



MASTER SERVICES AGREEMENT – TERMS AND CONDITIONS

1. DEFINITIONS

In this Contract the following words have the following meanings:

- 1.1 **"Affiliate"** means any direct or indirect holding Company or Subsidiary Company of the relevant entity. A Company is a **"Subsidiary"** of another Company, if the latter company: (a) holds a majority of the voting rights in it; or (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it. **"Company"** includes any body corporate or any legal entity capable under law of making a contract.
- 1.2 **"API"** means the application programming interface described and defined in Schedule 6.
- 1.3 **"API Licence"** means the API licence described at Schedule 6.
- 1.4 **"Client"** means the 'Client' specified in the Order Form.
- 1.5 **"Client Infrastructure"** means the Client's systems and technical infrastructure, including those systems that directly or indirectly interface and/or are interoperable with, and/or impact on, the Services, and which are not under Notify's management and control and explicitly identified as Notify's responsibility under this Contract, but excluding the Connectivity Infrastructure.
- 1.6 **"Connectivity Infrastructure"** means the internet, telecommunications links, broadband and/or third party software and systems which are neither owned or supplied by Notify or the Client and which connect the Services and/or the Notify Software to wide area networks.
- 1.7 **"Contract"** means these MSA Terms & Conditions, the Order Form, and the Schedules.
- 1.8 **"Costs"** means costs, liabilities, penalties, and charges.
- 1.9 **"Deliverables"** means the output/deliverables in respect of any Services, excluding any Materials.
- 1.10 **"Effective Date"** means the contract date specified in the Order Form.
- 1.11 **"Fees"** means the fees and charges specified in the Order Form and the SOW(s).
- 1.12 **"Hardware"** means any hardware to be supplied by Notify to the Client as set out in the Order Form.
- 1.13 **"Hosted Services"** means 'Hosted Services' as described in the Order Form.
- 1.14 **"Intellectual Property Rights"** means all copyrights (including copyright in computer software), database rights, rights in inventions, patent applications, patents, trade marks, trade names, know-how, service marks, design rights (whether registered or unregistered), trade secrets, rights in confidential information and all other industrial or intellectual property rights of whatever nature for the full duration of such rights, including any extensions or renewals.
- 1.15 **"Law"** means any applicable laws, regulations, regulatory constraints, obligations, proclamations, rules (including binding codes of practice and statement of principles incorporated and contained in such rules), or applicable judgment of a relevant court of law which is a binding precedent, in each case in force in any jurisdiction that is or may be applicable to this Contract.
- 1.16 **"Licensing Purpose"** means use in Health & Safety management and compliance for the benefit of the Client's business only, as envisaged in Notify's published marketing materials of the Hosted Services, excluding the Prohibited Purpose.
- 1.17 **"Local"** means installed on Client Infrastructure.
- 1.18 **"Materials"** means any tangible materials delivered by Notify to the Client under this Contract or any SOW(s).
- 1.19 **"Notify"** means Notify Technology Limited, a company registered in England and Wales with company number 10756960 of Cobalt Business Exchange, Cobalt Park Way, Newcastle Upon Tyne, NE28 9NZ.
- 1.20 **"Notify-Distributed Service Providers"** means the third party 'Notify-Distributed Service Providers' described at Schedule 5.
- 1.21 **"Notify-Distributed Service Terms"** means the additional terms applicable to the re-supply by Notify of services by Notify-Distributed Service Providers described at Schedule 5.
- 1.22 **"Notify-Distributed Software Vendors"** means the third party 'Notify-Distributed Software Vendors' described at Schedule 5.
- 1.23 **"Notify-Distributed Software Licences"** means software licensing terms in respect of the re-supply by Notify of software supplied by Notify-Distributed Software Vendors described at Schedule 5.



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- 1.24 “Notify Software” means the Notify software as described in the Order Form.
- 1.25 “Open Source Licence” means the open source software licence(s) described at Schedule 5.
- 1.26 “Open Source Software” means the open source software described at Schedule 5.
- 1.27 “Order Form” means the order form setting out the Services required by the Client, including any modification or customisation of the Notify Software.
- 1.28 “Prohibited Purpose” means use for the benefit of any entity other than the Client including without limitation (a) provision of any advisory services to any third party unconnected with the Health & Safety management and compliance of the Client’s business (b) reselling or re-providing the Hosted Services and/or Software to any other business whether on a bureau basis or otherwise.
- 1.29 “Services” means Set-up and Implementation Services, Notify Software, Hosted Services and additional professional services from time to time upon the completion of a Statement of Work.
- 1.30 “Set-up and Implementation Services” means ‘Set-up and Implementation Services’ as described in the Order Form.
- 1.31 “SLA” means the ‘Service Level Agreement’ set out at Schedule 1.
- 1.32 “Software” means the Notify Software, Open Source Software, and software supplied pursuant to Notify-Distributed Software Licences, including all new releases, new versions, updates, and modifications thereto.
- 1.33 “Statement of Work” or “SOW” means a contract for specified professional services that is made in accordance with Clause 5.3.
- 1.34 “System Access” the local and wide area access to the Client Infrastructure as required by Notify in order to provide the Services pursuant to this Contract.
- 1.35 “Target Go-Live Date” means the target date (advised by Notify) on which the Client should put the Hosted Services into live and/or operational use.
- 1.36 “User Data” means any information, materials, or data: (a) uploaded, stored or created in or using the Notify Software by: (i) the Client or its users; or (ii) by Notify or a third party on the Client’s or its users’ instructions; and/or (b) provided to Notify by (or on behalf of) the Client or its users.

