract, they will prevail in the order written above.

1. INTERPRETATION

- 1.1 The clause, schedule and paragraph headings shall not affect the interpretation of this MSA or any Service Contract.
- 1.2 The definitions and rules of interpretation set out in Appendix 1 shall apply to each Service Contract.

2. BASIS OF CONTRACT

- 2.1 This MSA shall apply to and be incorporated into each Service Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 No contract shall be created between the Supplier and the Customer for the provision of Services unless and until the Customer has signed the relevant Order Form and sent it to the Supplier and the Supplier has acknowledged with an Order Acceptance, except (if earlier) the Supplier has commenced providing the Services, in which case a contract will be deemed to have come into existence on the basis of this MSA (and, if applicable, the terms of the Service Contract) from the date on which the provision of the Services by the Supplier commenced.
- 2.3 This MSA shall commence on the date that it or the first Order Form is executed by both parties. Each Service Contract shall commence on its respective Commencement Date. Both the MSA and the Service Contracts shall continue until they expire in accordance with their terms, unless suspended or terminated earlier in accordance with Clause 17.
- 2.4 Each Service Contract shall continue for the Initial Term. Thereafter, unless otherwise expressly stated in the Service Contract, it shall automatically be extended for successive twelve (12) month periods (each an “**Extended Term**”) at the end of the Initial Term and at the end of each Extended Term, unless a party gives written notice to the other party to terminate, not later than ninety (90) days before the end of the Initial Term or the relevant Extended Term, in which event the Service Contract will terminate at the end of that Initial Term or Extended Term as the case may be.
- 2.5 Either party may terminate an individual Service or Services under a Service Contract in accordance with Clause 2.4, in which event the Service Contract shall remain in full force and effect in relation to all of the Services not so terminated. The Customer shall terminate a Service by completing the Supplier’s “**Request to Terminate**” form. The Supplier shall acknowledge receipt of the “**Request to Terminate**” form.

- 2.6 In the event of termination or cancellation by the Customer of any Service Contract or Service prior to the expiry of the Initial Term or an Extended Term other than in accordance with Clauses 2.4 or 2.5, the Customer remains liable to pay for the Services for the entire Initial Term and/or Extended Term except where the Customer rightfully terminates under Clauses 17.2 or 18.3.
- 2.7 Subject to the due and punctual payment of the Fees by the Customer and the performance of its obligations under the Service Contract, the Supplier shall provide the Services to the Customer on and subject to the terms and conditions of the Service Contract.
- 2.8 Unless the Order Form provides otherwise, a payment for any Set Up Fees and the first quarter’s Services (being part of the Recurring Fees) shall be payable on Order Acceptance and in advance of the commencement of the Services.

3. THE SERVICES

- 3.1 Save as expressly provided in the relevant Service Contract, all representations, warranties and other terms, whether express or implied by law or otherwise, are strictly excluded to the fullest extent permitted by law. In particular, the Supplier does not give any warranties, guarantees or assurances regarding the performance of the Equipment and/or the Services when used with, or run in conjunction with, any particular operating systems and/or software including Supported Software and software of the Customer or any third parties.
- 3.2 The Customer shall use the Services in accordance with the Acceptable Use Policy (where applicable). Without prejudice to the foregoing, the Customer shall not use the Services for any purpose, or store, distribute or transmit any material through any part of the Services, that:
 - 3.2.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
 - 3.2.2 facilitates illegal activity;
 - 3.2.3 depicts unlawful sexual imagery;
 - 3.2.4 promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities; and
 - 3.2.5 constitutes a violation or infringement of the rights of any person, firm or company (including, without limitation, rights of copyright and confidentiality).
- 3.3 Without prejudice to Clause 2, the Supplier shall not be responsible

for any Event, or for any failure to meet any Service Level, response time, threshold or any obligation under any Service Contract, to the extent that such Event and/or failure is due to any:

- 3.3.1 act or omission of the Customer, it's employees, agents, or subcontractors;
- 3.3.2 failure of Customer Equipment and/or of any software other than Supported Software;
- 3.3.3 failure caused by Customer Equipment and/or of any software other than Supported Software;
- 3.3.4 Force Majeure;
- 3.3.5 failure of the Customer to report an Event in accordance with the relevant Service Contract; or
- 3.3.6 planned maintenance notified to the Customer in accordance with the applicable Service Contract or, if no such notice provisions are contained in the relevant Service Contract, upon reasonable notice.

4. AMENDMENTS AND ADDITIONAL SERVICES

- 4.1 The Supplier is entitled to change this MSA from time to time and will display the updated MSA at <http://www.thinkingfish.com>. The Supplier will notify the Customer in writing of any material changes to the MSA sixty (60) days in advance and any such updates shall take effect at the end of such sixty (60) day period. Otherwise, changes will take effect upon being made.
- 4.2 Where the Supplier has given the Customer notice of a material change to the MSA in accordance with Clause 4.1 and where such change will have a materially adverse effect on the Customer, the Customer shall be entitled to terminate the Service Contract by giving the Supplier not less than thirty (30) days' prior notice in writing to that effect, such notice to expire before the expiry of the sixty (60) day notice period referred to in Clause 4.1.
- 4.3 The Supplier may, at its discretion, also provide from time to time additional services beyond the scope of the Services being provided to the Customer as at the Commencement Date, subject to prior written agreement between the parties. The pricing for such additional services will be set out and agreed in writing by the parties before such additional services commence.

