

## MY SERVER GUY APS

CVR: 44710641

### GENERAL TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

#### 1 INTERPRETATION

1.1 In these Conditions, the following definitions apply:

- “Agreement”** means the agreement between MSG and the Client for the supply of Goods and/or Services in accordance with these Conditions;
- “Client”** means the person or firm who purchases the Services from MSG;
- “Client Background IPR”** any and all Intellectual Property Rights that are owned by or licensed to the Client and which are or have been developed independently of this Agreement (whether prior to the Commencement Date or otherwise) including the trade names, logos, service marks or other trade marks (in each case whether registered or unregistered) which are provided by the Client to MSG from time to time in connection with the performance of the Services;
- “Client Content”** the Content provided by the Client to MSG from time to time for incorporation in the Website;
- “Client Data”** any and all data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:
- (a) are supplied to MSG by or on behalf of the Client; or
  - (b) MSG is required to generate, process, store or transmit pursuant to this Agreement; and
  - (c) any Client Personal Data;
- “Client Materials”** means any images, designs, text, photographs, logos or other material whatsoever in whatever format containing Intellectual Property Rights supplied directly or indirectly by the Client to MSG;
- “Commencement Date”** has the meaning set out in clause 2.2;

- “Conditions”** means these general terms and conditions as amended from time to time in accordance with clause 16.5;
- “Deliverables”** means the deliverables described or referred to in the Work Order;
- “Insolvency Event”**
- (a) a Party is, or is deemed to be, insolvent or unable to pay its debts as they fall due or stops or suspends payment of any of its debts;
  - (b) a Party enters into, or gives notice of any intention to enter into, any statutory composition or arrangement, with one or more of its creditors in order to reschedule any of its obligations to pay or repay money including giving notice of a meeting of creditors for the purpose of considering a proposal for an individual or a company voluntary arrangement;
  - (c) any petition is presented, resolution proposed, notice of meeting given or other action, or step taken which may lead to:
    - (i) winding up, dissolution, administration, receivership of a Party;
    - (ii) the appointment of a liquidator (both provisional and following a winding up), receiver, administrative receiver, administrator, or other similar officer in respect of a Party or any of its assets; or
    - (iii) bankruptcy of an individual Party or voluntary arrangement, debt relief order or other formal debt arrangement;
  - (d) any event similar to any of those set out above occurs in relation to a Party (including in any jurisdiction to which it is subject); or

- (e) a Party suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business);

**“Intellectual Property Rights”** means copyright and related rights, trade marks, business names and domain names, rights in get-up, rights in designs, database rights, and all other intellectual property rights, in each case whether registered or unregistered 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;

**“IPR Claim”** any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Intellectual Property Rights used to provide, or supplied by MSG to the Client during the provision of, the Services, including the Supplier’s Background IPR and the Resulting IPR but excluding the Client’s Background IPR;

**“Losses”** losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation), claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis);

**“MSG’s Background IPR”** any and all Intellectual Property Rights that are owned by or licensed to MSG and which are or have been developed independently of the Services to be provided under this Agreement (whether prior to the Commencement Date or otherwise);

**“MSG”** means My Server Guy Limited a company incorporated in Scotland, with company number SC482153, having its registered office at 8 Douglas Street, Hamilton, ML3 0BP;

**“Regulatory Body”** those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are

entitled to regulate, investigate or influence the matters dealt with in this Agreement or any other affairs of the Parties or either of them;

**“Resulting IPR”**

any and all Intellectual Property Rights in anything created by MSG (or by a third party on behalf of MSG) specifically for the Client for the purposes of the Services under this Agreement and/or any Client Data that MSG creates or generates pursuant to this Agreement;

**“Services”**

means any services, including any relevant Deliverables, supplied by MSG as specified in the Work Order or otherwise agreed; and

**“Work Order”**

means the document provided in writing by MSG to the Client setting out the description or specification of the Services, Deliverables, price and other details of the work to be undertaken or services supplied by MSG.

