

1. Interpretation

- 1.1. From time to time, the Client may wish to use the Software under a licence or rental agreement (including Support), order Professional Services, and/or change an existing Work Order. To enter into such a contract, the parties shall complete and sign a Work Order. Each Work Order incorporates these Terms and Conditions.
- 1.2. The following terms have the meanings set out in the Work Order: (a) **"Fees"**; (b) **"Client"**; (c) **"Location"**; (d) **"Software"**; (e) **"Start Date"**.
- 1.3. In these Terms and Conditions and in any Work Order(s), the following expressions have the following meanings: (a) **"Hosted"** means ML providing the Software as an 'Application Service Provider'; (b) **"ML"** means ManSys Limited, a company registered in England under registration number 03551157, whose registered office is at East Court, College Lane, East Grinstead, West Sussex RH19 3LT; (c) **"Licensed"** means ML licensing the Software to the Client, as specified in a Work Order; (d) **"Professional Services"** includes consultancy, project management, configuration, customisation, bespoke development, training, data migration and conversion, installation, implementation, or other services, as specified in a Work Order, and which are chargeable; (e) **"Support"** means the Software support and maintenance services described at Clause 3; (f) **"Users"** means the Client's users, to be individually identified prior to accessing the Software; (g) **"Working Hours"** means 09:00 until 17:00 GMT (or BST as applicable) from Monday to Friday, excluding UK public holidays; (h) **"Work Order"** means a contract which is made by the parties executing a completed work order.
- 1.4. In the event of conflict between these Terms and Conditions and a Work Order, the latter shall prevail.

2. Software Provision and Services

- 2.1. ML grants to the Client a non-exclusive, non-transferable licence to use the Software for the duration specified at Clause 9 and subject to Clause 2.2 to: (a) install and permit the Users to Use the Software in combination with the environment specified in the Work Order, and make as many copies of the Software as is reasonable for the purpose of backup, disaster recovery and testing; or where (b) where the Software is Hosted, permit the Users to Use the Software; and (c) use and make such copies of the Software documentation as the Client may reasonably require. For the purpose of this Clause 2.1 **"Use"** means use (i) strictly in accordance with instructions contained in operating instructions, manuals and help text files relating thereto, (ii) in support of the Client's business operations only, and (iii) not for or on behalf of any third party.
- 2.2. The Client shall: (a) not decompile or reverse engineer the Software nor attempt to change the Software in any way whatsoever; (b) not change or remove ML's logos, trademarks or copyright statements contained in the Software; (c) not grant a sub-licence to a third party in respect of the Software; (d) ensure that the Users are the Client's competent, trained: (i) employees; or (ii) bona fide contractors working on behalf of the Client (and not acting on behalf of themselves or any third party); (e) be responsible for ensuring it has the appropriate hardware, software, internet access, and telecommunication lines to access the Software; (f) undertake all reasonable enquiries to satisfy itself that the Software is suitable for its business needs before entering into a Work Order; (g) adopt such processes and make such changes to its working practices as are necessary to make effective use of the Software; (h) ensure it has contracted for sufficient user licences for each and every User to have individual access to the Software; (i) whether Hosted or not-Hosted be responsible for maintaining the required hardware and operating system software, audit controls, the accuracy and security of input and output data, restart and recovery routines, security routines for programmes and data, and all other procedures necessary for the Client's intended use of the Software.
- 2.3. Where the Software is to be installed on Client equipment, ML shall deliver one copy of the Software to the Client at the Location via remote installation procedures. Where the Software is Hosted, delivery shall be deemed to take place on the Start Date. To the extent that installation and configuration is required after delivery in order for the Client to use the Software, unless the parties otherwise agree in a Work Order for Professional Services, such installation and configuration shall be the Client's sole responsibility. The Software shall be deemed accepted on the earlier of (i) the expiry of 30 days from delivery; and (ii) any live or operational use by the Client.
- 2.4. Where the Software is Hosted, ML shall use all reasonable endeavours to guarantee the 99 per cent availability per annum (commencing on the Start Date) of the Software, and without prejudice to the foregoing ML may from time to time, by giving as much notice to the Client as is reasonably practicable or 14 days (whichever is the lesser), suspend access to the Software (**"Downtime"**) in order to undertake Support. ML shall wherever reasonably possible ensure that Downtime takes place outside Working Hours.
- 2.5. ML shall provide services using reasonable care and skill and in accordance with good industry practice. So ML may carry out its duties the Client shall, without charge to ML: (a) respond promptly to any request for information from ML; (b) permit ML's staff to have remote electronic access to the Client's technical equipment to access the Software; and (c) make available to ML any reasonably requested office, information and telecommunications facilities.
- 2.6. To use the Software the Client must have a valid and current initial licence or annual licence, or a current rental agreement, without which the Software will be inoperable.

