

# Melior Solutions Limited

## TERMS OF BUSINESS

Melior Solutions Limited, an English limited liability company whose office is at Newland House, The Point, Weaver Road, Lincoln, Lincolnshire, LN6 3QN, United Kingdom (“we” or “Melior Solutions”) are pleased to set out the Terms of Business which will apply to the work we do for you. These Terms of Business and the attached terms of engagement or the attached proposal document, as the case maybe, once signed by both parties (the “Terms of Engagement”) form the Contract between Melior Solutions and the client entity identified in the Terms of Engagement (“you” or the “Client”). If at any time you have any questions in connection with this Contract or our work, please let us know.

### 1. The Services We Will Provide

**1.1 Services** – We will provide the Services described in the Terms of Engagement at the location(s) set out in the Terms of Engagement. Where the Terms of Engagement refer to Services as “services to perform” this means that we will provide you with these Services and will be responsible for the management and control of these Services and the quality of any Deliverables listed or referred to in the Terms of Engagement. Where the Terms of Engagement do not refer to Services as “services to perform” this means that we will use reasonable skill and care to assist you with your project but that you will be responsible for the overall management and control of the Services and for the results to be achieved from using the Services.

**1.2 Timetable** – We will use reasonable efforts to carry out our obligations in accordance with any dates or time periods referred to or specified in the Terms of Engagement. However, unless specified otherwise in the Terms of Engagement, these dates and time periods are intended for planning and estimating purposes only and are not contractually binding.

**1.3 Changes to Services** – Either of us may request changes to the Services or changes to any other aspect of this Contract. Requests for changes must be sufficiently detailed to enable the other party to assess the impact of the requested change on the cost, timetable or any other aspect of this Contract. Both of us agree to work together to consider, and if appropriate, seek to agree any changes. Until a change is agreed in writing, both of us will continue to act in accordance with the latest agreed version of this Contract.

**1.4 Contract Management** – Each of us will name a contact who will be responsible for managing all issues relating to the performance of this Contract. The initial contacts are named in the Terms of Engagement.

### 2. Deliverables

We will deliver to you the deliverables, if any, as specified in the Terms of Engagement as being Melior Solutions responsibility (the “Deliverables”).

**2.1 Acceptance** – The Deliverables will be accepted by you when the acceptance criteria specified in the Terms of Engagement, if any, have been met or when you make any productive or live use of the Deliverables whichever occurs first. Where no criteria are specified the Deliverables will be accepted on delivery to you.

#### 2.2 Ownership of Deliverables

We will transfer to you our title in the Deliverables subject to the following:

**2.2.1** Client Materials – You will own the copyright in all those Deliverables identified in the Terms of Engagement as “Client Materials”, subject to the remainder of this Clause 2.2 and to payment of amounts due under this Contract. You grant to us a non-exclusive, royalty-free, worldwide, perpetual right to use, copy, adapt, modify, sub-license and market such Client Materials.

**2.2.2** The copyright and other intellectual property rights in any materials or software (whether written or machine-readable) created by or licensed to us prior to this Contract or outside this engagement and any subsequent modifications to the same (“Pre-Existing Works”) will remain vested in us (or our licensor), but to the extent that these form part of any of the Deliverables, you will have a license to use them in accordance with Clause 2.2.3 below.

**2.2.3** We will own the copyright and all other intellectual property rights in all Deliverables which are not identified in the Terms of Engagement as Client Materials and in all other materials or software created under this Contract whether by or on behalf of us solely or both parties jointly. Subject to payment of amounts due under this Contract, you will have a non-exclusive, non-transferable license to use these Deliverables (and any Pre-Existing Works to the extent that these form part of the Client Materials) for your own internal use and only for the purposes for which they were delivered but you must not provide these Deliverables (or any Pre-Existing Works to the extent that these form part of the Client Materials) or copies of them to any third party.