2. HOSTED SERVICES AND SOFTWARE

- 2.1 From the Target Go-Live Date Notify shall provide Hosted Services substantially in accordance with the SLA with reasonable skill and care in accordance with good industry practice, subject to the terms of this Contract and provided that Notify does not warrant that the Client’s use of Hosted Services will be uninterrupted or error free. Notify shall have no liability for breach of warranty or otherwise arising as a result of: (a) the failure of any services or software provided by Notify-Distributed Software Vendors or Notify-Distributed Service Providers respectively; (b) the failure by the Client to implement recommendations made by Notify in respect of solutions to faults previously advised by or on behalf of Notify and (c) any repair or modification of the Software by any person other than Notify or its authorised sub-contractors. Notify shall use its reasonable endeavours to meet the timescales specified in the SLA. Resolution times are targets rather than guarantees.
- 2.2 Subject to the Client complying at all times with the terms of this Contract, and subject to clause 2.6, Notify grants to the Client a non-exclusive non-transferable, non-sub-licensable licence for the duration of this Contract to: (a) permit its authorised users to use the Notify Software via the Hosted Services for the Licensing Purpose and at all times in compliance with the Law, subject to the licensing parameters set out in the Order Form; (b) permit its authorised users to install and use any Local Notify Software for the Licensing Purpose and at all times in compliance with the Law, subject to the licensing parameters set out in the Order Form; and (c) use the Materials and Deliverables for the Licensing Purpose.
- 2.3 Notify shall not be responsible for any failure to provide Hosted Services as a result of a failure by the Client to comply with its responsibilities under this Contract and: (a) errors in or corruption of the Client Infrastructure, Connectivity Infrastructure, and/or the Client’s data; and/or (b) the occurrence of a Suspension Event.
- 2.4 Notify reserves the right at its sole discretion to suspend Hosted Services in the event of (each of which shall be a “Suspension Event”): (a) scheduled maintenance services (for which Notify shall give to the Client as much notice as is reasonably practicable in the

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circumstances); (b) a material breach by the Client of the terms of this Contract (including a failure to pay the Fees in accordance with Clause 8); (c) where ongoing use by the Client of Hosted Services has, in Notify's reasonable opinion, the prospect of damaging Hosted Services or degrading performance, whether due to failures in or problems with the Client Infrastructure, failures in or problems with the Connectivity Infrastructure, or the occurrence of an Event of Force Majeure.

2.5 In the event of a failure by Notify to provide Hosted Services in accordance with this Contract, Notify will, at its expense, use all reasonable commercial efforts to correct any such failure(s) promptly (which may include the provision of a temporary workaround) in accordance with the SLA. Notify's provision of corrective services in accordance with this Clause 2.5 shall constitute the Client's exclusive remedy for any breach of Clause 2.1. Nothing in this Clause 2.5 purports to limit Notify's liability for any failure of Notify to comply with this Clause 2.5 (for which the provisions of Clause 14 shall apply).

2.6 Client's authorised users shall include only the Client's employees and directors. Notwithstanding the foregoing, if expressly permitted in the licensing parameters set out in the Order Form, the Client's authorised users may also include (to the extent indicated on the Order Form) Client's agents or advisors, Client's Affiliates and/or sub-contractors, in each case who have a need to use the Software and/or Hosted Services for the Licensing Purpose. Where such permissions are given, the details of each third party user shall be expressly communicated to Notify by Client and clause 4.6 shall apply.

3. HARDWARE

Any Hardware supplied by Notify shall be supplied with the manufacturing warranty only. Notify's sole liability to the Customer in respect of any such Hardware shall be an obligation to enforce, at the Client's own expense, any rights that Notify may have against the supplier of such Hardware.