3. Support

- 3.1. The Client appoints ML as its sole and exclusive provider of maintenance and support services in connection with the Software.
- 3.2. From the Start Date until the Agreement is terminated, ML shall use all reasonable endeavours to: (a) provide help desk support to the Client during Working Hours; (b) provide new releases of the Software from time to time in accordance with ML's standard release policy (but excluding new versions and additional modules or users).
- 3.3. The Client may log a **"Support Ticket"** with ML. A Support Ticket means a query or request by telephone call, e-mail or web-form detailing the topic and any operational impact. ML will progress Support Tickets as follows: (a) requests will be given a Ticket number that the Client should use in subsequent communications; (b) for a **"Critical Situation"** (which means a Software failure is preventing more than 60% of users from accessing the system and performing their work) ML will use reasonable endeavours to respond within 4 working hours of ML being provided by the Client with sufficient information to start issue resolution; (c) for a **"Non-Critical Situation"** (which means any Software failure that is not a

- Critical Situation) ML will use reasonable endeavours to respond within 48 hours.
- 3.4. Given the nature of software issue resolution ML cannot guarantee that any issue will be resolved within any specific timescale but all Tickets will remain open and under action until either closed by agreement with the Client or closed if the client has not responded to requests for information about the Ticket within 6 weeks.
- 3.5. If the Support Ticket request cannot be solved by telephone or e-mail, ML will provide the option of an on-line service, via the internet and agreed communications software, to investigate and, if possible, deal with the request. No changes to the "live" system will be actioned without the prior consent of the Client.
- 3.6. Support does not include: (a) support for any software other than the Software; (b) support of Old Versions (see Clause 3.8); (c) support for hardware, network or telecommunications, (d) recovery and restoration work required as a result of corruption to software and data by any computer virus or third party software, however introduced; (e) problems arising from invalid data or operator misuse; (f) problems caused directly or indirectly by the negligence of the Client or by the Client's failure to comply with these Terms and Conditions.
- 3.7. Whereas the provision of patches, bug-fixes, and new releases are included within the Agreement, new versions of the Software are not included. Where the Software is on Client equipment, the Client is responsible for installing patches, bug-fixes and new releases. ML may agree to provide assistance on a chargeable basis. Where the Software is Hosted, ML is responsible for applying patches, bug-fixes and new releases of the Software.
- 3.8. Where not-Hosted the Client is advised to install new releases as they become available and ML will not be obliged to resolve a Support Ticket by other action when the issue can be resolved by the Client installing a later release. In any case, on the expiry of two years from the date of ML's notification to the Client that a new version of the Software is available, the existing version of the Software licensed by the Client shall be an **"Old Version"**. ML will have no obligation to resolve Support Tickets relating to Old Versions and may charge fees for doing so.
- 3.9. Where the Client intends to move, alter, attach anything to, repair or adjust any equipment used by the Software reference to ML must be made prior to taking such actions. Where such actions are taken without reference and result in damage to or operational failure of the Software the Client will be responsible for all costs incurred in the restoration or attempted restoration of the Software to its normal operating status.
- 3.10. The Client will maintain appropriate security copies of the Client's data, the Software, and all additional systems and application programmes to facilitate a complete system restore in the event of any hardware or other systems failure, howsoever caused. In the event that such security copies are not maintained and it is requested that ML assist with data and system recovery then ML may agree to provide such assistance on a chargeable basis. In such circumstances it is also possible that the Client's systems may not be capable of restoration to the exact point of failure of the system.

