

## Terms and Conditions for the Supply of Services

### 1. INTERPRETATION

The following definitions and rules of interpretation apply to these Conditions.

#### 1.1 Definitions:

**Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Business Day** means a day other than a Saturday, Sunday or public holiday in England (United Kingdom) and Victoria (Australia).

**Business Hours** means the hours from 09:00 until 18:00 on each Business Day.

**Commencement Date** has the meaning given in Clause 2.2.

**Conditions** means these terms and conditions as amended from time to time in accordance with Clause 14.7.

**Contract** means the contract between the Supplier and the Customer for the supply of Services, consisting of the Order, these Conditions, and any other terms, conditions or documents which the Customer and Supplier agree in writing shall form part of the Contract.

**Control** shall be as defined in section 50AA of the *Corporations Act 2001* (Cth), and the expression change of control shall be construed accordingly.

**Customer** means the person or firm who purchases the Services from the Supplier.

**Force Majeure Event** has the meaning given to it in Clause 13.

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order** means the Customer's order for the supply of Services, as set out in the Customer's purchase order form;

**Services** means the cloud-based management services supplied by the Supplier to the Customer as specified in the Order.

**Supplier** means MAS AUSTRALIA PTY LTD ACN 612 371 945 of Ground Floor, 470 St Kilda Road, Melbourne,

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Victoria, 3004.

**Term** means a period of 12 months from the Commencement Date.

1.2 **Interpretation:**

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email (but not fax).

**2. BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted on the date of the first invoice at which point the Contract shall come into existence (**Commencement Date**).
- 2.3 Where any samples, drawings, descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them, they shall not form part of the Contract or have any contractual force – such as a branded example.
- 2.4 These Conditions apply to the 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.
- 2.5 Any quotation given by the Supplier to a customer for Services shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

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**3. SUPPLY OF SERVICES**

- 3.1 The Supplier shall supply the Services to the Customer in all material respects as specified in the Order.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.3 Support Services: The Supplier shall provide software support to the Customer in relation to the Services within 5 hours from receiving the request for support, within the Supplier's Business Hours.

**4. CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer must:
- (a) ensure that the terms of the Order are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services as reasonably required by the Supplier;
  - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities within the Customer's business hours and as agreed between the Customer and the Supplier, as reasonably required by the Supplier to provide the Services;
  - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - (e) obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - (f) comply with any additional obligations as may be set out in the Order; and
  - (g) not infringe any of the Supplier's intellectual property rights.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

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- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly from the Customer Default.

**5. CHARGES AND PAYMENT**

- 5.1 The price for Services shall be the price set out in the Order or, if no price is specified in the Order, the price set out in the Supplier's published price list as at the date of the relevant Order. The Supplier will provide the Customer with a copy of its then current price list on request.
- 5.2 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, including the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials, provided such expenses have been approved by the Customer prior to being incurred.
- 5.3 In respect of Services, the Supplier shall invoice the Customer monthly in arrears or as otherwise specified in the relevant Order.
- 5.4 The Customer shall pay each invoice submitted by the Supplier under clause 5.3:
  - (a) within 15 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 5.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under Clause 11 (Term and Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum. Interest under this Clause 5.5 will accrue each day at 4% a year above the Reserve Bank of Australia's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

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**6. GST**

- 6.1 All amounts payable by the Customer under the Contract are exclusive of GST.
- 6.2 Capitalised terms in this clause have the meaning given to them in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 6.3 If GST is payable in relation to a Taxable Supply under the Contract, then the Supplier may increase the amount otherwise payable for the Supply under the Contract by the amount of such GST or otherwise recover from the Customer the amount of such GST.
- 6.4 The recovery of any amount in respect of GST by the Supplier from the Customer is subject to the Supplier issuing to the Customer a Tax Invoice or an Adjustment Note enabling the Supplier to claim any applicable tax credits in respect of the Supply.
- 6.5 Each party warrants that it is registered for GST purposes.

**7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 7.2 The Customer grants the Supplier a fully paid-up, non-exclusive, irrevocable, royalty-free and non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract, for the purpose of providing the Services to the Customer.

**8. PRIVACY**

- 8.1 The Supplier agrees to comply with all applicable privacy laws including the Privacy Act 1988 (Cth) (**Privacy Act**) in the collection, use, storage and handling of any personal information provided by the Customer to the Supplier in connection with the Contract.
- 8.2 In this clause 8, 'personal information' has the meaning given in section 6 of the Privacy Act.