4. CLIENT'S RESPONSIBILITIES

4.1 The Client shall: (a) undertake all reasonable enquiries to satisfy itself that the Services are suitable for its needs before entering into this Contract; (b) adopt such processes and make

such changes to its working practices as are necessary to make effective use of the Services; (c) have in place appropriate Client Infrastructure and Connectivity Infrastructure necessary for the provision of Services; (d) maintain and upgrade the Client Infrastructure and Connectivity Infrastructure in accordance with good industry practice, Notify's reasonable instructions, and any minimum environment recommendations published as part of Software specifications/guidelines (including Notify guidance as to supported internet browsers); (e) carry out all of its responsibilities set out in this Contract in a timely and efficient manner and, in particular, not act (or fail to act) in a manner that will delay or otherwise adversely impact on Notify (or its subcontractors) performance of Services; (f) provide Notify with all necessary information, co-operation, and assistance as may be required by Notify in order to provide Services; (g) comply with the Law with respect to its activities under this Contract; (h) provide Notify with such technical support, information, and access to systems and/or data as Notify reasonably requires in order to maintain System Access for the duration of this Contract; (i) maintain its own back-up of User Data in accordance with good industry practice; (j) ensure that any data (including User Data) migrated to Notify as part of any data migration project is appropriately cleansed and is free from corruption or material errors; (k) keep confidential the Notify Software, the Deliverables and the Materials and effect and maintain adequate security measures to safeguard the Notify Software, Deliverables and Materials from access or use by any unauthorised person and in particular limit access to the same to those employees, agents and sub-contractors who either have a need to know or who are engaged in the use of the Notify Software, Deliverables and Materials in accordance with the terms of this Contract.

4.2 The Client shall not, and shall not permit any third party to, copy, adapt, reverse engineer, decompile disassemble, or modify the Software (or attempt to do the same), save to the extent permitted by Law.

4.3 The Client recognises that the availability of the Hosted Services is, in part, dependent on the stability of the Connectivity Infrastructure, and that changes to the Connectivity Infrastructure may result in the loss of availability of (or the material degradation of) the Hosted Services.

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The Client shall not make changes to those elements of the Connectivity Infrastructure that are within its control, without the authorisation of Notify. The parties agree that changes to Connectivity Infrastructure that are outside of both parties control (and the consequences of such changes) are not the responsibility of either party; save that both parties shall use their reasonable endeavours to mitigate the adverse impact of such changes on the Hosted Services.

- 4.4 The Client shall permit Notify, on reasonable notice, to test the Client Infrastructure. In the event that Notify reasonably considers that the Client Infrastructure is inadequate and/or is (or may be) responsible for performance or functionality failures or degradation, the Client shall make such changes to Client Infrastructure (whether configuration or upgrades) as Notify may reasonably recommend.
- 4.5 The Client may use the Hosted Services and Software only for the advertised purpose. The Software must not be used for any unlawful or immoral purpose including in relation to adult content or content that may contain harmful programs designed to adversely affect the operation of any computer software or hardware.
- 4.6 The Client shall be responsible to Notify for any third party use of the Software and/or Hosted Services pursuant to Clause 2.6, as if such use were by the Client itself. Client shall notify the use restrictions under this Contract to each relevant third party user and shall ensure that all such third parties comply with the terms of this Contract. Each third party user shall count towards the numerical restrictions on users described in the licensing parameters set out in the Order Form.

5. SERVICES

- 5.1 Services will be provided pursuant to this Contract if and to the extent that such Services are specified in the Order Form.
- 5.2 If Notify's performance of its obligations under this Contract is prevented or delayed by any act or omission of the Client, its agents, sub-contractors or employees: (a) Notify shall not be liable for any costs, charges or losses incurred by the Client in respect of such failure to perform; and (b) Notify shall be provided with additional time to perform its obligations, at

least equal to the length of the delay caused by the Client.

- 5.3 This Contract also operates as a framework under which Services may be provided if the parties agree any SOW(s) by completing a SOW pro forma, as set out at Schedule 2. A SOW is deemed completed and binding on the parties if: (a) it is signed by both parties; or (b) it is raised by Notify in accordance with Clause 5.4 below. Each completed SOW is a separate contract for Services. The completed SOW incorporates all the terms of this Contract that directly or indirectly relate to the SOW.
- 5.4 In the event that Services are undertaken by Notify on the written request of the Client and it is not reasonably practicable to populate and execute a SOW in respect of such services prior to such services commencing, as soon as reasonably practicable thereafter Notify shall raise a retrospective SOW capturing the Services ordered by the Client, with the fees calculated either on a time and materials basis or as a fixed price as specified in a SOW. Such a SOW will not require the Client's signature to be binding on the parties.
- 5.5 Notify shall provide Services using reasonable care and skill and in accordance with good industry practice. Both parties shall use their reasonable endeavours to meet the timescales specified in the SOW(s). Notify shall not be responsible for any failure to achieve deadlines or milestones in the SOW(s) to the extent that the failure has been caused by any delay or default on the part of the Client. Time shall not be of the essence in relation to Notify's performance.