- 2.2.4 Notwithstanding any other provisions of these Terms of Business the use of any computer software Deliverables which are not Client Materials will be subject to the terms of the software license referred to in the Terms of Engagement or where no such license is referred to you may use the software in accordance with the license granted by Clause 2.2.3 above.
- 2.2.5 Each party will at the request and reasonable expense of the other execute all such documents and do all such acts as may be reasonably necessary in order to vest in the other the rights granted to the other under this Clause 2.2.
- 2.3 **Freedom to Use Ideas** – We and our Affiliates (as defined in Clause 8.2 below) will not be prevented or restricted by this Contract from using any technique, idea, concept or know-how relating to our or their business activities.

### **3. Your Responsibilities**

Our performance is dependant on you co-operating with us and carrying out your responsibilities as set out in this Contract.

- 3.1 **Support Facilities** – You agree to provide us and our personnel with all office and other accommodation and facilities that we may reasonably require to perform the Services, in particular secretarial support, access to telephone and fax communications and computer facilities. You will be responsible for ensuring that you have appropriate back-up, security and virus-checking procedures in place for any computer facilities you provide or which may be affected by the Services.
- 3.2 **Information & Materials** – You agree to provide all information and materials reasonably required to enable us to provide the Services. You agree that all information disclosed or to be disclosed to us is and will be true, accurate and not misleading in any material respect.
- 3.3 **Your Staff** – You will ensure that your staff are available to provide such assistance as we reasonably require and that we are given reasonable access to senior management, as well as any members of your staff specified in the Terms of Engagement to enable us to provide the Services. You will ensure that your staff have the appropriate skills and experience. If any of your staff fail to perform as required, you will make suitable additional or alternative staff available.
- 3.4 **Suppliers and other Third Parties** – Where you are using or providing us with third party information, support or materials for a project including but not limited to where you are employing other suppliers whose work may affect our ability to provide the Services, you will ensure that you have appropriate agreements in place with those third parties to enable us to perform the Services under the terms of this Contract. Unless specifically agreed otherwise in writing you will be responsible for the management of the third parties and the quality of their input and work. Except to the extent we specifically agree otherwise in the Terms of Engagement, you are solely responsible for any third party hardware, software or communications equipment used in connection with the Services.
- 3.5 **Payment for Services** – You agree to pay for the Services as set out in the Terms of Engagement and Clause 4 below.

### **4. Fees and Payment**

- 4.1 **How fees will be calculated** – Unless the Terms of Engagement state otherwise, time and materials charging will apply and charges will be calculated on the basis of a 7 hour day worked on weekdays excluding public holidays. If our personnel are required to work away from home for extended periods, we will have flexibility in the way we divide their time between your sites and their home base. Travel time, other than time spent travelling from a local residence to the normal place of work, will be chargeable as part of the above working hours. Unless the Terms of Engagement state otherwise, hours worked in excess of 7 hours a day or outside weekdays may be charged on a premium rate basis. All charges are stated exclusive of expenses unless the Terms of Engagement state otherwise. You agree to pay our travel, subsistence and other reasonable expenses incurred in connection with the Services.
- 4.2 **Fee Estimates** – Any estimate given by us of any charge whether for planning or any other purpose is only an estimate and is not contractually binding.
- 4.3 **Taxes** – Charges and expenses will be stated exclusive of any taxes. You will be responsible for paying any taxes arising from this Contract for which you are legally liable as well as Value Added Tax (and any other local taxes) at the rate in force at the date the liability arises.
- 4.4 **Payment of Invoices** – Upon contract signature we will invoice 20% of the anticipated total contract value. Thereafter we will invoice time and materials charges on a monthly basis. We will invoice fixed price charges in accordance with the payment plan set out in the Terms of Engagement. Unless the Terms of Engagement state otherwise: (i) all charges will be specified in Pounds Sterling and (ii) invoices will be paid in that currency.

All invoices will be due for payment on receipt by you. In the event of late payment we reserve the right to suspend the provision of Services and to charge interest on amounts overdue for a period in excess of 30 days at a rate of 2% above the annual base rate of The Royal Bank of Scotland plc from time to time.