5. RENT AND SALE OF EQUIPMENT

- 5.1 Any Rented Equipment shall be identified as such in a Service Contract. The Supplier will retain title in all Rented Equipment at all times and the Customer shall not do anything to affect the Supplier's interest therein. The Supplier may at any time where the Customer is in breach of a Service Contract take possession and control of the Rented Equipment.
- 5.2 Any Sold Equipment shall be identified as such in a Service Contract. The Supplier will retain title in all Sold Equipment until it has been paid for in full by the Customer, and the Customer shall not do anything to affect the Supplier's interest therein until title has vested in the Customer. The Supplier may at any time where the Customer is in breach of a Service Contract take possession and control of any Sold Equipment which has not been paid for in full.

- 5.3 The Customer agrees to keep all CPE title to which has not vested in the Customer pursuant to this Clause 5 separate from its other equipment and marked as the property of the Supplier, and irrevocably agrees that the Supplier may enter its premises and recover any such equipment in the event that the Customer is in breach of its payment obligations under any Service Contract or upon termination of a relevant Service Contract.

6. SET-UP OF SERVICES

- 6.1 Where appropriate, the Customer and the Supplier shall agree a Project Plan for the implementation and provision of Services.
 - 6.2 The Supplier shall use reasonable endeavours to meet the performance dates set out in the Service Contract, but any such dates shall be estimates only, and time shall not be of the essence in respect of the Supplier's obligations.
 - 6.3 When the Supplier considers that the relevant Service and/or Sold Equipment is Ready for Service it shall so notify the Customer. Within three (3) Business Days of such notification the Customer shall review the operation of the Service and/or Sold Equipment to confirm that there are no Errors. The Customer shall give the Supplier a the three (3) Business Days review period.
 - 6.4 The Supplier shall use reasonable efforts to correct any Error within a reasonable time and, on completion, re-submit the Service and/or Sold Equipment to the Customer. The provisions of Clauses 6.3 and 6.4 shall then apply again.
 - 6.5 If the Customer does not provide any written notification of Errors in the three (3) Business Days period described above, or if the Service is found to conform to the Service Contract, the Service and/or Sold Equipment shall be deemed accepted from the Ready for Service date.
- 7. SUPPLIER'S OBLIGATIONS**
- 7.1 The Supplier warrants that each of the Services will be performed with reasonable skill and care and that it will be provided substantially in accordance with the relevant Service Contract.
 - 7.2 The Supplier agrees to respond to and use its reasonable endeavours to comply with the Customer's reasonable requests and written instructions and act in a professional manner.
 - 7.3 The warranty in Clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of any of the Services contrary to the Supplier's instructions or the Service Contract.
 - 7.4 If a Service does not conform with the warranty in Clause 7.1, the Supplier will, at its expense, use all reasonable commercial efforts to correct any such non-conformity promptly, or provide the Customer with an alternative means of accomplishing the desired performance.
 - 7.5 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error free.
 - 7.6 The Supplier agrees not to use the Customer Equipment or any other equipment belonging to the Customer save for the purposes of performing its obligations under the Service Contract or

otherwise as directed by the Customer in writing.

7.7 The Supplier shall use reasonable endeavours to procure the installation of any Sold Equipment and/or Rented Equipment within the lead-times quoted to the Customer. These lead-times will, however, be subject to Order Acceptance, site survey and capacity checks and exclusive of any detailed description of any Error in writing within third-party delays.

7.8 The Supplier agrees to notify the Customer by email of any significant changes to its Acceptable Use Policy and afford the Customer a reasonable period of time to comply with such changed provisions.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall at all times:

8.1.1 co-operate with the Supplier in all matters relating to the Services;

8.1.2 provide to the Supplier, in a timely manner, such materials, documentation, instructions and other information ("Customer Materials") as the Supplier may reasonably require in order to perform the Services, and ensure that the Customer Materials are complete and accurate in all material respects in order to carry out the Services, including Customer Data, security access information and software interfaces, to the Customer's other business applications.