6. ACCEPTANCE AND TESTING

- 6.1 This clause shall apply only if the Set-Up and Implementation Services reference a Notify document under which Notify has agreed with the Client to execute software development services to enhance the Notify Software and/or Hosted Services and such document articulates acceptance criteria for such services.
- 6.2 The parties shall mutually agree in writing the acceptance criteria that will be used to determine whether the Software is Accepted or Rejected ("[Acceptance Criteria](#)"), and in the absence of such agreement the Acceptance Criteria shall be such criteria recommended by Notify that demonstrate that the Software complies with its specification(s).

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- 6.3 The Client shall undertake and complete user acceptance testing in a test environment in accordance with good industry practice and Notify's reasonable recommendations promptly ("**Tests**").
- 6.4 If the Software fails the Tests: (a) Notify shall promptly, and in any event within fourteen (14) days, endeavour to remedy such failure (noting that Notify will have limited control over such Software that is supplied by third parties) and resubmit the Software for a second cycle of Tests in accordance with clause 6.3; or (b) the parties may agree to vary some or all of the Acceptance Criteria in relation to the Software and following which Notify shall promptly submit the Software for a second cycle of Tests in accordance with clause 6.3.
- 6.5 If the Software fails a second cycle of Tests, the parties agree that the cycle at clause 6.4 shall be repeated.
- 6.6 If the Software fails a third cycle of Tests, within thirty (30) days of such failure, the Client shall be entitled to Reject the Software, which in respect of Tests immediately following (or part of) the Set-Up and Implementation Services, will entitle the Client to terminate this Contract by giving to Notify not less than ten (10) days prior written notice, whereupon the Client shall be entitled to receive a refund of all pre-paid Fees under this Contract that relate to Software and/or Set-Up and Implementation Services.
- 6.7 Software shall be deemed accepted if: (a) the Client signs an acceptance certificate; (b) the Client does not exercise its rejection rights in accordance with clause 6.6; (c) the Client puts the Software into live or operational use.
- 6.8 The Client's rights at clause 6.6 shall be its exclusive remedies in respect of rejection. In no circumstances shall the Client be entitled to compensation and/or damages (with the exception of the refund(s) set out at clause 6.6 (a)).
- 6.9 The Client shall install and/or implement new releases and/or new versions of Software promptly.

7. PERSONNEL

- 7.1 Each party shall appoint the personnel as specified in the Order Form ("**Key Personnel**"). Each party shall ensure that its Key Personnel shall be contactable using the contact details specified in the Order Form (as updated from time to time). Each party shall inform the other

promptly if any of its Key Personnel resigns or for any other reason ceases to work under this Contract.

- 7.2 Each party shall use their reasonable endeavours to maintain the continuity of their Key Personnel in respect of the management of this Contract, and if such Key Personnel become unavailable, each party shall promptly replace such individuals and ensure that any disruption to the Contract is minimised.

8. PAYMENT

- 8.1 The Client shall pay: (a) Fees as and when they fall due for payment, as specified in the Order Form; and (b) Fees for Services in the manner specified in the SOW(s) or otherwise fixed as specified under a SOW.
- 8.2 The Client shall pay any expenses reasonably incurred by Notify in performing its duties under this Contract, including travel, accommodation, subsistence and telecommunication expenses.
- 8.3 Notify shall be entitled to raise invoices for Fees and charges as and when they fall due for payment under Clause 8.1.
- 8.4 The Client shall pay Notify's invoices either: (a) within seven (7) days of the date of the invoice; (b) by the date specified on the invoice or (c) by direct debit or standing order (if applicable; and if specified in the Order Form).
- 8.5 The Client may not withhold payment of any amount due to Notify because of any set-off, counterclaim, abatement, or other similar deduction.
- 8.6 All fees payable by the Client to Notify under this Contract are payable in Pounds Sterling (unless another currency is specified in the Order Form) and are exclusive of any tax, levy, currency conversion charge or similar governmental charges, including value added or sales tax, that may be assessed by any jurisdiction, except for income, net worth or franchise taxes on Notify.
- 8.7 If any sum payable under this Contract is not paid ten (10) days after the due date for payment then (without prejudice to Notify's other rights and remedies) (a) Notify reserves the right to charge interest on that sum on a daily compounded basis (before as well as after any judgment) at the annual rate of ten per cent measured from the due date to the date of payment, provided that at no time shall the Client be required to pay interest at an effective rate higher than legally permissible; and (b)

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Notify reserves the right to disable access to the Services until such outstanding fees (and interest, if applicable) are paid in full.

