



# *MTI Cloud Backup Terms and Conditions for the use of the online internet managed backup service (Cloud Backup)*

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## **Explanation**

1.1 The definitions and rules of interpretation in this Clause 1.1 apply in this Contract.

“**MTI**” means MTI Technology trading at Riverview House, Weyside Park, Catteshall Lane, Godalming, Surrey GU7 1XE.

“**MTI Group Company**” means a MTI subsidiary or holding company including without limitation a holding company of MTI, or a subsidiary of any such holding company, all as defined by Section 736 of the Companies Act 1985, as amended by the Companies Act 1989.

“**Backup**” means the process of transferring Data from a PC, desktop, laptop computer or server to the MTI Cloud Backup Platform.

“**Business Day**” means any day within the year, excluding weekends (Saturday, Sunday), public holidays and bank holidays.

“**MTI Cloud Backup Platform**” all hardware and software required to be operated by MTI to provide the Service.

“**Computer**” means any PC, desktop, laptop, server or device to be backed up.

“**Confidential Information**” means any confidential or business-sensitive information whether communicated orally or in writing that is designated as confidential by either party or which the receiving party ought reasonably to realise is of a confidential or business-sensitive nature including but not limited to data or information relating to the Service or to each party’s business, business methods, products or services, any source or object code, research, the User Manual, development or business plans (whether announced or not), either party’s clients, service providers, financial information including actual or forecasted revenue, the existence and terms of this Contract or any information relating to each party’s research, development or business activities.

“**Contract**” means, in order of precedence, this Agreement (Terms & Conditions), the Service Level Agreement and Schedule of Charges.

“**Customer**” means the Company or person named on the Order Form. MTI may accept instructions from another person who MTI reasonably believes is acting with the Customer’s authority or knowledge.

“**Customer Platform**” means the area of the MTI Cloud Backup Platform which the Customer is required to operate and maintain on behalf of their end users, including management of licences, storage space, passwords and customer groups in order to use the Service.

**“Data”** means any programs, data or other information copied, or to be copied from a PC, desktop or laptop computer or server for storage or other digital device during Backup.

**“Documentation”** means all guides, information and instructions provided or made available to the Customer in relation to the use of the Service by MTI from time to time, including but not limited to any user manual.

**“End User”** means the users who shall be using the Service, as authorized by the Customer.

**“Intellectual Property Rights”** means all intellectual property rights howsoever arising and in whatever media, whether or not registered or capable of registration, including (without limitation) copyright, database rights, patents, service marks, trademarks, trade names, registered design rights, unregistered design rights, domain names, know-how, Confidential Information and any applications for the protection or registration of these rights and all renewals and extensions of them throughout the world.

**“Internet”** means the internet and all links between the internet and the Cloud Backup Platform and between the internet and the customer which are outside of the direct control of MTI.

**“Minimum Period”** means the term set out in the Schedule of Charges beginning on the Operational Service Date.

**“Operational Service Date”** means the date MTI notifies the Customer that their Storage Platform is operational.

**“Order Form”** means the order form, which the Customer completes as part of the order process.

**“Pass Phrase”** is the combination of password, encryption key and user name which will give the Customer access to their backups on the Online Backup platform. If the Customer forgets any part of the Pass Phrase then they will be unable to access the data.

**“Queries”** All reports of Software or Service faults where the Service fails to perform in accordance with this Contract.

**“Severity Rating”** the level of severity assigned to a query upon its receipt as more fully described in the Service Schedule.

**“Site”** means the Customer's premises as identified in the Order Form.

**“Service”** means the internet based Data storage service as described in the Manuals and the Charges Schedule, registered and marketed under the name of MTI Cloud Backup.

**“Service Credits”** means the service credits which may apply by virtue of a failure by MTI Limited to achieve the Service Levels.

**“Service Definition”** means the description of the functionality of the Service as set out in each document entered into by the parties detailing the Service, Charge, Service Level and Service Credits attaching to the provision of each service, which may be updated from time to time by MTI.

**“Service Level”** means the service level (if any) attaching to the provision of each Service as described in the relevant Service Definition.

**“Service Level Agreement”** means the written agreement between MTI and the Customer covering the Service Level(s) applicable to this Service.

**“Software”** means the software used and provided by MTI to enable the Customer to use the Service, such software may be changed by MTI from time to time.