1.2 In this Agreement (except where the context otherwise requires):

- 1.2.1 words in the singular include the plural and vice versa and reference to any gender includes the others;
- 1.2.2 reference to “a person” includes a natural person, company or unincorporated body (whether or not having separate legal personality);
- 1.2.3 a reference to “company” includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.4 a reference to a “Party” shall mean MSG or the Client and “Parties” shall be construed as them both together;
- 1.2.5 a reference to a clause is to a clause of this Agreement;
- 1.2.6 a reference to “this Agreement” or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other document or agreement as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time;
- 1.2.7 references to legislation are to that legislation as amended, extended or re-enacted from time to time;
- 1.2.8 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;

1.2.9 any words following the terms “including”, “include”, “in particular” or any similar terms shall be construed as illustrative only and shall not limit the sense of the words preceding those terms;

1.2.10 a reference to “writing” or “written” includes faxes but not email; and

1.2.11 any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

1.3 Headings are for convenience only and shall not affect the interpretation of this Agreement.

1.4 This Agreement shall be binding upon, and enure to the benefit of, the Parties and their respective personal representatives, successors and permitted assignees, and references to any Party shall include that Party’s personal representatives, successors and permitted assignees.

## 2 **BASIS OF AGREEMENT**

2.1 Once the Work Order prepared by MSG is in final form and is issued to the Client it shall constitute an offer by MSG to provide Services in accordance with these Conditions.

2.2 The Work Order shall be deemed to be accepted when the Client confirms acceptance by email or by signing the Work Order and, unless otherwise specified, the Services shall commence on the date of such acceptance (the “**Commencement Date**”).

2.3 The Agreement (comprising the Work Order and these Conditions and where applicable our Website Development and Hosting Terms and Conditions as set out below) constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, assurance or warranty made or given by or on behalf of MSG which is not set out in the Agreement.

2.4 These Conditions apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate.

## 3 **DELIVERY OF DELIVERABLES**

3.1 Unless otherwise specified in the Work Order or specifically agreed between the parties, any dates quoted for delivery of the Deliverables are approximate only, and the time of delivery is not of the essence. MSG shall not be liable for any delay in delivery of the Deliverables or failure to supply the Deliverables that is caused by the Client’s failure to provide MSG with adequate delivery instructions or any other instructions or information that are necessary or relevant to the supply or delivery of the Services and/or the Deliverables.

## 4 **SUPPLY OF SERVICES**

- 4.1 MSG shall:
- 4.1.1 provide the Services to the Client in accordance with the Work Order;
  - 4.1.2 provide the Services using reasonable care and skill; and
  - 4.1.3 use all reasonable endeavours to meet any performance dates for the Services and delivery of any Deliverables specified in the Work Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services or timescales for delivery of the Deliverables, unless otherwise stated in the Work Order or specifically agreed between the parties.
- 4.2 MSG may make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.

## 5 **CLIENT'S OBLIGATIONS**

- 5.1 The Client shall:
- 5.1.1 ensure that the terms of the Work Order and any specifications for the Services and Deliverables to be provided, are complete and accurate;
  - 5.1.2 co-operate with MSG in all matters relating to the Services;
  - 5.1.3 provide MSG, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by MSG to provide the Services;
  - 5.1.4 provide MSG with such information and materials as MSG may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - 5.1.5 obtain and maintain all necessary licences (including software licences) , permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 5.1.6 keep and maintain all materials, equipment, documents and other property of MSG (the "**MSG Materials**") at the Client's premises in safe custody at its own risk, maintain MSG Materials in good condition until returned to MSG, and not dispose of or use MSG Materials other than in accordance with MSG's written instructions or authorisation;
  - 5.1.7 carryout any obligations of the Client set out in the Work Order; and

- 5.1.8 respond to any requests for approval of proofs or other work in progress and any other specific obligations contained in the Work Order within the timeframes specified in the Work Order.
- 5.2 If MSG's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (the "**Client Default**"):
  - 5.2.1 MSG shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default;
  - 5.2.2 MSG shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from MSG's failure or delay to perform any of its obligations as permitted in this clause 5.2; and
  - 5.2.3 the Client shall reimburse MSG on written demand for any costs or Losses sustained or incurred by MSG arising directly or indirectly from the Client Default.