- 8.8 All Fees shall increase on each anniversary of the Target Go-Live Date by an amount, as notified by Notify, that does not exceed the rate of change in the Retail Price Index (for all items) as published by the Office for National Statistics plus two per cent, measured between the date of review and the last review date (or in the event of the first review date, the Target Go-Live Date) ("**Indexed Increase**").
- 8.9 The parties acknowledge that Notify's Fees are in part dependent on the costs imposed on it by third party technology and/or infrastructure providers which are outside of its control. As such, Notify shall be entitled to increase the Fees at any time by giving the Client not less than thirty (30) days' written notice if any Notify-Distributed Software Vendor and/or Notify-Distributed Service Provider has increased its fees or charges in a manner that increases the costs imposed on Notify under this Contract, provided that such increase shall be limited to the additional cost imposed on Notify as may be apportioned to this Contract. Both parties will work collaboratively to mitigate the impact of any such third party costs and will endeavour to keep such increases to a minimum.
- 8.10 After the expiry of the Minimum Term, Notify shall be entitled by giving the Client not less than ninety (90) days' written notice prior to an anniversary of the Target Go-Live Date ("**Anniversary Date**") to increase any or all Fees with effect from the Anniversary Date by an amount that exceeds an Indexed Increase (as determined by Notify in its sole discretion) ("**General Increase**"), provided that if the Client objects to a General Increase it shall be entitled to terminate this Contract with effect from the Anniversary Date by giving to Notify not less than sixty (60) days' written notice prior to the Anniversary Date.
- 8.11 Notify shall be entitled to increase the Fees if, during any month, the Client's use of the Hosted Services exceeds the relevant data storage maximums specified at www.notifytechnology.com/fairuse. In such situation the Client shall pay Notify's then current excess data storage fees as indicated at www.notifytechnology.com/fairuse.

9. PROPERTY RIGHTS

- 9.1 Title to the Materials is and shall at times remain with Notify unless otherwise specified in the Order Form or an SOW. Notify and its licensors owns and shall continue to own all Intellectual Property Rights in the Notify Software and any Deliverables including any updates, enhancements and/or fixes to the same. Full and unencumbered title (with full title guarantee) in Deliverables shall vest in Notify absolutely upon creation. The Client undertakes at the request of Notify at all times from the date of this Contract to, and to procure that any and all of its sub-contractors and any third party involved in any SOW(s) shall, do all acts and execute all documents, papers, forms and authorisations and to dispose to or swear all declarations or oaths reasonably necessary and/or desirable to give effect to the provisions of this Clause 9.1.

10. TERM AND TERMINATION

- 10.1 **This Contract.** This Contract is formed (and becomes legally binding) when the parties complete and sign the Order Form. This Contract shall commence on the Effective Date and shall continue unless and until terminated by either party in accordance with this Clause 10.
- (i) Either party shall be entitled to terminate this Contract on expiry of the Minimum Term specified in the Order Form and each subsequent anniversary of the Target Go-Live Date by giving to the other party not less than ninety (90) days' prior written notice.
- (ii) Either party shall be entitled to terminate this Contract immediately if the other party commits any material breach of this Contract and fails to remedy that breach within thirty (30) days of written notice of that breach (the 30 day period only applies where a breach is capable of remedy - if it is incapable of remedy, the Contract may be terminated by written notice immediately).
- 10.2 **SOW(s).** The SOW(s) shall commence in accordance with Clause 5.3 and shall terminate on completion of the Services or in accordance with this Clause 10.2.
- (i) Either party shall be entitled to terminate any SOW(s) immediately by giving to the other party not less than ninety (90) days' prior written notice.
- (ii) Either party shall be entitled to terminate any

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SOW(s) immediately by giving written notice to the other party if that other party commits any material breach of the applicable SOW that is incapable of remedy (if the breach is capable of remedy, this Contract may be terminated immediately if the other party fails to remedy that breach within thirty (30) days of written notice).

- 10.3 **Insolvency.** Either party shall be entitled to terminate either this Contract and/or any SOW(s) immediately by giving written notice to the other party if that other party has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver, administrator or manager appointed over any of its assets, or a court or arbiter with authority to so determine, determines that the debtor is unable to pay its debts.

11. CONSEQUENCES OF TERMINATION

- 11.1 On termination of this Contract or any SOW(s) howsoever caused: (a) the rights and duties created by Clauses 8, 9, 12, 13, 14, 17, 18, and 19 shall survive; (b) the rights of either party which arose on or before termination shall be unaffected.
- 11.2 On termination of this Contract howsoever caused: (a) the SOW(s) shall be unaffected; (b) each party shall return, in good condition, the tangible property of the other party (if any) that was made available under this Contract in accordance with that other party's reasonable instructions; (c) all licences granted shall terminate; (d) the parties shall cooperate as regards the migration of User Data to the Client, subject to any data retention that is required by Law; (e) the Client shall immediately pay to Notify any sums due under the Contract.
- 11.3 On termination of any SOW(s) howsoever caused: (a) other SOW(s) and the Contract shall be unaffected; and (b) each party shall return, in good condition, the tangible property of the other party (if any) that was made available under the SOW(s) in accordance with that other party's reasonable instructions. In the event that termination of the SOW(s) precedes completion of the Services: (i) Notify shall make such partial delivery to the Client of the Materials and Deliverables as is reasonably practicable, such Materials and Deliverables to

be provided on an "AS IS" basis; and (ii) if the parties had agreed to a fixed price under the SOW(s), Notify may (at its sole discretion) reduce the fixed price by an amount that reasonably reflects both the value of the Services that have been provided under the SOW(s) and the cost to Notify of providing such Services.