8.1.3 provide such personnel assistance, and access to and use of its premises, facilities and utilities as may be reasonably requested by the Supplier from time to time;

8.1.4 ensure that all Customer Equipment is and remains in good working order and suitable for the purposes for which it is used and conforms to all Applicable Law;

8.1.5 carry out all other Customer responsibilities set out in the Service Contract in a timely and efficient manner;

8.1.6 ensure that:

(i) prior to commencement of the Services, any Customer Equipment to be hosted at the Facility is clearly identified as belonging to the Customer and that the Customer Equipment is labelled and all individual components which make up the Customer Equipment are easily identifiable from the front and rear;

(ii) it takes all necessary steps to ensure that it has in place appropriate business continuity and disaster recovery arrangements in the event of Force Majeure. The Customer acknowledges that, unless expressly agreed in writing, the Services do not include the provision by the Supplier of additional space for hosting the Customer Equipment or any replacement equipment or the making of any contingency arrangements to support the Customer in the event of Force Majeure;

(iii) it has obtained and maintained all necessary licences and consents and complies with all relevant legislation in relation to its use of the Services, the installation of the Equipment, the use of Customer Materials and the use of the Customer Equipment in relation to the Services; and

(iv) it maintains, at its own cost, with a reputable insurance company such insurance cover against all risks which would normally be insured against by a prudent business including insurance in relation to the Equipment, any loss or damage caused to the Supplier's property or to the Supplier's employees, agents or subcontractors by the negligence or default of the Customer, or the Customer's employees or agents, or caused by any malfunctioning of the Customer Equipment, and any related loss or business interruption and shall upon reasonable request provide the Supplier with evidence that such insurance has been effected and is and will be maintained;

8.1.7 comply with all Applicable Law, including applicable requirements relating to health and safety and electrical equipment;

8.1.8 not hold itself out as being an agent, partner, representative or otherwise being entitled to bind the Supplier or other members of the Thinking Fish;

8.1.9 not publish or cause anything to be published, whether in hard copy or by any electronic medium, which contains adverse or derogatory comments about the Supplier or other members of the Thinking Fish;

8.1.10 provide the Supplier with the names and e-mail addresses of all persons who are authorised to issue instructions to the Supplier and, where any of those persons cease to be so authorised, notify the Supplier immediately;

8.1.11 ensure that no data received or transmitted by the Customer Equipment or otherwise via any of the Services will adversely affect, interfere with or be malicious to any of the Supplier's or any third party networks, equipment or software;

8.1.12 ensure that the Customer Equipment will not at any time perform operations designed to intercept data not directly addressed to the Customer Equipment or otherwise breach or disrupt voice or internet communications and will be operated in accordance with Accepted Standards; and

8.1.13 apply such security updates and patches as may, from time to time, be required to ensure compliance with the Service Contract and generally Accepted Standards of information security.

8.2 In the event of any delays in the Customer's compliance with Clause 8.1, the Supplier may adjust any timetable or delivery schedule set out in a Service Contract as reasonably necessary.

9. SYSTEM CAPACITY AND PERFORMANCE

9.1 Should the Customer's usage of the Services, or any component of the Services, be in excess of capacity specifications which are detailed in the Service Contract, recommended by the Supplier and/or published by any vendor of the relevant components, then the Supplier will advise the Customer of any upgrades recommended by the Supplier, and the Supplier will not be liable for any degradation in Service caused by such usage.

9.2 If the Customer chooses not to upgrade as recommended by the Supplier in accordance with Clause 9.1, then the Supplier may notify the Customer in writing that all support in respect of such Services or component is thereafter provided on a best efforts, discretionary and no liability basis, and following such notice any

provision to the contrary of the Service Contract shall be deemed to be suspended to that extent unless and until such time as the Supplier's recommended upgrades are implemented.

9.3 Where the Service performance continues to be impacted due to a capacity issue as referred to in Clause 9.1 and as a result the Service is considered by the Supplier to be unsustainable, then without prejudice to Clause 9.2 the Supplier may at its sole discretion terminate the Service Contract in question upon giving no less than three (3) month's written notice to the Customer.

10. FEES AND PAYMENT

10.1 The Customer shall pay the Fees as set out in the relevant Service Contract, with effect from the Ready for Service date in relation to each Service.

10.2 With prior written agreement, the Customer shall reimburse the Supplier for all actual and reasonable travel expenses including airfares, hotels and meals incurred by the Supplier in performance of any set-up services.

10.3 The Supplier shall be entitled to charge for any further Fees reasonably incurred for all time spent in reasonably resolving:

10.3.1 any complaints or reports received from any governmental or other competent authority or from any emergency service organisation in relation to the Equipment or the Customer's use of the Services. Save where prohibited from doing so by applicable law or regulation, the Supplier:

(i) shall inform the Customer without delay of any such complaint or report;

(ii) wherever possible, shall not respond to the relevant authority or organisation without the Customer's prior consent (which shall not be unreasonably withheld or delayed); and

(iii) shall consult with the Customer with regard to such complaint or report;

10.3.2 any issues that have arisen as a result of the Customer's failure to use any software or equipment in accordance with applicable user instructions, or the Customer's unauthorised attempts to maintain or alter any software or equipment, or any use of software, equipment or services other than in accordance with the Service Contract (including any breach of the Acceptable Use Policy) and in accordance with the Applicable Law.

10.4 The Customer shall pay the Fees by the Invoice Due Date. If the Customer has a genuine dispute about any Fees, it must provide details to the Supplier within fourteen (14) days of receipt of the relevant invoice, stating the invoice item which is disputed, and must pay all other elements of the relevant invoice by the Invoice Due Date.