4. Goods

- 4.1. From time to time the parties may agree that ML will procure certain third party software and/or hardware (**"Goods"**) and supply such Goods to the Client. The Client warrants that it shall comply with the system requirements, usage restrictions, and terms and conditions specified on or in the Goods. In the event that the Goods are defective or the Client otherwise disputes the quality or fitness for purpose of the Goods, ML shall refer the Client to the relevant supplier of the Goods for resolution.

5. Fees

- 5.1. ML shall be entitled to raise invoices for all Fees when they fall due. All Fees quoted are exclusive of VAT which shall be payable as prescribed by law. Fees are payable in accordance with the relevant Work Order and payable from the Start Date whether or not the Client uses the Software.
- 5.2. ML shall be entitled to revise its Annual Licence Fees at each annual renewal to reflect rises in costs. Such annual revision is limited to RPI (Retail Price Index) + 2%, limited to a maximum of 5% per annum.
- 5.3. Each Rental Agreement shall commence on the Start Date and shall continue for a minimum 24 months and until terminated by either party giving the other not less than 90 days prior notice. Rental fees are set as a monthly fee and due three-monthly in advance.
- 5.4. ML shall be entitled to revise fees for Professional Services by giving prior notice to the Client, provided that no such revision shall affect any existing Work Order(s).
- 5.5. The Client shall pay all reasonable travel and subsistence expenses incurred by ML in performing its duties under any Work Order(s).
- 5.6. Should the Client be in arrears in paying Annual Licence or Rental fees, ML is entitled to make the software inoperable.
- 5.7. In no case shall the Client be entitled to withhold any Fees beyond the due date for any reason whatsoever. Fees paid and payable in advance are non-refundable. Termination of any Work Order(s) or licence for any reason shall not entitle the Client to any refund (prorated or otherwise) of charges paid or payable in advance.
- 5.8. ML reserves the right to claim statutory interest on any overdue Fees at the then prevailing rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

6. Intellectual Property

- 6.1. ML shall own all intellectual property rights in: (a) the Software; and (b) software, specifications, design documents, and all other Materials (**"Materials"**) created pursuant to a Work Order. Upon ML's written request, the Client shall promptly execute all documents necessary to vest all intellectual property rights in Materials in ML.

7. Confidentiality

- 7.1. The parties agree to treat in confidence the other's confidential information, whether disclosed before or after the execution any Work Order(s).
- 7.2. Nothing shall prevent ML from using the knowledge and know-how gained in providing Software and services to the Client for any other purpose.
- 7.3. There is no duty of confidence in respect of any disclosure of information that is required by any court, arbitrator, or governmental or other regulatory authority, having statutory authority or jurisdiction to require the disclosure of that information
- 7.4. The Client agrees that any personal data held by ManSys about its registered users of the **ManSys** software are held for a legitimate interest on a lawful basis in the context of the GDPR.

- 7.5. ManSys agrees that any personal data held by the Client about its staff that provide support for the **ManSys** software are held for a legitimate interest on a lawful basis in the context of the GDPR.
- 7.6. The Client agrees that it is its responsibility to comply with GDPR with respect to any personal data held in the **ManSys** software.

8. Limitation of Liability

- 8.1. ML shall not exclude or limit its liability for: (a) death or personal injury caused by the negligence of ML; (b) fraudulent misrepresentation; and/or (c) breach of the obligations arising from section 12 of the Sale of Goods Act 1979.
- 8.2. Subject to Clause 8.1, ML shall not be liable for any consequential or indirect loss or damage (meaning loss of profits, loss of revenue, loss of goodwill and loss of data), howsoever arising.
- 8.3. Subject to Clause 8.2, ML's liability (a) for damage to the Client's tangible property caused by the negligence of ML shall not exceed £1,000,000; and (b) in respect of defective Goods shall be limited to 150% of the price of the defective Goods.
- 8.4. The liability of ML to the Client under or in relation to the subject matter of each Work Order that is not the subject of Clauses 8.1, 8.2, and 8.3 shall not exceed £100,000, regardless of whether such liability arises from a breach of contract, tort or breach of statutory duty.
- 8.5. ML hereby excludes any implied condition or warranty concerning the quality or fitness for purpose of the Software and Professional Services, whether such condition or warranty is implied by statute or common law.