12. CONFIDENTIALITY

- 12.1 Each party that receives ("**Receiving Party**") non-public business or financial information ("**Confidential Information**") from the other (or the other's Affiliates) ("**Disclosing Party**"), whether before or after the date of this Contract shall:
- (i) keep the Confidential Information confidential;
 - (ii) not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 12.2, or 12.3; and
 - (iii) not use the Confidential Information for any purpose other than the performance of its obligations or its enjoyment of rights under this Contract ("**Permitted Purpose**").
- 12.2 The Receiving Party may disclose Confidential Information to its own, or any of its Affiliates, officers, directors, employees agents and advisers who reasonably need to know for the Permitted Purpose (each a "**Permitted Third Party**"), provided that the Receiving Party shall remain liable to the Disclosing Party for the acts, omissions, and compliance with the terms of this Clause 12 of such Permitted Third Party as if such Permitted Third Party was the Receiving Party (and a party to this Contract). The Receiving Party shall ensure that each Permitted Third Party is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Clause 12.
- 12.3 If required by Law, the Receiving Party may disclose Confidential Information to a court or regulatory authority or agency, provided that the Receiving party shall (if legally permissible) provide reasonable advance notice to the Disclosing Party and co-operate with any attempt by the Disclosing Party to obtain an order for providing for the confidentiality of such information.
- 12.4 The parties agree that any breach of the restrictions contained in this Clause 12 may cause irreparable harm to the innocent party,



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whereupon the innocent party shall be entitled to seek injunctive relief.

13. DATA PROTECTION

13.1 Subject to clause 13.6, Notify shall not own (or claim ownership rights in respect of) User Data.

13.2 The Client is responsible for the accuracy, reliability, lawfulness, and integrity of all User Data. The Client warrants that User Data shall not be defamatory or offensive and that it, and its users, have all consents, licenses and permissions (including the consent of any Data Subjects) in respect of User Data as are required for Client (and its users) to lawfully upload, store, distribute, publish, share and/or Process the User Data (as applicable): (a) in/through the Notify Software; and/or (b) to/with other Client users or any third parties who are authorised by the Client or by Law to view/access the User Data. The Client shall indemnify and hold harmless Notify for Costs arising from a breach of this Clause 13.2, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this Clause 13.2.

13.3 For the purposes of this Clause 13, “[Data Protection Legislation](#)” means the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 and any related act or regulation in the UK, including statutory modification or re-enactment of it, and “[Data Controller](#)”, “[Data Subject](#)”, “[Personal Data](#)”, “[Data Processor](#)”, and “[Process](#)” shall have the meaning specified in the Data Protection Legislation. “[Applicable Laws](#)” means (for so long as and to the extent that they apply to Notify) the law of the European Union, the law of any member state of the European Union and/or the Data Protection Legislation.

13.4 In relation to the Processing of any Personal Data in the User Data, the parties agree that the Client and/or its user(s) is/are the Data Controller and Notify is the Data Processor. Schedule 4 sets out the subject matter, duration, nature and purpose of the processing by Notify, as well as the types and categories of Personal Data and the obligations and rights of the Client. Notify shall in respect of such Personal Data:

(i) process that Personal Data only on the documented written instructions of the Client unless Notify is required by Applicable Laws to

otherwise process that Personal Data. Where Notify is relying on Applicable Laws as the basis for processing Personal Data, Notify shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Notify from notifying the Client;

(ii) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures;

(iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(iv) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the Client has provided appropriate safeguards in relation to the transfer;

(v) assist the Client, at the Client’s cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach, notifications, impact assessments and consultations with supervisory authorities or regulators;

(vi) notify the Client without undue delay on becoming aware of a Personal Data breach;

(vii) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Applicable Laws to store the Personal Data; and

(viii) maintain complete and accurate records and information to demonstrate its compliance with this Clause 13 and allow for audits by the Client on reasonable notice and immediately inform the Client if, in the opinion of Notify, an instruction infringes the Data Protection Legislation.