**4.5 Fee Changes** – We may vary any time materials fee rates stated in the Terms of Engagement by giving you 30 days' written notice of the variation. Variations may include without limitation increases arising as a result of the promotion of individuals assigned to work for you. Fee rates quoted in the Terms of Engagement relate to the provision of services at the location(s) stated in the Terms of Engagement. Any change in location may result in a change in the applicable fee rates.

## **5. Term, Termination and Suspension**

**5.1 Duration of Contract** – This Contract will apply from the Commencement Date stated in the Terms of Engagement, if any, or where no Commencement Date is specified, from the date of signature of the Terms of Engagement by both parties. This Contract will continue until all the Services and Deliverables have been provided unless it is terminated earlier in accordance with the terms set out below.

**5.2 Termination on Notice** – Unless the Terms of Engagement state otherwise, this Contract may be terminated by either party at any time by giving the other party not less than 30 days' written notice for short term engagements and 60 days for longer term engagements. A short-term engagement is defined as between one (1) and six (6) months whereas a long-term engagement is a continuous engagement in excess of six months.

**5.3 Termination for Breach of Contract** – This Contract may be terminated by either party on written notice with immediate effect if the other commits a material breach of any term of this Contract which is not remedied within 30 days of a written request to remedy the same (or if it is not practical to remedy the breach within such period, reasonable steps have not been taken within the 30 days towards remedying the breach).

**5.4 Suspension of the Contract** – We may suspend this Contract while circumstances exist which, in our reasonable opinion, materially adversely affect the basis on which this Contract was entered into or our performance of it. If, following suspension of this Contract, we both agree to resume performance of it, we will first agree any changes to this Contract which may be necessary as a result of its suspension, including fees, costs and timetable. If such a period of suspension exceeds 30 days, this Contract may be terminated by us with immediate effect by written notice to you.

**5.5 Effect of Termination** – On the termination of this Contract you will pay us for all Services provided up to the date of termination and (without prejudice to any right additional amounts at law), where you terminate on notice or we terminate for breach, for additional costs we reasonably incur as a result of the early termination of the Services, for example costs relating to sub-contracts or relocation costs. We will take reasonable steps to mitigate any such additional costs. Unless specified otherwise in the Terms of Engagement, where the Services have been provided on a fixed price fees basis, you will pay us all sums due at the date of termination in accordance with the payment plan set out in the Terms of Engagement plus any related holdback, together with fees on a time and materials basis for Services provided after the date of the last applicable payment under the payment plan.

## **6. Confidentiality**

**6.1** For 2 years following the initial date of disclosure, neither of us will disclose to any third party without the prior written consent of the other party any confidential information which is received from the other party for the purposes of providing or receiving Services which if disclosed in tangible form is marked confidential or if disclosed otherwise is confirmed in writing as being confidential or, if disclosed in tangible form or otherwise, is manifestly confidential. Confidential information will be deemed to include the Terms of Engagement and the relationship between the parties under this Contract. Both of us agree that any such confidential information received from the other party may be used by its personnel only for the purposes of providing or receiving Services under this or any other contract between us. These restrictions will not apply to any information which: (i) is or becomes generally available to the public other than as a result of a breach of an obligation under this Clause 6; (ii) is acquired from a third party who owes no obligation of confidence in respect of the information; or (iii) is or has been independently developed by the recipient (or one of its Affiliates) or was known to it or them prior to receipt.

**6.2** Notwithstanding Clause 6.1 above either of us will be entitled to disclose confidential information of the other: (i) to our respective insurers or legal advisors; (ii) to a third party to the extent that this is required by any court of competent jurisdiction, or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose, provided that in the case of a sub-Clause (ii) where reasonably practicable (and without breaching any legal or regulatory requirement) not less than 2 business days' notice in writing is first given to the other party. Notwithstanding anything to the contrary, we may disclose information referred to in this Clause 6 to our Affiliates and may similarly retain the engagement work papers in 'hard copy' or electronic format for our or our Affiliates internal use.