9. Duration

- 9.1. Each Work Order shall commence on the Start Date and shall continue until terminated in accordance with this Clause 9.
- 9.2. The Software licence granted pursuant to Clause 2 and the Support shall commence on the Start Date and shall cease and expire on any anniversary of the Start Date upon either party giving to the other not less than 90 days prior notice.
- 9.3. Professional Services shall be undertaken in accordance with any timetable specified in a Work Order and may be terminated by either party on or after the **"End Date"** specified in the Work Order by giving to the other not less than 60 days' prior notice (such notice may be given at any time).
- 9.4. Work Orders that execute variations to existing Work Orders (**"Changes"**) shall be deemed to be part of the Work Order to which the Changes relate.
- 9.5. Either party may terminate a Work Order immediately, by giving notice to the other, if the other: (a) commits a material breach of any of its duties and fails to remedy such breach within 30 days of the notice specifying the breach; or (b) enters into a voluntary arrangement with its creditors; or (c) enters into liquidation whether compulsory or voluntary (other than for the purpose of a solvent merger or corporate reorganisation); or (d) has a receiver or administrative receiver appointed over all or any part of its assets or undertaking or has a petition presented for an administration order; or (e) is unable to pay its debts, as defined by Section 123 of the Insolvency Act 1986.
- 9.6. On termination of a Work Order for any reason all licences granted pursuant to that Work Order shall terminate immediately.
- 9.7. On termination of a Work Order for any reason: (a) each party shall, where possible, cause all confidential information belonging to the other party to be returned, deleted or destroyed according to the written instructions of the other party, and provide written certification of the same; (b) the rights and duties created by Clauses 6 – 10 shall survive; and (c) any rights of either party which arose on or before termination shall be unaffected.

10. GENERAL PROVISIONS

- 10.1. For the purposes of this Clause 10.1, "data", and "process" shall be interpreted in accordance with the Data Protection Act 1998, as amended. Each party warrants that it will not process data on behalf of the other, pursuant to any Work Order(s).
- 10.2. No change or variation to any Work Order(s) or these Terms and Conditions shall be valid unless agreed in writing by duly authorised representatives of each party.
- 10.3. All notices shall be in writing and shall be sent to the address of the recipient set out in the Work Order or to such other address as the recipient may have notified the other party from time to time. Any notice may be delivered personally, by first-class recorded post or by email, and shall be deemed to have been served upon confirmation of delivery.
- 10.4. The Client must not assign or otherwise transfer any Work Order(s) without the prior written consent of ML. ML shall be entitled to assign or transfer any Work Order(s) with the prior written consent of the Client, not to be unreasonably withheld or delayed. ML shall be entitled to sub-contract its duties under any Work Order(s).
- 10.5. The Client shall not, without the prior written consent of ML, actively initiate recruitment of any employee from ML during the life of, or for a period of six months from termination of, any Work Order(s).
- 10.6. Neither party will be liable for delay in performing obligations or for failure to perform obligations if the delay or failure resulted from circumstances beyond its control including but not limited to, an act of God or governmental act, flood, fire, explosion, accident, civil commotion, industrial dispute, or transportation or communications problems.
- 10.7. ML and the Client agree for the purpose of the Contracts (Rights of Third Parties) Act 1999 (as amended) that no rights, powers or benefits are or shall be conferred on any person pursuant to any Work Order(s).
- 10.8. Each Work Order when read together with these terms and conditions constitutes the entire agreement between the parties with respect to the subject matter which they contain. All prior agreements with respect to the subject matter of any Work Order, whether or not agreed or offered, and all representations, statements, negotiations, understandings and undertakings either written or oral, are superseded by the Work Order, and the parties hereby acknowledge that no reliance is placed on any such representation made but not embodied in those documents.
- 10.9. Each Work Order is governed by the laws of England and Wales and is subject to the exclusive jurisdiction of the courts of England and Wales