13.5 The Client consents to Notify appointing Amazon Web Services as a third-party processor of Personal Data under this agreement. Notify confirms that it has entered

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or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third-party's standard terms of business. As between Notify and the Client, Notify shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 13.5. Notify shall inform the Client (60) sixty days prior to any proposed change or addition to the appointed to third-party processor. If the Client objects to such changes or additions it may terminate this Contract.

- 13.6 During and after the term, Notify may access, view and manipulate User Data and use the User Data for the purpose of providing other clients of Notify or any third parties, whether on commercial or non-commercial terms, with anonymised User Data for the purpose of creation by Notify or by those third party recipients of reports, benchmarking information and other analysis based on the anonymised User Data. References to User Data in this clause include any Intellectual Property Rights in or related to the User Data.

14. LIABILITY

- 14.1 Neither party shall exclude or limit its liability for:
- (i) death or personal injury caused by its negligence;
 - (ii) fraudulent misrepresentation; and/or
 - (iii) breach of Clause 12.
- 14.2 Notify shall not be liable for loss of profit, loss of revenue, loss of anticipated savings, loss of goods, loss of contract or loss of goodwill.
- 14.3 The Client agrees that it will have no remedy in respect of any untrue statement or representation made to it upon which it relied in entering into this Contract and that its only remedies can be for breach of contract (unless the statement was made fraudulently).
- 14.4 Notify's Contractual Liability to the Client shall not exceed the greater of (a) £100 or (b) fees paid (plus any unpaid fees that are payable) under the Contract (but not any SOW) relating to the 12 month period prior to the date in which the claim (or series of connected claims) arose. "Contractual Liability" means liability howsoever arising under or in relation to the subject matter of this Contract that is not:
- (i) unlimited by virtue of Clause 14.1; or
 - (ii) excluded pursuant to Clauses 14.2 and 14.3.

- 14.5 Notify's SOW Liability to the Client shall not exceed the fees paid (plus any unpaid fees that are payable) under the SOW under which the claim (or series of connected claims) arose. "SOW Liability" means liability howsoever arising under or in relation to the subject matter of the SOW under which the claim (or series of connected claims) arose that is not: (a) unlimited by virtue of Clause 14.1; (b) excluded pursuant to Clauses 14.2, 14.3, and 14.4.

- 14.6 Except as expressly provided in this Contract, Notify hereby excludes any implied condition or warranty concerning the merchantability, quality or fitness for purpose of its services, whether such condition or warranty is implied by statute or common law.

- 14.7 Neither party shall be liable for any delay or failure in performing its duties under this Contract caused by any circumstances beyond its reasonable control. Without limitation, the following shall be regarded as causes beyond either party's reasonable control: (a) act of God, explosion, flood, tempest, fire or accident; (b) unusual atmospheric conditions and unusual conditions in outer space which may affect signals to and from and the workings of satellites; (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition; (d) import or export regulations or embargoes; (e) any change in any Law(s) that has an impact on the parties' rights and/or responsibilities under this Contract; (f) any breach by a third party of the Computer Misuse Act 1990 or the Communications Act 2003 that has the object or effect of directly or indirectly interfering with or damaging the Client Infrastructure, and/or Notify's hardware, software and/or network infrastructure; and (g) any mitigation arising in accordance with Schedule 6 paragraph 'd'; each an "Event of Force Majeure".

15. ASSIGNMENT AND SUBCONTRACTING

- 15.1 The Client shall not assign or otherwise transfer this Contract or any of its rights and duties under this Contract without the prior written consent Notify, such consent not to be unreasonably withheld or delayed.
- 15.2 Notify may assign or otherwise transfer this Contract or any of its rights and duties under this Contract without the consent of the Client. In such circumstances Notify will use reasonable endeavours to inform the Client promptly following such assignment or transfer.

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- 15.3 Notify may sub-contract the performance of any of its duties. Notify shall be entitled, at its sole discretion, to replace such service providers from time to time without notice to the Client.
- 15.4 The rights and liabilities of the parties hereto are binding on, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

16. CHANGES

- 16.1 Subject to Clause 16.4, no changes to this Contract or the SOW(s) shall be valid unless made in writing and signed by the authorised representatives of both parties.
- 16.2 Either party shall be entitled from time to time to request a change to the scope of the Services (“Change”). Neither party shall be entitled to charge for considering and/or negotiating a Change.
- 16.3 A Change will be effective when it is documented in writing in a standard Notify change control form.
- 16.4 Notify reserves the right to make changes to Hosted Services from time to time. If such a change is likely to remove material functionality of the Hosted Service: (a) Notify shall give the Client not less than sixty (60) days’ prior written notice of such change (a “Change Notice”); and (b) the Client shall be entitled by giving Notify not less than thirty (30) days’ prior written notice prior to the Change Notice taking effect to terminate this Contract. In the event that the Client has prepaid Fees covering a period that is shortened by termination by the Client in accordance with this Clause 16.4, Notify shall refund to the Client a proportion of the prepaid Fees in respect of such period, pro rated on a daily basis. This Clause 16.4 is without prejudice to Notify’s rights under the SLA.