## 6 **CHARGES AND PAYMENT**

- 6.1 The price for Services shall be the price set out in the Work Order.
- 6.2 MSG reserves the right to increase the price of the Services, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of third party supplies or services (including but not limited to any web or cloud service, any software licence fees or data charges) to MSG that is due to:
  - 6.2.1 any factor beyond the control of MSG (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 6.2.2 any request by the Client to change the delivery date(s), types of Services ordered, or the Services Specification; or
  - 6.2.3 any delay caused by any instructions of the Client in respect of the Services or failure of the Client to give MSG adequate or accurate information or instructions in respect of the Services.
- 6.3 In respect of Services MSG may invoice the Client on or at any time after completion of delivery of the Deliverables or performance of the Services.
- 6.4 The Client shall pay each invoice submitted by MSG:
  - 6.4.1 no later than 14 days of the date of the invoice (unless otherwise stated in the Work Order);

6.4.2 in full and in cleared funds to a bank account nominated in writing by MSG, and

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

- 6.5 All amounts payable by the Client under the Agreement are (unless otherwise stated in the Work Order) 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 Agreement by MSG to the Client, the Client shall, on receipt of a valid VAT invoice from MSG, pay to MSG 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.
- 6.6 If the Client fails to make any payment due to MSG under the Agreement by the due date for payment, MSG reserves the right to charge interest and administrative charges at the maximum rate as permitted by law.
- 6.7 The Client shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. MSG may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by MSG to the Client.

## **7 CLIENT MATERIALS**

- 7.1 The Client is responsible for obtaining all licenses, permissions or consents to use Client Materials (and in particular any third party logos trademarks, confidential information or other Intellectual Property Rights contained in the Client Materials) which may be necessary to allow MSG to perform the Services or to modify and /or incorporate of the Client Materials into the Deliverables.
- 7.2 The Client shall indemnify MSG against all liabilities, costs, expenses, damages and Losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by MSG in connection with any claim made against MSG for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with MSG's use of the Client Materials to perform the Services or to modify and /or incorporate of the Client Materials into the Deliverables.
- 7.3 MSG may decline to use any Client Materials or other materials supplied by or on behalf of the Client which appear to MSG to be unsuitable.
- 7.4 By supplying Client Materials to MSG, the Client grants MSG permission to copy, use and modify the material to produce the Deliverables and /or to provide the Services.

## **8 INTELLECTUAL PROPERTY RIGHTS IN DELIVERABLES**



- 8.1 Except as expressly set out in this Agreement:
- 8.1.1 the Client shall not acquire any right, title or interest in or to the MSG Background IPR; and
- 8.1.2 MSG shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Client or its licensors, including:
- a) the Client Content;
  - b) the Client's Background IPR;
  - c) the Client Data; and
  - d) the Resulting IPR.
- 8.2 Where MSG acquires, by operation of law, title to any Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 8.1.2, it shall (provided it has been paid in full for the Services) assign in writing such title as it has acquired to the Client on the written request of the Client.
- 8.3 Except as may be otherwise specified in the Work Order, ownership of Intellectual Property which is (1) created by MSG for the Client as part of the Services and (2) incorporated into the Deliverables (but in all cases specifically excluding MSG Background IPR), shall pass to the Client when MSG receives payment in full (in cash or cleared funds) for the Services and any Deliverables that MSG has supplied to the Client in respect of which payment has become due.
- 8.4 The Client grants to MSG an irrevocable, worldwide, royalty free licence to use copies of the Deliverables for the sole purpose of demonstrating examples of previous work on the MSG website or in its portfolio.
- 8.5 MSG shall waive or procure a waiver of any moral rights in any copyright works assigned to the Client under this Agreement.
- 8.6 If requested to do so by the Client, MSG shall without charge to the Client execute all documents and do all such further acts as the Client may require to give effect to this clause 8 or shall procure that the owner of the Resulting IPRs does so on the same basis.
- 8.7 MSG hereby grants with effect from the Commencement Date, a non-exclusive, non-transferable, royalty-free licence to use and operate only for the purpose for which it was supplied, any MSG Background IPR which is supplied in order to complete the Deliverables as detailed in the Work Order.
- 8.8 The Client hereby grants to MSG, with effect from the Commencement Date for the duration of this Agreement, a non-exclusive royalty-free licence to use, operate, copy and modify the Client's Background IPRs, the Client Data and the Resulting IPRs

solely to the extent necessary for MSG to fulfil its obligations under this Agreement. MSG may not use the Client's Background IPRs, the Client Data and/or the Resulting IPRs for any purpose other than fulfilling its obligations under this Agreement.