**“Terms and Conditions”** means these terms and conditions together with all Service Definitions and the Service Level Agreement from time to time in force.

**“Documentation”** means all guides, information and instructions provided or made available to the Customer in relation to the use of the Service by MTI from time to time.

## 2. Interpretation

- 2.1 References to the singular shall include the plural and vice versa;
- 2.2 References to clauses are (unless stated otherwise) to clauses and sub-clauses in this Contract and references to Schedules and Appendices are (unless stated otherwise) to schedules and Appendices to this Contract;
- 2.3 Except where reference is expressly made to the contrary references to paragraphs are to paragraphs and sub-paragraphs in the appropriate Schedule;
- 2.4 Headings are inserted for convenience only and no account shall be taken of headings in construing the Contract.

## 3. Duration of this contract

- 3.1 This Contract begins on the Operational Service Date and will continue until terminated in accordance with the Conditions of this contract in Clauses 17 and 18 of this Contract.

## 4. Provision of the service

- 4.1 MTI will use reasonable endeavors to provide the Service to the Customer in accordance with this Contract.
- 4.2 MTI will use reasonable endeavors to provide the Service by the dates agreed with the Customer. All dates are estimates and MTI shall have no liability for any failure to meet any such dates, time for such dates shall not be of the essence.
- 4.3 MTI will provide the Service with reasonable skill and care.
- 4.4 MTI shall use reasonable endeavors to provide the Service in accordance with the Service Level Agreement and the Service Definition.
- 4.5 MTI may carry out the initial installation of the Software before commencement of the Service if the installation service is purchased. Any further installation shall be carried out either by the Customer in accordance with the Documentation or any other instructions provided by MTI or by MTI themselves, for which MTI shall make a charge on a time and materials basis.
- 4.6 MTI may at their discretion carry out training in relation to the Service. MTI shall make a charge for such training on a time and materials basis.
- 4.7 Occasionally MTI may temporarily suspend the Service because of an emergency or for operational reasons, maintenance or improvements. Service will be restored as soon as possible. During such suspension of Service MTI shall not be liable for any failure to provide the Service. Before suspending the Service MTI will give the Customer as much written prior notice as is reasonably possible.

- 4.8 If the Customer wishes to make any changes to the Service they may notify MTI of such changes. Following such notification MTI may at their sole discretion implement such changes but in such circumstances MTI may amend any of these Conditions (for example the charges in relation to the Services). If the Customer does not agree to such changes to the Conditions then the Services shall continue as they were before the Customer's notification of their possible change. If the changes to the Conditions are accepted then they shall at a time agreed between the parties become part of the terms and conditions of the Contract.
- 4.9 MTI will conduct its business in relation to the provision of the Service in a manner that will reflect favorably on the good name and reputation of the Customer.

## 5. Use of the service

- 5.1 The Customer shall use the Service strictly in accordance with this Agreement and the Documentation and shall only use the Service on the Customer Platform which it shall maintain in a fully operative condition.
- 5.2 The Customer must ensure that any equipment connected to or used with the Service is connected and used in accordance with any applicable instructions, safety and security procedures.
- 5.3 The Service must not be used in any way that does not comply with the terms of any legislation or any license applicable to the Customer or that is in any way unlawful. MTI reserves the right to terminate or suspend the provision of any of the Services in the event the Customer does not comply with this clause.
- 5.4 This service is provided solely for the Customer's own use and the Customer will not resell the Service (or any part or facility of it) to any third party and shall not allow the Service to be used by or for the benefit of any third party either directly or indirectly and whether through themselves or through a third party.
- 5.5 The Customer shall procure that any person who may have access to the Service on their behalf complies with the terms and conditions of this Contract. The Customer shall be responsible for the acts or omissions of all users of the Service (those using the Service on behalf of the Customer) and shall indemnify MTI for any and all losses that MTI may suffer as a result of use of the Service by users. To the extent that there is an obligation on the Customer in this Contract it shall also be an obligation upon the User for which the Customer is entirely responsible.
- 5.6 The Customer will promptly comply with all reasonable instructions, which MTI may give from time to time regarding the use of the Service.
- 5.7 Where in order for the Customer to make use of any Service it is provided by MTI Technology with an encryption key(s), the Customer acknowledges and agrees that it is the sole responsibility to ensure that such encryption key is kept safe and secure. The Customer acknowledges and agrees that MTI Technology will be unable to provide restoration of any data where the Customer has lost any such encryption key and MTI Technology will have no liability to the Customer in such circumstances.
- 5.8 The Customer warrants that entering into this Contract will not:

- (a) Result in a breach of the Memorandum or Articles of Association or associated documentation of the Customer;
- (b) Result in a breach or constitute a default under any agreement to which the Customer is a party or to which the Customer is bound;
- (c) Result in a breach of any order or judgment of any court or Governmental body or agency;
- (d) Constitute any infringement or breach of any law, regulation or other code or rules which may bind or govern the activities of the Customer.

## 6. Software licence

- 6.1 The possession and use by the Customer of the Software and the User Manual shall be on the terms and subject to the conditions of this Contract and the Licence.
- 6.2 MTI grants to the Customer a non-exclusive non-transferable licence to use the Software and the user manual at the site for the duration of this Contract only in relation to the Customer's internal business purpose.
- 6.3 MTI grants the licence for the Customer to use the software at the site in relation to the number of computers as set out in the Order Form. The Customer is entitled to access the Software by using the Pass Phrase and in no circumstances can any person other than the Customer have access to or use the Software for any purpose whatsoever. For this reason the Customer is under an obligation to store the software and the Pass Phrase in a secure environment preventing any unauthorised use or access to them and the Customer shall not transmit or provide access to the Software or the Pass Phrase to any third party other than an employee or agent engaged by the Customer to use the Software on the Customer's behalf and in the accordance with this Contract.
- 6.4 The Customer shall at all times keep the Pass Phrase confidential and be entirely responsible for the use of the Pass Phrase and will only use it in accordance with this contract. The Customer will indemnify MTI for whatever loss of whatever kind for what is in the reasonable opinion of MTI a miss use by the Customer of the Pass Phrase.
- 6.5 The Customer shall only use the Software on the Customer Platform and shall in all respects use the Software strictly in accordance with the User Manual
- 6.6 The Customer shall not permit any third party to use the Software nor use the Software on behalf of or for the benefit of any third party in any way whatsoever.

## 7. Acts not permitted

- 7.1 Save as permitted by law the Customer shall not permit any third party without the prior consent of MTI:
  - a) (save for the purposes of normal backup procedures in accordance with the Software documentation) copy, make error corrections, reproduce, replicate, modify, adapt, reverse engineer, disassemble (or otherwise reduce into machine readable form), make derivative works from, combine or incorporate with any other programs the whole or any part of Software (or the User Manual) or the functionality of the whole or any part of the Software (including, without limitation, by means of, or by examination and/or reproduction of the screen format, sequential operation and general use of the interface of the Software and/or its general operation and use, or by replicating the functionality of the Software or otherwise by copying, reproducing or duplicating the use or function of the Software in whatever language or environment); or

- b) Copy all or any part of the User Manual;
- c) Modify or remove any copyright or proprietary notices on the Software (or the User Manual).

## 8. Alterations

- 8.1 In the event that the Customer makes any unauthorised use, alterations or modifications of the Software (or part of it) all ongoing obligations, warranties, indemnities and other responsibilities of MTI set out in the Contract shall cease.

## 9. Indemnity

- 9.1 The Customer shall indemnify MTI from and against all claims, liabilities, proceedings, costs, damages, losses, or expenses incurred by MTI caused by, or in any way connected with, the unauthorised use of the Software by any third party whether through the Customer's use of the Software, breach by the Customer of the Contract or any other act or omission of the Customer.

## 10. Intellectual property

- 10.1 All Intellectual Property Rights and other proprietary rights in the Software and the Service, processes, files, documentation or any source or object code of whatever nature comprised in the Software and/or the Service are and shall remain the absolute property of MTI (or MTI's licensor if MTI is the licensee of such rights).

- 10.2 Subject to the following provisions of this clause 10, MTI shall indemnify the Customer against all losses, claims, damages, costs and expenses resulting from any claim made against the Customer that the Customer's normal use or possession of the Software and the Service infringes the copyright in the United Kingdom of any third party.