10.5 If no notice of a disputed invoice is given within the fourteen (14) days referred to at Clause 10.4, the Customer shall be deemed to accept the invoice in full.

10.6 Any sum payable under the Service Contract is exclusive of VAT which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time, subject to receipt by

the Customer of a valid VAT invoice.

10.7 The Supplier shall collect unpaid invoices in accordance with the provisions of its accounts receivable escalation policy, such policy shall be found in a schedule to the Service Contract.

10.8 Save where the Order Form states otherwise, the Customer shall pay (and the Supplier may collect) all sums due under any Service Contract by way of variable direct debit in accordance with the direct debit mandate attached to the Service Contract or as varied from time to time.

10.9 If any sum payable under a Service Contract is not paid on or before the Invoice Due Date then, without prejudice to any other rights it may have, the Supplier will be entitled to charge the Customer interest on that sum at the rate of four per cent (8%) per annum above the base lending rate from time to time of HSBC Bank plc from the Invoice Due Date until the actual date of payment, such interest to accrue on a daily basis.

10.10 The Customer shall reimburse all costs and expenses (including legal costs) incurred by the Supplier in the collection of any overdue amount.

10.11 Subject to Clause 10.4, if the Customer fails to make full payment on the Invoice Due Date the Supplier may notify the Customer in writing of such payment default (a "Payment Default Notice") and unless the amount of the invoice is paid in full within ten (10) Business Days of the Customer's receipt of the Payment Default Notice, the Supplier may, without prejudice to any other rights it may have:

10.11.1 suspend the Services immediately until it has received payment in full of all sums due; and/or

10.11.2 terminate the Service Contract for material irremediable breach immediately; and/or

10.11.3 exercise a lien over the Customer Equipment and any Sold Equipment until such time as all outstanding payments are made in full; and/or

10.11.4 sell any Customer Equipment and Sold Equipment and account to the Customer for all sums received less a sum equal to all sums outstanding due to the Supplier and an administrative fee to cover the costs of sale equal to fifteen per cent (15%) of the sums outstanding due to the Supplier at the time of sale such fee to be a minimum of £75 plus VAT.

10.12 On expiry or termination of this MSA or any Service Contract for any reason, any outstanding Service Credits shall not be recoverable by the Customer.

10.13 The Supplier shall have the right to alter the Rates in the Service Contract following the Initial Term subject to giving the Customer not less than four (4) weeks' notice in writing of any alteration.

10.14 All payments by the Customer shall be made in pounds sterling (£) and without deduction or set off of any amount except where the Order Form specifies otherwise.

10.15 Fees in relation to any particular Services may be amended at any time by the Supplier giving not less than two (2) months' notice to

- the Customer if:
- 10.15.1 the scope of, or functionality required in, the Services changes or increases as a result of the Customer's changes, requirements or instructions; or
- 10.15.2 there is any material increase in the cost of the Services or other items that the Supplier must procure from third parties for the provision of the Services.
- 10.16 The Customer shall pay to the Supplier the sum of £45 plus VAT to cover the costs incurred by the Supplier:
- 10.16.1 in the event that any cheque rendered to the Supplier by the Customer or any third party on its behalf is returned or required to be represented by the Customer's bankers; and
- 10.16.2 in respect of any rejected charge arising out of a credit or debit card payment. The Customer shall also pay to the Supplier a sum equal to five per cent (5%) of any fees discharged by way of credit or debit card.
- 10.17 The Fees specified in the Order Form are exclusive of, and may be increased without notice as a result of, the imposition by any relevant authority of any tax, impost, levy or charge including any 'green levy' such as the carbon reduction commitment or the climate change levy and non-domestic rates on fibre optic networks. For the avoidance of doubt, only the actual amount will be passed on to the Customer.
- 11. SERVICE CREDITS**
- 11.1 Service Credits are available against certain losses of service and/or failures to meet Service levels where expressly stated and defined in the applicable Service Contract.
- 11.2 If, in the Supplier's reasonable opinion, only a proportion of any one Service used by the Customer is affected by the relevant loss of service, the Supplier shall credit the Customer's account with a reasonable proportion of the Service Credit. For the purpose of calculating the proportion of a Service Credit due to the Customer, the Supplier (in its sole discretion but acting reasonably) shall determine which proportion of the Service was affected.
- 11.3 The calculation of the Service Credit shall be based on the Recurring Fees and shall not include any other Fees paid or payable by the Customer to the Supplier.
- 11.4 The maximum Service Credit allowable in any given calendar month is limited to the amount of the Recurring Fees payable in that calendar month, unless set out otherwise in the applicable Service Contract.
- 11.5 A Service Credit shall not be credited to the Customer's account unless the Customer requests it from the Supplier's accounts department within thirty (30) Business Days of the date on which the relevant ticket was issued. If the Customer does not claim the Service Credit in this period then the Service Credit will lapse and may not be claimed by the Customer. A Service Credit which is claimed by the Customer shall be applied by the Supplier as a reduction to the Recurring Fees payable by the Customer to the Supplier and shall be credited in the Supplier's subsequent invoice.
- 11.6 Where Service Credits are provided for in a Service Contract these shall be the sole and exclusive remedy of the Customer for the relevant loss of service and/or the Supplier's failure to meet the applicable Service Levels.
- 12. CHANGE CONTROL**
- 12.1 If either party wishes to change the scope of the Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.
- 12.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer the extent (if any) of:
- 12.2.1 the likely time required to implement the change;
- 12.2.2 any variations to the Fees arising from the change;
- 12.2.3 the likely effect of the change on the Project Plan; and
- 12.2.4 any other impact of the change on the terms of the relevant Service Contract.
- 12.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 12.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its fees, the Project Plan and any other relevant terms of the Service Contract to take account of the change.
- 12.5 Following any change pursuant to this Clause 12, the relevant Service Contract will be deemed amended accordingly in relation to the relevant Services and shall continue unamended in relation to all other Services. The change shall be recorded on an "Order Amendment Form" or other written document signed by both parties.
- 13. INTELLECTUAL PROPERTY**
- 13.1 All Intellectual Property Rights in relation to the Services shall be owned by the Supplier or its licensors. The Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis for the term of the Service Contract to such extent as is necessary to enable the Customer to make reasonable use of the Services. If the Service Contract terminates, this licence shall automatically terminate.
- 13.2 The Supplier will indemnify the Customer against any liability or damage arising as a result of the Services breaching the Intellectual Property Rights of any other person, provided that the Customer:
- 13.2.1 gives the Supplier prompt notice of any such claim;
- 13.2.2 gives the Supplier sole control of the defence of any such claim;
- 13.2.3 does not make any statement, admission or settlement in relation to any such claim without the Supplier's prior written approval; and
- 13.2.4 gives the Supplier all reasonable assistance in relation to any such claim, at the Supplier's cost.

