

Morewood Payroll Services Limited - Terms of Business Issued 2022

1. Interpretation

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

1.1. Definitions:

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

Charges: the charges payable by the Client for the supply of the Services in accordance with clause 5.

Claim: means all actions (including discrimination and unfair dismissal claims), proceedings and all direct, indirect or consequential liabilities, losses, damages, injuries, claims costs and expenses (including legal expenses) awarded against or incurred by the relevant party either arising from TUPE or otherwise;

Client: the person or firm as specified in the Letter of Engagement that purchases the Services from Morewood.

Client Default: has the meaning set out in clause 4.2.

Client Staff: means all those persons employed or engaged directly or indirectly by Client who were engaged in the provision of the Services prior to the date of this Contract;

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.5.

Contract: the contract between Morewood and the Client for the supply of the Services in accordance with these Conditions and the Letter of Engagement. In the event of any conflict between these Conditions and the Letter of Engagement these Conditions shall take precedence;

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

Deliverables: the deliverables set out in the Letter of Engagement produced by Morewood specifically for and at the cost of the Client.

Domestic Law: the law of England and Wales;

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

EU Law: the law of the European Union or any member state of the European Union.

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

Letter of Engagement: the document issued by Morewood which sets out the scope of the Services to be provided by Morewood to the Client.

Services: the services, including the Deliverables, supplied by Morewood to the Client as set out in the Letter of Engagement.

Morewood: Morewood Payroll Services Limited registered in England and Wales with company number 12505472 whose registered office is located at 69 Ingleside Drive, Stevenage, Hertfordshire SG1 4RY;

Morewood Materials: means those items provided to the Client by Morewood to enable the Client to receive the benefit of the Services;

Transfer: means a relevant transfer of an undertaking for the purposes of TUPE or any other legislation;

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2. Interpretation:

- (a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time; and
 - (ii) shall include all subordinate legislation made from time to time.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. Basis of contract

- 2.1. The Letter of Engagement constitutes an offer by Morewood to provide the Services in accordance with these Conditions.
- 2.2. The Letter of Engagement shall be deemed to be accepted when countersigned by the Client at which point and on which date the Contract shall come into existence.

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- 2.3. Any samples, drawings, descriptive matter or advertising issued by Morewood, and any descriptions or illustrations contained in the Morewood's website, catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5. Any quotation given by the Morewood shall not constitute an offer unless or until detailed in a Letter of Engagement. Quotations are only valid for a period of 3 months from the date of issue.

3. Supply of Services

- 3.1. Morewood shall supply the Services to the Client in accordance with the Letter of Engagement in all material respects.
- 3.2. Morewood shall use all reasonable endeavours to meet any performance dates specified in the Letter of Engagement but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3. Morewood reserves the right to amend the Letter of Engagement if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Morewood shall notify the Client in any such event, which notification can be via email.
- 3.4. Morewood warrants to the Client that the Services will be provided using reasonable care and skill.

4. Client's obligations

- 4.1. The Client shall:
- (a) ensure that the terms of the Letter of Engagement and any information it provides to Morewood are and remain complete and accurate;
 - (b) co-operate with Morewood in all matters relating to the Services;
 - (c) promptly provide Morewood with such information and materials as Morewood may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects and updated as soon as reasonably possible where relevant;
 - (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the Commencement Date;
 - (e) comply with any additional obligations as set out in the Letter of Engagement;
- 4.2. If Morewood's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (i.e. **Client Default**):

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- (a) without limiting or affecting any other right or remedy available to it, Morewood shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Morewood's performance of any of its obligations;
- (b) Morewood shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Morewood's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Client shall reimburse Morewood on written demand for any costs or losses sustained or incurred by Morewood arising directly or indirectly from the Client Default.

4.3. Client warrants represents and undertakes that there are no Client Staff to the extent that TUPE applies and Client will indemnify Morewood on demand against all costs, claims, demands, liabilities and expenses properly incurred by Morewood in respect of any Claim made by Client Staff pursuant to any application to a Court or Employment Tribunal or any compromise thereof to the extent arising as a result of a breach by the Client of the warranty, representation and undertaking provided by the Client in this Clause 4.3.

5. Charges and payment

5.1. The Charges for the Services shall be calculated at the rates specified in the Letter of Engagement or otherwise agreed between the parties in writing.

5.2. Morewood reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Average Weekly Earnings Index in the preceding 12-month period and the first such increase shall, where applied, take effect on the first anniversary of the Commencement Date.

5.3. Unless otherwise agreed with the Client in writing Morewood shall invoice the Client monthly in arrears.

5.4. The Client shall pay each invoice submitted by Morewood:

- (a) within fourteen (14) days of the date of the invoice or in accordance with any credit terms agreed by Morewood and confirmed in writing to the Client; and
- (b) in full and in cleared funds to a bank account nominated in writing by Morewood, and

time for payment shall be of the essence of the Contract.