- 10.3 The indemnity in this clause 10 is conditional on the Customer:

- (a) Notifying MTI immediately in writing after becoming aware of any such claim;
- (b) Making no admission or settlement without MTI's prior written consent;
- (c) Permitting MTI to have the sole conduct of the defence of any such claim and of all negotiations for its settlement or compromise; and
- (d) Giving MTI all reasonable assistance and information requested.

- 10.4 In the event of any such claim, or if MTI believes that any part of the Software or the Service is likely to become infringing, MTI may at its sole option and expense:

- (a) Procure the right for the Customer to continue using the Software or the Service; and/or
- (b) Make such alterations, modifications or adjustments to the Software or the Service as are required such that they become non-infringing without incurring a material diminution in performance or function; and/or Replace the Software with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

- 10.5 MTI will have no liability to the Customer under this clause 10 to the extent that the third party's claim results from any modification of any part of the Software or the Service by a party other than MTI without MTI's consent, from the use of the Software or the Service in combination with any other software or programs, from any negligent, wilful or fraudulent act or omission of or by the Customer, from any breach by the Customer of any of the provisions of this Contract or from use of the Software or the Service other than strictly in accordance with the User Manual.
- 10.6 The Customer shall notify MTI immediately if the Customer becomes aware of any unauthorised use of the whole or part of the Service by any person in any way whatsoever.

## 11. Data Protection and regulatory and policy compliance

- 11.1 Both parties shall comply with all provisions of the Data Protection Act 1998 ("the Act") and any subsequent legislation relating to Personal Data (as defined in the Act) which may be applicable in relation to this Contract. The Customer hereby notifies MTI that the Customer has notified under the Act.
- 11.2 The Customer is the Data Controllers as defined in the Act and as such are responsible for compliance with the Act in relation to Personal Data and the Customer will ensure that their End Users are aware and comply with this. For the purposes of this Contract MTI is a Data Processor (as defined in the Act) and shall only process data in accordance with this Contract.
- 11.3 The Customer warrants and undertakes that all Data has been obtained and processed lawfully and fairly and otherwise in accordance with the Act.
- 11.4 Each Party shall ensure that they comply at all times with all laws, directives and regulations which are applicable to their use of each service.
- 11.5 The Customer shall comply with all reasonable policies from time to time in place of MTI Technology relating to the use of any Service(s).

## 12. Confidentiality

- 12.1 The parties will keep in confidence any Confidential Information obtained under this Contract and will not, without the written consent of the other party, disclose that information to any person (other than their employees or professional advisers, or in the case of MTI the employees of a MTI Group Company or their suppliers, who need to know the information).
- 12.2 This Clause 12 will not apply to:
- (a) Any information, which has been published other than through a breach of this Contract;
  - (b) Information lawfully in the possession of the recipient before the disclosure under this Contract took place;
  - (c) Information obtained from a third party who is free to disclose it; and
  - (d) Information which a party is requested to disclose and, if it did not, could be required to do so by law.
- 12.3 This Clause 12 will remain in effect for 2 years after the termination of this Contract.

## 13. Charges and payment

- 13.1 The charges for the Service will be calculated in accordance with the charges set out in the Schedule of Charges / Proposal. Charging will commence immediately upon the Operational Service Date.
- 13.2 Charges will be based on average data usage throughout the 3 months in arrears. Should additional desktop / laptop / server agents be required then this will be added to the quarterly bill in line with the charges for the service as set out in the Schedule of Charges / Proposal.
- 13.3 MTI may increase their Service prices at any time by giving the Customer 2 month's written notice, such price increases to be reasonable and fair and benchmarked. If the Customer does not agree to such increased prices the Customer may terminate the Contract in accordance with Clause 17.
- 13.4 Subject to any provision of this Contract, liability for charges shall commence with effect from the Operational Service Date.
- 13.5 Whether or not the Service is actually used, the first charge for the Service will be calculated on a pro-rata daily basis to the end of the first billing period which is the 15<sup>th</sup> day of the third month in each and every quarter, and thereafter for each billing period in arrears. Payment of all charges is due within 14 days of date of invoice.
- 13.6 All invoices will be invoiced and paid in pounds sterling. Value Added Tax or any other applicable country sales, use tax or like charge in a country where the Service is provided, which is payable by the Customer will be added to MTI's invoices as appropriate.
- 13.7 MTI may, at any time and with prior written notice to the Customer, require the Customer to pay a deposit or provide a guarantee as security for payment of future bills.
- 13.8 No payment under this clause 13 shall be considered made until it is received by MTI in cleared funds.
- 13.9 Without prejudice to any other rights or remedies of MTI (whether expressly specified in this Contract or otherwise) in the event that the Customer fails to pay any of the sums payable under this Contract on their due dates for payment:
- (a) MTI reserves the right to charge interest on such sum in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;
  - (b) MTI shall be entitled (but not bound) to suspend performance of this Contract until all sums owing have been paid in full and/or
  - (c) MTI shall be entitled to terminate this Contract by giving the Customer 30 Business Days' written notice of its intention to so do.
- 13.10 All services provided by MTI outside of the Service shall be charged for by MTI on a time and materials basis, such charges shall be due and payable within 30 days of the date of MTI's invoice in respect of such charges.
- 13.11 A minimum monthly or quarterly (as the case may be) charge shall apply to the data element of the service.