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14. CONFIDENTIALITY

- 14.1 The Supplier and the Customer will each treat as confidential all Confidential Information obtained from each other under or in connection with this MSA and any Service Contract.
- 14.2 The Supplier and Customer shall not use the other's Confidential Information except for the purpose of exercising or performing its rights and obligations under a Service Contract ("Permitted Purpose") and shall not disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 14.
- 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 to third parties by its Representatives in violation of this Clause 14.
- 14.4 The Customer acknowledges that the Supplier's Confidential Information includes any designs, plans, software or other materials created by the Supplier in connection with the Services and the Customer agrees not to make use of any such material for any purpose other than receipt of the Services from the Supplier.
- 14.5 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 14.6 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
 - 14.6.1 it informs such Representatives of the confidential nature of the Confidential Information prior to disclosure; and
 - 14.6.2 at all times it is responsible for such Representatives' compliance with the confidentiality obligations set out in this Clause 14.
- 14.7 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
- 14.8 The restrictions set out in this Clause 14 do not apply to information which:
 - 14.8.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this Clause 14);
 - 14.8.2 was available to the receiving party on a non-confidential basis prior to disclosure by the disclosing party;
 - 14.8.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
 - 14.8.4 is developed by or for the receiving party independently of the information disclosed by the disclosing party.

14.9 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this MSA or a Service Contract are granted to the other party or may be implied.

14.10 The provisions of this Clause 14 shall continue to apply after termination of the last Service Contract to expire, for a period of three (3) years.

15. LIMITATION OF LIABILITY

15.1 This Clause 15 sets out the entire liability of each party (including any liability for the acts or omissions of its employees, agents and subcontractors) to the other in respect of:

15.1.1 any breach of contract;

15.1.2 any representation, misrepresentation (whether innocent or negligent), statement, tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with this MSA or a Service Contract; and

15.1.3 in each case whether or not the liable party was made aware of the possibility of any loss or damage.

15.2 Except as expressly and specifically provided in a Service Contract:

15.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use; and

15.2.2 the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction.

15.3 Nothing in any Service Contract excludes or limits the liability of a party for:

15.3.1 death or personal injury caused by the party's negligence;

15.3.2 fraud or fraudulent misrepresentation;

15.3.3 for breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

15.3.4 any other liability which cannot lawfully be excluded or limited.

15.4 Further, no limitations on liability in a Service Contract apply to the Customer's liability to pay any Fees due under a Service Contract or interest due thereon.

15.5 The Service Contract states the Customer's full and exclusive rights and remedies, and the Supplier's only obligations and liabilities in respect of the performance and/or availability of the Services to be provided thereunder, or their non-performance and non-availability.