17. NON-SOLICITATION

- 17.1 For the duration of this Contract and a period of twelve (12) months thereafter, the Client shall not, and shall ensure its Affiliates shall not, without the prior written consent of the other, solicit, entice away, and/or actively initiate recruitment (whether directly or indirectly) of any employee of Notify who performed (or is performing) a material function for the other party (excluding administrative, secretarial, or other back-office functions).

- 17.2 If the Client breaches Clause 17.1, it shall pay Notify an amount equal to the last twelve (12) months’ salary of the applicable individual in recognition of the value of the individual to Notify and cost of recruiting and training a replacement. The parties agree that this sum is a genuine pre-estimate of the loss likely to be suffered by Notify in these circumstances and not a penalty.

18. DISPUTES

- 18.1 The parties shall attempt to resolve any dispute arising out of or relating to this Contract (including any dispute relating to any non-contractual obligations arising out of or in connection with it) (the “Dispute”) through discussions between senior representatives.
- 18.2 Where the Dispute is not resolved within forty (40) days of the start of discussions in accordance with Clause 18.1 above, the parties shall attempt to resolve the Dispute in good faith through an Alternative Dispute Resolution (“ADR”) procedure as recommended by the Centre for Effective Dispute Resolution.
- 18.3 If the Dispute has not been resolved by an ADR procedure within forty (40) days of the initiation of that procedure, or if either of Notify or the Client will not participate in an ADR procedure, either of the parties shall be entitled to refer the Dispute to the High Court of England and Wales and the parties submit to its exclusive jurisdiction for that purpose.
- 18.4 Clauses 18.1 to 18.3 above shall not restrict either party’s ability to commence court proceedings in respect of any:
- (i) matter relating to its Confidential Information or Intellectual Property Rights; and/or
 - (ii) unpaid invoice.

19. GENERAL PROVISIONS

- 19.1 **Publicity.** The Client hereby irrevocably consents to Notify referring to the Client as a client of Notify in its sales and marketing literature (including its web site).
- 19.2 **Third Party Rights.** The parties hereby exclude to the fullest extent permitted by law any rights of third parties to enforce or rely upon any of the provisions of this Contract.
- 19.3 **Relationship.** Nothing in this Contract shall render the Client a partner or an agent of Notify and the Client shall not purport to undertake any obligation on Notify’s behalf nor expose

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Notify to any liability nor pledge or purport to pledge Notify's credit.

- 19.4 **Entire Agreement.** This Contract supersedes any prior contracts, arrangements and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to the subject matter.
- 19.5 **Severance.** If any part of this Contract is held unlawful or unenforceable that part shall be struck out and the remainder of this Contract shall remain in effect.
- 19.6 **No Waiver.** No delay, neglect or forbearance by Notify in enforcing its rights under this Contract shall be a waiver of or prejudice those rights.
- 19.7 **No Bribery.** Each party warrants to the other that it: (a) has not and will not commit an offence under the Bribery Act 2010 in relation to this Contract or any other contract between the parties; and (b) has adequate procedures (as defined in section 7(2) of that Act) in place to prevent its associated persons from committing an offence under that Act.
- 19.8 **Counterparts.** This Contract may be executed in any number of counterparts and by each of the parties on separate counterparts each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.
- 19.9 **Notices.** All notices (which include invoices and correspondence) under this Contract shall be in writing and shall be sent to the address of the recipient set out in this Contract or to such other address as the recipient may have notified from time to time. Any notice may be delivered personally, by a reputable courier service, by first-class post, or by email and shall be deemed to have been served if by hand when delivered, if by courier service or first class post 48 hours after delivery to the courier or posting (as the case may be), or if by email immediately.
- 19.10 **Interpretation.** In this Contract: (a) any reference to a Clause means a reference to a Clause of this Contract unless the context requires otherwise; (b) unless the context otherwise requires, the words “including” and “include” and words of similar effect shall not be deemed to limit the general effect of the words which precede them; (c) the headings are for ease of reference only and shall not affect the construction or interpretation of the

Contract; and (d) references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.

- 19.11 **Hierarchy.** To the extent there is any inconsistency between the provisions of these MSA Terms & Conditions, the Order Form, the Schedules, the SOW(s), any documents incorporated into this Contract, and any documents incorporated into the SOW(s) the following order of precedence shall apply: (a) first these MSA Terms & Conditions; (b) second the Schedules; (c) third the Order Form; (d) fourth the SOW(s); (e) fifth documents incorporated into the SOW(s); and (f) sixth documents incorporated into this Contract.
- 19.12 **Law.** This Contract is governed by the laws of England.