## 14. Warranties

- 14.1 MTI gives no warranty that the Service will be uninterrupted, bug or error free.
- 14.2 The terms of this Contract are in lieu of all other conditions, warranties or other terms concerning the supply of goods or services by MTI or any other term condition or warranty which might, but for this clause to have effect between MTI and the Customer or would otherwise be implied or incorporated into this Contract whether by statute, common law or otherwise, all of which are hereby excluded including without limitation the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or as to the use of reasonable skill and care

## 15. Limitation of liability

- 15.1 The parties acknowledge and agree that the allocation of risk and liability contained in this Contract is reasonable in all the circumstances having regard to all relevant factors including the nature of this Contract, the prices set out in the Charges Schedule, and the ability of the Customer to rely on their own respective insurance arrangements and other resources to bear or recover any loss or damage incurred. The Customer acknowledges that it is in a better position than MTI to foresee and evaluate any potential damage or loss that they may suffer in connection with this Contract and therefore the Customer is in a better position to adequately insure against such damage or loss.
- 15.2 This clause 15 prevails over all other clauses in this Contract and sets forth the entire liability of MTI, and the sole and exclusive remedies of the Customer in respect of the performance, non-performance, purported performance or delay in performance of this Contract or otherwise in relation to this Contract.
- 15.3 Nothing in this Contract shall exclude or limit MTI's liability for death or personal injury caused by its negligence.
- 15.4 MTI's liability in contract, tort (including negligence or breach of statutory duty) or otherwise for loss of or damage to the Customer's tangible property (or that of their agents or subcontractors) shall not exceed one million pounds (£1,000,000). Neither corruption of magnetic media nor loss of Data shall constitute physical damage to property for the purposes of this clause 15.
- 15.5 Save as provided in clause 15.3 and 15.4, MTI's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise ("the Liability") shall in no circumstances exceed the sum of 150% of the charges payable by the Customer under the Contract during the 12 month period preceding the date on which the event leading to the liability occurred or, if such limitation is considered to be unreasonable by a court or body with competent jurisdiction, the Liability shall be limited to the amount received by MTI from its insurance provider in relation to the Customer's claim up to a maximum of £2,000,000 (two million pounds).
- 15.6 MTI shall in no event be liable for loss of profits; loss of contracts; loss of use of money; loss of anticipated savings; loss of business; loss of opportunity; loss of good will; loss of reputation; loss, damage to or corruption of data; or any indirect or consequential loss, and such liability is excluded whether it is foreseeable, known, foreseen or otherwise. For the avoidance of doubt, the exclusions set out in this Clause 15.6 apply, whether such losses are direct, indirect, consequential or otherwise.

- 15.7 MTI shall in no circumstances be liable or responsible for (or for the consequences of):
- (a) Defects or errors resulting from any modifications of the Software or the Services made by any person other than MTI without MTI's prior written consent;
  - (b) Defects or errors caused by the use of the Service or the Software other than strictly in accordance with this Contract;
  - (c) Use of the Software or the Service other than strictly in accordance with the User Manual or defects or errors due to operator error;
  - (d) A situation where a defect or error can be avoided by consideration of all information contained in the User Manual, even if such consideration depends on the interpretation of such information;
  - (e) Any defect or error in the Customer Platform or any other equipment used in conjunction with the Software or the Service;
  - (f) Defects or errors caused by the malicious or negligent activities of the Customer or its agents or any other third parties;
  - (g) Defects or errors in any way related to the Customer not affording MTI proper access to the Software.
  - (h) A loss or damage arising out of any failure by the Customer to keep full and up to date security copies of the Software and any computer programs and data used in accordance with the Service in accordance with best computer practice.
  - (i) Defects or errors in the Service that are in any way related to the Internet.
- 15.8 The Customer agrees to have in place adequate insurance protection, including but not limited to business continuity insurance in order to protect their business in the event of the Service failing or the Service resulting in any loss on the part of the Customer.