5.5. All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Morewood to the Client, the Client shall, on receipt of a valid VAT invoice from Morewood, pay to Morewood such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

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5.6. If the Client fails to make a payment due to Morewood under the Contract by the due date, then, without limiting Morewood's remedies under clause 9, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

5.7. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Intellectual property rights

6.1. All Intellectual Property Rights in or arising out of or in connection with the Services including the Morewood Materials (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by Morewood. Upon payment in full of all applicable Charges, all Intellectual Property Rights in the Deliverables shall pass to the Client.

6.2. Morewood grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to use the Morewood Materials (excluding materials provided by the Client) for the purpose of receiving and using the Services.

6.3. The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.

6.4. The Client grants Morewood a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to Morewood for the term of the Contract for the purpose of providing the Services to the Client.

7. Data protection

7.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

7.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and Morewood is the Processor. Schedule 1 sets out the scope, nature and purpose of processing by Morewood, the duration of the processing and the types of Personal Data and categories of Data Subject.

7.3. Without prejudice to the generality of clause 7.1 the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Morewood and/or lawful collection of the Personal Data by Morewood on behalf of the Client for the duration and purposes of the Contract.

7.4. Without prejudice to the generality of clause 7.1 Morewood shall, in relation to any Personal Data processed in connection with the performance by Morewood of its obligations under the Contract:

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- (a) process that Personal Data only on the documented written instructions of the Client unless Morewood is required by Domestic Law to otherwise process that Personal Data. Where Morewood is relying on Domestic Law as the basis for processing Personal Data, Morewood shall promptly notify the Client of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits Morewood from so notifying the Client;
- (b) 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 data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK or EEA unless the following conditions are fulfilled:
 - (i) the Client or Morewood has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Morewood complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Morewood complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) 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;
- (f) notify the Client without undue delay on becoming aware of a Personal Data Breach;
- (g) 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 Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 7.

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8. Limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 8.1. Morewood has obtained insurance cover in respect of its own legal liability howsoever arising under this Contract. The limits and exclusions in this clause reflect the insurance cover Morewood has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2. References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3. Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 8.4. Nothing in this clause 8 shall limit the Client's payment obligations under the Contract.
- 8.5. Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.6. Subject to clause 8.3 (No limitation in respect of deliberate default), and clause 8.5 (Liabilities which cannot legally be limited), Morewood's total liability to the Client shall not exceed one hundred and twenty five per cent (125%) of the Charges paid or payable by the Client under the Contract in any period of twelve months from the Commencement Date or anniversary thereof.
- 8.7. The caps on Morewood's liabilities shall be reduced by:
- (a) payment of an uncapped liability;
 - (b) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 8.8. Subject clause 8.3 (No limitation in respect of deliberate default), clause 8.4 (No limitation of Client's payment obligations) and clause 8.5 (Liabilities which cannot legally be limited), this clause 8.8 sets out the types of loss that are wholly excluded:
- (a) loss of profits.
 - (b) loss of sales or business.
 - (c) loss of agreements or contracts.
 - (d) loss of anticipated savings.
 - (e) loss of use or corruption of software, data or information.

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- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

8.9. Morewood has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.10. Unless the Client notifies Morewood that it intends to make a claim in respect of an event within the notice period, Morewood shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire two (2) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

8.11. This clause 8 shall survive termination of the Contract.

9. Termination

9.1. Without affecting any other right or remedy available to it and unless otherwise agreed in the Letter of Engagement, either party may terminate the Contract by giving the other party three (3) months' written notice.

9.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.3. Without affecting any other right or remedy available to it, Morewood may terminate the Contract with immediate effect by giving written notice to the Client if:

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- (a) the Client fails to pay any amount due under the Contract on the due date for payment and has failed to remedy such non-payment within a period of ten (10) days from the due date.
- (b) Morewood reasonably believes that the Client is about to become subject to any of the events listed in clause 9.2(b).

10. Consequences of termination

10.1. On termination or expiry of the Contract:

- (a) the Client shall immediately pay to Morewood all of Morewood's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Morewood shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return all of Morewood Materials and any Deliverables which have not been fully paid for. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

10.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

10.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. General

11.1. Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2. Assignment and other dealings.

- (a) Morewood may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Morewood.

11.3. Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of two (2) years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, clients of the other party, or any other information which it would could reasonably be considered to be confidential, except as permitted by clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:

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- (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4. Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

11.5. Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

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

11.7. Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 11.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.8. Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working

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day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Letter of Engagement.

- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 11.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.9. Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

11.10. Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

11.11. Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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Schedule 1 Data Processing - Processing, Personal Data and Data Subjects

Processing by the Provider

Nature of Processing: includes the following operations: collection, recording, organisation, storage, retrieval, use, disclosure by transmission, restriction, erasure or destruction.

Purpose of processing – Provision of payroll processing services.

Duration of the processing – Length of the Contract plus 6 years.

Types of Personal Data – name, address, employee reference, date of birth.

Categories of Data Subject – Client employees