15.6 Subject to Clauses 15.3 and 15.4, neither party will be liable to the other or to any third party for:

15.6.1 indirect or consequential loss or damage;

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- 15.6.2 any loss arising from or in connection with loss of revenues, profits, contracts or business or failure to realise anticipated savings; and
- 15.6.3 any loss of goodwill or reputation.
- 15.7 Subject to Clauses 15.3 and 15.4, the total liability of either party arising under or in connection with any Service Contract shall be limited to an amount equal to the greater of (i) £1,000,000; or (ii) the Fees paid by the Customer under the relevant Service Contract in the twelve (12) months preceding the date on which such liability arose, in respect of any single event or series of connected events.
- 16. SUSPENSION OF THE SERVICES**
- 16.1 The Supplier may, at its sole discretion upon giving notice to the Customer as soon as reasonably possible either orally (confirming such notification in writing) or in writing, elect to suspend immediately the provisions of the Services until further notice where:
- 16.1.1 the Supplier is entitled to terminate any Service Contract pursuant to Clause 17.1;
- 16.1.2 the Supplier suspects that the Equipment or Services are being used fraudulently or otherwise unlawfully;
- 16.1.3 the Supplier is entitled to suspend provision of any other service under the terms of any other agreement between the Supplier and the Customer; or
- 16.1.4 the Supplier is obliged to do so in order to comply with an order, instruction or request of government, an emergency services organisation or other competent administrative or regulatory authority.
- 16.2 Any exercise by the Supplier of its right of suspension in respect of an event referred to in this Clause 16 shall not exclude the Supplier's right subsequently to terminate a Service Contract or to claim any remedies in respect of the Customer's breach (if any).
- 16.3 Suspension of the Services for any reason will not alter the period of service for the current chargeable invoice and all fees and sections of each Service Contract will remain in effect.
- 16.4 In the event that a suspension is implemented as a consequence of the breach, fault or omission of the Customer, the Customer shall reimburse the Supplier for all reasonable costs and expenses incurred in the implementation of such suspension and/or the recommencement of the provision of the Services as appropriate.
- 16.5 The Supplier shall not be liable to the Customer for any fees incurred by the Customer for the use of other services, whether provided by the Supplier or any other person during any period of unavailability, occurring as a result of implementing a suspension pursuant to Clause 16.1.
- 17. TERMINATION**
- 17.1 The Supplier shall be entitled to terminate any Service Contract at its immediate discretion in the event that:
- 17.1.1 the Customer fails to pay any amount due under the Service Contract on the Invoice Due Date for payment and fails to pay such amount within fourteen (14) days after being notified in writing of such failure;
- 17.1.2 the Customer repeatedly breaches any of the terms of the Service Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention and/or ability to give effect to the terms of the Service Contract; or
- 17.1.3 the Supplier has terminated, or is entitled to terminate, any other contract that it has entered into with the Customer on any grounds which are the same as, or are analogous to, those set out in this Clause 17.
- 17.2 Either party shall be entitled to terminate a Service Contract on notice in writing to the other party if:
- 17.2.1 the other party commits a material breach of the Service Contract and (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;
- 17.2.2 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, enters bankruptcy or (being a partnership) has any partner to whom any of the foregoing apply;
- 17.2.3 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 (in the case of a company) 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;
- 17.2.4 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 (being a company) 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;
- 17.2.5 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 (being a company);
- 17.2.6 the holder of a qualifying charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 17.2.7 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;
- 17.2.8 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;

17.2.9 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 clauses 17.2.2 – 17.2.8 (inclusive);

17.2.10 the other party suspends, ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

17.2.11 the other party threatens, whether orally or in writing (whether in hard copy, by any electronic medium or otherwise) to adversely affect the on-going operations of the first party's business or that of any of its Group Companies (provided that this Clause shall not apply to any action taken by the Supplier in accordance with a Service Contract or at any time that the Customer has not paid the Fees by the due date or is otherwise in breach of a Service Contract).

17.3 If a party has the right to terminate any Service Contract pursuant to Clauses 17.1 or 17.2, it may instead elect to terminate one or more of the individual Services provided under that Service Contract, in which event such Services shall be so terminated but the Service Contract will continue in full force and effect in relation to all the other Services provided thereunder.

17.4 Any provision of a Service Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Service Contract shall remain in full force and effect.

17.5 Termination of a Service Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties accrued before the date of termination or expiry.

17.6 On termination of a Service Contract for any reason, then without prejudice to any other right the Supplier may have, the following provisions shall apply to such termination as appropriate:

17.6.1 the Supplier shall immediately cease provision of the Services;

17.6.2 all amounts payable by the Customer to the Supplier shall become immediately due (subject to receipt by the Customer of a valid invoice in respect of the same);

17.6.3 the Customer shall pay all costs relating to the packing, transportation and administration, delivering or retrieving of the Customer Equipment;

17.6.4 the Customer shall pay the Supplier's reasonable cost for storing any Customer Equipment which is not collected from the Facility within fifteen (15) days of termination of the Service Contract (provided the delay is not caused by any act or omission of the Supplier);

17.6.5 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and

17.6.6 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession.

17.7 Notwithstanding its obligations in Clause 17, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under Clause 17, it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. Clause 14 shall continue to apply to any such retained documents and materials.