## 16. Matters beyond the reasonable control of either party

- 16.1 If either party is unable to perform any obligation under this Contract because of a matter beyond its reasonable control, such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes or acts of local or central Government or other competent authorities infrastructure failure, power failure, municipal infrastructure problems, telecommunications or Internet failure or events beyond the reasonable control of that party's suppliers, that party will have no liability to the other for that failure to perform.
- 16.2 In the event of the imposition of restrictions of a legal or regulatory nature, which prevents MTI from supplying the Service, then MTI will have no liability to the Customer for failure to supply the Service.

If any of the events detailed in clauses 16.1 or 16.2 continue for more than 3 months either party may serve notice on the other terminating this Contract.

## 17. Termination of this contract

- 17.1 Either party may terminate this Contract by giving notice to the other of at least the notice period as outlined on the Schedule of Charges. If the Customer terminates this Contract during the Minimum Period other than under Clause 16 or because MTI has increased the prices in accordance with clause 13.3, the Customer must immediately pay MTI termination charges equal to the charges due in respect of the remaining period of the Minimum Period.

- 17.2 Either party may terminate this Contract immediately on notice, if the other:
- (a) commits a material breach of this Contract, which is capable of remedy, and fails to remedy the breach within 60 days of a written notice to do so; or
  - (b) commits a material breach of this Contract which cannot be remedied; or
  - (c) is the subject of a bankruptcy orders, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation or a receiver or administrator is appointed over their assets.

## 18. Consequences of termination

- 18.1 Following termination of this Contract for whatever reason:
- (a) the Customer will at MTI's option immediately return or destroy the Software, User Manual and any Confidential Information together with all copies in any form, including copies on any hard and backup disks;
  - (b) immediately discontinue any use of the Software or User Manual supplied as part of this Contract; and
  - (c) MTI will have the right to delete any stored Data without any liability for loss or damage 30 days after the termination date of this Agreement. Prior to this 30 day period you may make arrangements to collect your data.
- 18.2 Any termination of the Contract shall be without prejudice to any rights of the parties accrued up to the date of termination or to any obligations under the Contract which are intended or expressed to survive such a termination.
- 18.3 If MTI is entitled to terminate this Contract under Clause 17.2, MTI may, on giving prior notice where practicable, suspend the Service without prejudice to such rights. Where the Service is suspended under this clause the Customer must pay the charges for the Service until this Contract is terminated.
- 18.4 If this Contract is terminated by MTI during the Minimum Period because of an event specified in Clause 17.2 the Customer must pay MTI, without prejudice to any other rights MTI may have, the termination charges specified in Clause 17.1.
- 18.5 If either party delays in acting upon a breach of this Contract that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Contract that waiver is limited to that particular breach.

## 19. Non-solicitation

- 19.1 Neither party shall (except with the prior written consent of the other) during the term of this Contract, and for a period of one year thereafter, solicit or engage the services of any staff of the other party who have been engaged in the provision of the Service under this Contract or the management of this Contract or any significant part of it either as principal, agent, employee, independent contractor or any other form of employment or engagement other than by means of a national advertising campaign open to everyone and not specifically targeted at such staff of the other party.