8.9 The licence granted in clause 8.8 does not include the right to grant sub-licences, which may only be granted with the prior written consent of the Client.

8.10 The Client shall:

8.10.1 promptly notify MSG in writing of any IPR Claim;

8.10.2 allow MSG to conduct all negotiations and proceedings and provide MSG with such reasonable assistance as is required by MSG, each at MSG's cost, regarding the IPR Claim; and

8.10.3 not, without prior consultation with MSG, make any admission relating to the IPR Claim or attempt to settle it, provided that MSG considers and defends any IPR Claim diligently, using competent professional advisers and in such a way as not to bring the reputation of the Client into disrepute.

## 9 **COPYRIGHT AND TRADEMARKS**

Unless the Work Order expressly states to the contrary, MSG will not be responsible for checking whether any of the Deliverables infringe any copyright, trademark or license of any other party and the Client will indemnify and keep indemnified MSG against any claims (and any costs and expenses relative to such claims) that MSG suffers or incurs arising from any party claiming that the Deliverables or their use by the Client MSG infringes any copyright, trademark or license of any party.

## 10 **CONFIDENTIALITY**

A party to the Agreement (the "**receiving party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party to the Agreement (the "**disclosing party**"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

## 11 **LIMITATION OF LIABILITY**

- 11.1 Nothing in the Agreement shall limit or exclude MSG's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
  - 11.1.2 fraud or fraudulent misrepresentation; or
  - 11.1.3 any other liability which cannot be excluded or limited under applicable law.
- 11.2 MSG shall not be liable under or in connection with this Agreement or any collateral contract for any:
- 11.2.1 loss of revenue;
  - 11.2.2 loss of actual or anticipated profits;
  - 11.2.3 loss of contracts;
  - 11.2.4 loss of the use of money;
  - 11.2.5 loss of anticipated savings;
  - 11.2.6 loss of business;
  - 11.2.7 loss of opportunity;
  - 11.2.8 loss of goodwill;
  - 11.2.9 loss of reputation;
  - 11.2.10 loss of, damage to or corruption of data; or
  - 11.2.11 any indirect or consequential loss,
- in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or caused by breach of contract, delict (including negligence), breach of statutory duty or otherwise.
- 11.3 MSG's total liability to the Client in respect of all other losses arising under or in connection with the Agreement, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £1,000,000.

## 12 **TERMINATION**

- 12.1 Either Party may, without liability to the other, terminate this Agreement with immediate effect on giving notice to the other Party:
- 12.1.1 if the other Party suffers an Insolvency Event;

- 12.1.2 if the other Party commits a material breach of this Agreement which is incapable of remedy;
  - 12.1.3 if the other Party commits a material breach of this Agreement which is capable of remedy and fails to remedy that breach within thirty (30) days of being notified in writing to do so; or
  - 12.1.4 if the other Party (being an individual) dies, or by reason of illness or incapacity (whether mental or physical) is incapable of managing his own affairs or becomes a patient under any mental health legislation
- 12.2 On the expiry or termination of this Agreement:
- 12.2.1 each Party shall promptly comply with clause 10;
  - 12.2.2 MSG shall:
    - a) refund to the Client (under deduction of any properly incurred expenses or outlays paid or incurred by MSG for and on behalf of the Client ) any amount which it may have been paid in advance in respect of Services that have not been provided;
    - b) deliver to the Client (or, at the Client's written request destroy) all specifications, programs (including source codes) and other documentation or materials developed by MSG specifically and exclusively for the Client in connection with Services.
    - c) return to the Client all copies of the Client Content, the Specification and any other materials provided to MSG by the Client;
    - d) comply with clause 13 in relation to the return or destruction of all Client Personal Data and other Client Data; and
    - e) subject to 12.3, assist the Client and any replacement provider of the Services to the extent reasonably required by the Client to facilitate the smooth migration of the Services to the Client or such replacement provider as directed by the Client.
- 12.3 MSG may charge a reasonable sum to cover the cost of providing co-operation and assistance under clause 12.2.2e).
- 12.4 Expiry or termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at expiry or termination.
- 12.5 The provisions of clause (Intellectual Property Rights in Deliverables), clause (Confidentiality), clause 11 (Limitation of Liability), this clause 12 (Termination), clause 13 (Data Protection) clause 15 (Warranties) and any other provision of this

Agreement which expressly or by implication is intended to come into or continue in force on or after the expiry or termination of this Agreement, shall remain in full force and effect.