**9. CONFIDENTIALITY**

- 9.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 9.2.
- 9.2 Each party may disclose the other party's confidential information:

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- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 9; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **10. LIMITATION OF LIABILITY**

10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 51 (title) and 52 (undisturbed possession) of the Australian Consumer Law; or
- (d) defective products under the Australian Consumer Law.

10.2 Subject to Clause 10.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), under statute, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) breach of Personal Data caused by third parties;
- (g) loss of or damage to goodwill; and
- (h) any indirect or consequential loss.

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- 10.3 To the extent permitted by law:
- (a) if a claim is brought by the Customer under a warranty or condition which is implied into these Conditions by law, or under any other law which imposes liability on the Supplier with respect to the Services outside the terms of the Contract, the Supplier limits its liability with respect to any such claim (at its sole option) to:
    - (i) supplying the Services again; or
    - (ii) reimbursing the Customer for the cost of having the Services supplied again.
  - (b) the maximum amount for which the Supplier may be liable to the Customer under this Agreement, whether in contract, tort (including negligence) or under statute, is:
    - (i) in respect of any one claim in relation to Services - the price paid by the Customer for those Services under the relevant Order; and
    - (ii) in respect of all claims in aggregate in relation to the Contract - the total amount paid by the Customer under all Orders.

10.4 Except as imposed by law and being incapable of exclusion, the Supplier makes no express or implied warranties to the Customer regarding the Services and any implied warranties are disclaimed.

10.5 This Clause 10 shall survive termination of the Contract.

## 11. TERM AND TERMINATION

11.1 The minimum duration of the Contract shall be the Term.

11.2 The Contract will be deemed to have renewed for an additional term of 12 months if the Customer does not give the Supplier 30 days' written notice of its wish to terminate the Contract.

11.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract at any time by giving the Customer 90 days' notice.

11.4 Without affecting any other right or remedy available to it, the Supplier 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 its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 10 days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of

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a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction, subject to any law suspending or preventing the exercise of a termination right in the relevant circumstances;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- (e) there is a change of Control of the Customer.

- 11.5 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving 15 days written notice to the other party if the Customer fails to pay any amount due under the Contract within a period of 45 days after the due date for payment. The supplier agrees to give a 15-day notice period for cancellation; or
- 11.6 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in Clause 11.4(b) to Clause 11.4(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **12. CONSEQUENCES OF TERMINATION**

- 12.1 On expiry or earlier termination of the Contract, the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 12.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 12.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or

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expiry shall continue in full force and effect.

**13. FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract (other than an obligation to pay money) if such delay or failure result from events, circumstances or causes beyond its reasonable control.

**14. GENERAL**

**14.1 Assignment and other dealings**

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract, to the extent these rights do not materially affect those of the Customer. The Supplier agrees to consult with the Customer if an exercise of its rights under this Clause 14.1 will materially effect the rights of the Customer.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

**14.2 Notices**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and in English and may be given by:
  - (i) hand delivery;
  - (ii) pre-paid post; or
  - (iii) email,

to the address set out below or such other address notified by the other party from time to time.

Supplier	Address: CareLineLive C/O MAS Group, The Business Park, Maydwell Avenue, Slinfold, RH13 0AS, UK  Email: josh.hough@mas-group.co.uk.
Customer	Refer to Order.

- (b) Any notice or other communication provided under clause 14.2(a) is deemed to have been received, if:
- (i) delivered by hand, on signature of a delivery receipt or at the time the notice or communication is left at the proper address;
  - (ii) sent by pre-paid post, on the earlier of three Business Days after being posted or at the time recorded by the delivery service; or
  - (iii) if sent by email, at 9.00 am on the next Business Day after transmission.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

#### 14.3 **Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

#### 14.4 **Waiver**

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

#### 14.5 **No partnership or agency**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

#### 14.6 **Entire agreement**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

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- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement or assurance (whether made innocently or negligently) that is not set out in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

14.7 **Variation**

- (a) These Conditions are subject to change on written notice to the Customer. If the Customer does not agree to the amended Conditions, the Customer may terminate the Contract with immediate effect by written notice to the Supplier. By continuing to use any Services supplied, the Customer agrees to be bound by the amended Conditions.
- (b) Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

14.8 **Governing law and jurisdiction**

- (a) The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of the State of Victoria and the Commonwealth of Australia.
- (b) Each party irrevocably agrees that the courts of the State of Victoria and the Commonwealth of Australia will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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