## 20. Dispute Resolution and Choice of Law

- 20.1 Both parties shall in good faith follow the dispute resolution procedure set out in this Clause 20.
- 20.2 Any dispute which may arise between the parties concerning this Contract shall be determined as follows, and conducted in strict confidence.
- 20.3 The dispute shall first be referred to the individuals from each party as set out in Appendix A who shall negotiate in good faith in an attempt to resolve the dispute as speedily as possible. If those negotiations do not result in a settlement of the dispute within ten (10) Business Days of their commencement then the dispute shall be referred to the Customer's CEO and to MTI's CEO (or the appropriate equivalent) who shall negotiate in good faith in an attempt to resolve the dispute as speedily as possible. If those negotiations do not result in a settlement of the disputes within ten (10) Business Days of their commencement then the provisions of Clause 20.5 shall apply.
- 20.4 The parties shall bear their own legal costs of this Dispute Resolution Procedure.
- 20.5 If the parties fail to reach a binding settlement in accordance with Clause 20.3 then such dispute shall be referred to a sole arbitrator to be agreed upon by the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996.

## 21. Collaboration, Changes and Developments

- 21.1 The requirements of the parties may change over the course of time. The Change Control procedure set out below shall be the sole method by which any changes to the provisions of this Contract can be achieved.
- 21.2 For the purposes of this Contract a "Change Request" is a request to amend this Contract or any document attached to it or referred to in this Contract.
- 21.3 A Change Request shall become a "Change Order" when the requirements of the Change Control procedure have been satisfied and the Change Request is signed by authorised representatives of both parties to signify their approval to the change.
- 21.4 Change Requests may be originated by either party.
- 21.5 Where MTI originates a Change Request it shall provide, with the Change Request, details of the impact that the proposed change will have on any of the terms of this Contract.
- 21.6 Where the Customer originates a Change Request, it shall provide, with the Change Request, details of the impact that the proposed change will have on any of the terms of this Contract to include any additional costs.
- 21.7 On receipt of a Change Request either party shall respond within 20 days of such receipt as to their acceptance or otherwise of such Change Request. The parties agree to use all reasonable commercial endeavours to reach agreement in respect of any Change Request.

- 21.8 Save where otherwise stated herein, neither party shall be obliged to agree a Change Request originated by the other.
- 21.9 If either party is unwilling to accept a Change Request suggested by the other (or any term of any Change Request) then the Contract will continue unchanged.
- 21.10 The reasonable costs of implementing a Change Order and any amendments to the Schedule of Charges shall be borne as set out within the Change Order.
- 21.11 If a Change Request is agreed and becomes a Change Order the change shall become a term of this Contract as appropriate.

## 22. Rights to audit

- 22.1 MTI shall on giving reasonable notice have the right to access and inspect the Site, the Software and the Customer Platform and any other equipment or premises they consider appropriate to ensure compliance by the Customer with this Contract. The Customer shall give the other party all assistance requested in relation to such a right of access and inspection.

## 23. Publicity

- 23.1 All media releases, public announcements and public disclosures by either party relating to this Contract or its subject matter, including promotional or marketing material, shall be coordinated with the other party and approved jointly by the parties in writing prior to release. Such requests shall not be unreasonably withheld or delayed by either party.

## 24. Transfer of rights and obligations

- 24.1 Neither party may transfer any of its rights or obligations under this Contract, without the prior written consent of the other party, except that MTI may transfer its rights or obligations (or both) to an MTI Group Company without consent or to any third party in the event that MTI sell any of its business assets.

## 25. Entire agreement

- 25.1 This Contract contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.
- 25.2 The parties acknowledge and agree that:
- (a) they have not been induced to enter into this Contract by any representation, warranty or other assurance not expressly incorporated into it; and
  - (b) in connection with this Contract their only rights and remedies in relation to any representation, warranty or other assurance are for breach of this Contract and that all other rights and remedies are excluded.

25.3 The provisions of clauses 25.1 and 25.2 shall not affect the parties' rights or remedies in relation to any fraud or fraudulent misrepresentation

## 26. Rights of third parties

26.1 A person who is not party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy or a third party which exists or is available apart from that Act

## 27. Notices

27.1 Notices given by the Customer to MTI under this Contract must be in writing and delivered by e-mail to the following address: cloudadmin@mti.com

27.2 Notices given by MTI to the Customer under this Contract must be in writing and may be delivered by hand or by courier, or sent by first class post to the Customer at the address to which the Customer asks MTI to send invoices.

## 28. Severability

28.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of its provisions will continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision omitted.

28.2 The parties agree that if a clause is severed they will attempt to substitute any invalid or unenforceable provision with a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

## 29. Law and jurisdiction

29.1 This Contract is governed by the law of England and Wales and both parties submit to the exclusive jurisdiction of the English courts.