18. FORCE MAJEURE

18.1 The Customer acknowledges and agrees that the Supplier does not and cannot control the flow of data to or from its networks or the storage of data held outside its networks. Such flow and/or storage depend, in large part, on the performance of internet services and/or telecommunications networks provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt the Supplier's connections to the internet (or portions thereof) or such other platforms upon which access to the Services may be provided. Although the Supplier will use reasonable efforts to take all actions reasonably necessary to remedy and avoid such events, the Supplier cannot guarantee that such events will not occur. Accordingly, save as provided expressly in a Service Contract, the Supplier gives no warranty in relation to such events and any occurrence of such will be classed as an Event of Force Majeure.

18.2 Each party will give notice forthwith to the other party upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

18.3 If a default due to an Event of Force Majeure shall continue for more than sixty (60) days, then either party will be entitled to terminate any affected Service Contracts by giving not less than thirty (30) days written notice to the other. Neither party shall have any liability to the other in respect of the termination of a Service Contract as a result of an Event of Force Majeure.

19. DATA PROTECTION

19.1 Each party undertakes to the other that it will take all necessary steps to ensure that it operates at all times in accordance with the DPA and all related Applicable Law.

19.2 Without limiting Clause 17.1, if either party (the "Data Provider") passes to the other party (the "Data Recipient"), or otherwise gives the Data Recipient access to Personal Data under a Service Contract:

19.2.1 the Data Recipient will not Process Personal Data held under the Service Contract except in accordance with the Service Contract or otherwise on the instructions of the Data Provider;

19.2.2 the Data Recipient will implement appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of or damage to Personal Data in compliance with the DPA;

19.2.3 the Data Recipient will only Process such Personal Data in accordance with the data protection principles set out in the DPA; and

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19.2.4 the Data Recipient will comply promptly and in full with any request made by the Data Provider further to the Data Provider's statutory obligations pursuant to the DPA.

19.3 For the purposes of Clause 19.2, "Process" and "Personal Data" have the meanings given to them in the DPA.

20. TUPE

20.1 Both parties warrant that there will be no relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), and each party hereby indemnifies the other party against all losses, damages, liabilities, and reasonable costs and expenses arising in connection with any claim (whether successful or not) arising under, or in connection with the application of TUPE.

21. ANTI-BRIBERY

21.1 Each party shall:

21.1.1 comply with all applicable laws, regulations, mandatory codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("Relevant Requirements");

21.1.2 have and shall maintain in place throughout the term of each Service Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;

21.1.3 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of any Service Contract; and

21.1.4 immediately notify the other party if a foreign public official becomes one of its officers or employees or acquires a direct or indirect interest in the first party (and the first party warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of any Service Contract).

21.2 Any breach of this Clause 21 shall be deemed a material breach under Clause 17.

21.3 For the purposes of this Clause 21 a person associated with a party includes any subcontractor of that party.

22. WAIVER

22.1 No failure or delay by a party to exercise any right or remedy provided under a Service Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

23. CAPACITY

23.1 Each party warrants to the other that:

23.1.1 it has full capacity and authority to enter into and perform its obligations under any Service Contract; and

23.1.2 each Service Contract is executed by its duly authorised Representatives.

23.2 The Customer warrants that it is the owner or permitted user of the Customer Equipment and that any software on such equipment is properly licensed to the Customer on terms which allow it to be used as contemplated by the relevant Service Contract.

24. SEVERANCE

24.1 If any court or administrative body finds that any provision of a Service Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Service Contract shall not be affected.

24.2 If any invalid, unenforceable or illegal provision of a Service Contract would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

25. ENTIRE AGREEMENT

25.1 Each Service Contract constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

26. ASSIGNMENT AND SUBCONTRACTING

26.1 The Customer shall not be entitled to assign or subcontract all or any of its rights or obligations under any Service Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

26.2 The Supplier shall be entitled to assign or subcontract all or any of its rights and obligations under any Service Contract to any person without the prior written consent of the Customer.

27. THIRD-PARTY RIGHTS

27.1 Each Service Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person who is not a party to it.

28. DISPUTE RESOLUTION

28.1 The parties agree to use reasonable endeavours to resolve any dispute or claim relating to a Service Contract in accordance with this Clause 28 in good faith. Each party must follow the procedures in this Clause 28 before starting court proceedings (except for urgent injunctive or declaratory relief).

28.2 If a dispute or claim arises between the parties that cannot be resolved promptly between the parties at an operational level, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within fifteen (15)

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Business Days of the date of the notice (or any other agreed period) to resolve the dispute or claim. In the event that the dispute is still not resolved the parties may refer the dispute to Ofcom to decide under section 186 of Communications Act 2003 whether it is appropriate for them to handle the dispute.

29. NOTICES

29.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business.

29.2 Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt or

at the time the notice is left at the proper address, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

30. GOVERNING LAW AND JURISDICTION

30.1 Each Service 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.

30.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with any Service Contract or its subject matter or formation (including non-contractual disputes or claims).

APPENDIX 1 INTERPRETATION

The definitions and rules of interpretation in this Appendix apply in this MSA.