12.6 On termination of the Agreement the Client shall:

12.6.1 immediately pay to MSG all of MSG's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, MSG shall submit an invoice, which shall be payable by the Client immediately on receipt;

12.6.2 return all Deliverables which have not been fully paid for. Until they have been returned or paid for in full, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement; and

12.6.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12.7 Other than as referred to in clause 12.5, neither Party shall have any further obligation to the other under this Agreement after its expiry or termination.

### 13 DATA PROTECTION

13.1 In this clause 13:

13.1.1 **“data controller”**, **“data subject”**, **“personal data”** and **“processing”** shall bear the respective meanings given them in the Data Protection Act 1998 (and **“process”** shall be construed accordingly);

13.1.2 **“Data Protection Law”** means the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all Applicable Law relating to the processing or protection of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

13.1.3 **“Data Protection Principles”** means the eight data protection principles set out in Schedule 1 to the Data Protection Act 1998.

13.2 MSG shall, and shall procure that its employees, agents and sub-contractors shall:

- 13.2.1 only process any Client Personal Data for the purposes of providing the Services (and for no other purpose whatsoever) and in accordance with the Client's written instructions from time to time;
  - 13.2.2 promptly and fully notify the Client in writing of any notices received by MSG relating to the processing of any Client Personal Data, including subject access requests, complaints and/or correspondence from any Regulatory Body and provide such information and assistance as the Client may reasonably require in relation to such notice (at no cost to the Client);
  - 13.2.3 promptly and fully notify the Client in writing if any of the Client Personal Data has been disclosed in breach of this clause 13 or if it suspects or becomes aware of any actual, threatened or potential breach of security of the Client Personal Data; and
- 13.3 MSG shall ensure that access to the Client Personal Data is limited to those employees or authorised third parties who need access to it to perform the Services and that all such employees and authorised third parties are informed of the confidential nature of the Client Personal Data and are assessed by MSG to ensure their reliability.
- 13.4 If and to the extent that MSG collects and is passed Client Personal Data by the Client pursuant to this Agreement, the Client warrants that it has obtained appropriate consent from all data subjects to whom it relates, to pass their personal data to the Client for the purposes for which the Client intends to use it.
- 13.5 The Client shall at all times comply with its obligations under any applicable Data Protection Law;
- 13.6 Neither Party shall do or refrain from doing anything which puts the other in breach of its obligations in this clause 13.
- 13.7 In the event of a breach, or potential breach of or threat to, the security of the Client Personal Data, MSG shall:
- 13.7.1 take immediate steps to remedy the breach or prevent the potential breach or remove the threat;
  - 13.7.2 promptly take measures to ensure there is no repetition of the incident in the future;
  - 13.7.3 promptly provide the Client with full details in writing of the steps and measures taken; and
  - 13.7.4 comply with all reasonable requests made by the Client in respect of the same.

13.8 On request at any time and on the expiry or termination of this Agreement, MSG shall at the Client's option either return to the Client all Client Data and copies of it in such format as the Client may require (or, at the Client's written request, destroy it in the manner it may specify). Any additional hardware or media required to be purchased in order to satisfy the Client's request will be at the cost of the Client.

13.9 The provisions of this clause 13 shall apply during the term of this Agreement and indefinitely following its expiry or termination.

#### 14 **FORCE MAJEURE**

14.1 For the purposes of this Agreement, a "**Force Majeure Event**" means an event beyond the reasonable control of MSG including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of MSG or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14.2 MSG shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.

#### 15 **WARRANTIES**

The Client represents, warrants and undertakes that it has full capacity and authority to enter into this Agreement.

#### 16 **GENERAL**

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

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

16.3 **No partnership or agency.** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor

constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 16.4 **Third parties.** A person who is not a party to the Agreement shall not have any rights to enforce its terms.
- 16.5 **Variation.** Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing (including email) by MSG.
- 16.6 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Scots law.
- 16.7 **Jurisdiction.** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).