- 1.1 A person includes a natural person, company or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.2 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.3 A reference to a subsidiary or holding company is to be construed in accordance with section 1159 Companies Act 2006.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular, and a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.

Acceptable Use Policy: means the Supplier's acceptable use policy which is available on the Supplier's website at www.thinkingfish.com as may be amended and updated from time to time;

Accepted Standards: means using the standards practices and methods and exercising the skill, diligence, prudence, foresight and judgement which would be expected from a highly skilled, qualified and experienced person engaged in a similar undertaking under similar circumstances;

Applicable Law: means any relevant statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal); rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or industry code of conduct or guideline;

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

Commencement Date: means the date that the Order Form is executed by the Customer (provided that this occurs within one month of the completed Order Form's delivery to the Customer);

Confidential Information: means all confidential information (however recorded, stored, preserved or communicated, including orally) disclosed by a party or its Representatives (a "disclosing party") to the other party and that party's Representatives (a "receiving party") including the trade secrets, operations, processes, plans, intentions, services, product information, know-how, designs, market opportunities, transactions, business affairs and any information (whether or not included in the above examples) which is either labelled as confidential or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure, and includes the terms of each Service Contract;

CPE: means any equipment located or to be located on a Customer Site but controlled or to be controlled by the Supplier as part of the Services;

Customer: the party entering into the Service Contract that has a contractual relationship with the Supplier;

Customer Data: all software programme data provided by the Customer;

Customer Equipment: the equipment owned by the Customer to be located at the Facility and as applicable and as specified in the Order Form managed and/or maintained by the Supplier;

Customer Site: means any premises belonging to or occupied by the Customer at which it receives a Service; **DPA:** means the Data Protection Act 1998;

Equipment: means CPE and Customer Equipment, including cabling and systems provided by the Supplier in connection with the Services;

Error: is a failure of a Service in any material respect to conform with the Service Contract; **Event:** is an act, event, omission or circumstance;

Facility: means any building belonging to or occupied by the Supplier used for the provision of the relevant Services; **Fees:** means all fees due to be paid to the Supplier by the Customer for any Service Contract;

Force Majeure: means any cause beyond the Supplier's reasonable control including fires, floods, lightning, war, revolution, act of terrorism, riot, civil commotion, act of God, industrial disputes, strikes (of another person's employees), casualties, accidents, power failure, breakdown in equipment, failure of suppliers, failures of transportation, telecommunications failures or internet downtime or available bandwidth shortage;

Group Companies: in relation to a party, any subsidiaries or holding companies of that party, or subsidiaries of such holding companies;

Initial Term: the period for the supply of the Services indicated on the relevant Order Form starting from the Ready for Service date for, or if no Initial Term is specified on the relevant Order Form, a period of three (3) calendar years from that date;

Intellectual Property Rights: any and all trade and service marks or names, domain names, patents, utility models, design rights, copyright, database rights or other intellectual property rights, in each case whether registered or unregistered, whether capable of registration or not, including applications for registrations, anywhere in the world;

Invoice Due Date: means the date for payment set out on the Supplier's invoice or in the Service Contract or if no date for payment is stated, thirty (30) days from the date of the invoice;

Order Acceptance: means the notice given to the Customer by the Supplier confirming the order status;

Order Form: means the order placed by the Customer for relevant Services, which shall be submitted on the Supplier's standard order form unless otherwise agreed by the Supplier and which shall be subject to this MSA and form part of the relevant Service Contract;

Project Plan: the plan to be developed to outline the provision of Services (including any set-up services) where applicable;

Rates: any fees or charges for additional services that are to be charged on an hourly or daily rate which shall be notified to the Customer and as determined by the Supplier;

Ready for Service: the ready for service date is a date at which services commence under any Service Contract, as specified in the Service Contract or otherwise agreed by the parties in writing and determined in accordance with the Service Contract that become available for use by the Customer. For the avoidance of doubt, this is the date when the Initial Term shall commence;

Recurring Fees: any element of the Fees which is payable periodically (e.g. monthly, quarterly, annually) regardless of usage as set out in the Order Form;

Rented Equipment: any apparatus or equipment as specified in the Order Form to be loaned to the Customer by the Supplier or any third party on behalf of the Supplier to enable the provision of Services;

Representatives: a party's employees, officers, representatives, advisers or subcontractors; **Service:** shall mean each individual service listed on an Order Form; **Services:** the Services to be provided under a Service Contract, as specified in an Order Form;

Service Credit: any credits against Fees set out in the Service Contract which are payable by the Supplier for failure to comply with agreed Service Levels;

Service Level: any service level standards which the Supplier has agreed to in relation to a Service. This will be set out as being the Key Performance Indicator in the applicable Service Schedule and expressly identified as a Target Service Level;

Set-Up Fees: that element of the Fees which consists of initial one off fees as shown in the Order Form;

Sold Equipment: any apparatus or equipment as specified in the Order Form to be sold to the Customer by the Supplier or any third party on behalf of the Supplier;

Supported Software: any operating system and software applications identified in the Order Form as being supplied by the Supplier.