**6.3** Without prejudice to Clause 6.1 and Clause 6.2 above, we may cite the performance of the Services to our clients and prospective clients as an indication of our experience, unless we both specifically agree otherwise in writing.

## 7. Liability

- 7.1 We undertake to you that we will use reasonable skill and care in the provision of the Services and the preparation of any Deliverables.
- 7.2 Each of the parties will accept liability without limit for: (i) death or personal injury caused by its negligence or the negligence of its employees acting in the course of their employment; (ii) any fraud; and (iii) any other liability which by law cannot be excluded. Nothing in this Clause 7 will in any way impose greater liability on either party or any of its Affiliates than it would otherwise have at law.
- 7.3 Other than your obligation to make payments owing under this Contract and subject to the parties' acceptance of liability under Clause 7.2, each party's and its Affiliates' entire and collective liability to the other party and its Affiliates arising under or in connection with this Contract and the Services, whether in contract, tort (including without limitation), statute or otherwise, will, to the extent permissible by law, be limited to the payment of damages and will not exceed in aggregate or the fees paid or payable by you to us under this Contract.
- 7.4 The remedies available under Clauses 7 and the liability both parties accept under this Clause 7 are the only remedies and to the extent permissible by law the absolute limit of each party and its Affiliates' liability arising under or in connection with this Contract and the Services (except that this will not preclude either party from seeking injunctive relief to prevent or stop a breach of confidence or an infringement of intellectual property rights), and Melior Solutions charges for the Services are determined on the basis of the limits of liability set out in this Clause 7.
- 7.5 Without prejudice to Clause 7.2 or your obligation to make payments owing under this Contract, neither party nor its Affiliates shall be liable whether in contract, tort (including without limitation negligence), statute or otherwise, for any of the following, even if informed of the possibility of such losses: (i) loss of profit, business, revenue, goodwill, business opportunity or anticipated savings; (ii) loss or corruption of data; (iii) special, indirect or consequential loss or damage.
- 7.6 The Affiliates of each of the parties may enforce the rights expressly granted to the Affiliates under this Clause 7 subject to and in accordance with the provisions of this Contract and the following conditions: (i) Melior Solutions and the Client may rescind, vary or terminate this Contract without the consent of any such Affiliate; (ii) the prior written consent of the Client (in the case of the Client's Affiliates) or Melior Solutions (in the case of Melior Solutions Affiliates) will be required; and (iii) the rights granted to any Affiliate under this Contract may not be assigned or transferred. Except as expressly stated in this Clause 7, a person who is not a party to this Contract has no right (including without limitation under the Contracts (Rights of Third Parties) Act 1999) to enforce or rely on any term of this Contract. 7.7 Subject to Clause 7.2, all warranties, conditions, representations or terms other than those expressly set out in this Contract are excluded, including (but not limited to) conditions, warranties and representations implied by statute, common law or otherwise.
- 7.8 Any legal proceedings arising under or in connection with this Contract or the Services must be brought within 2 years from the date when the party bringing the proceedings first becomes aware or ought reasonably to have become aware of the facts which give rise to the liability or alleged liability or within any relevant statutory limitation period, whichever is the earlier.
- 7.9 As this Contract is between Melior Solutions and the Client, you agree that any claims by you or your Affiliates arising under or in connection with this Contract or the Services will, to the extent permissible by law, be brought only by the Client and only against Melior Solutions directly (and not against any of our Affiliates or our or their personnel). You agree to procure that each of your Affiliates complies with the provisions of this Clause 7.
- 7.10 Notwithstanding anything to the contrary in this Clause 7, the Services and the Deliverables are provided solely for your benefit and use unless provided otherwise in the Terms of Engagement. Accordingly, you may not provide copies of the Deliverables or make the benefit of the Services available to any third party. We accept no liability or responsibility to any third party who benefits from or uses the Services or gains access to the Deliverables. You agree to indemnify us and our Affiliates against any liabilities, losses, expenses or other costs reasonably incurred in connection with any claims against us or any of our Affiliates by such third parties.

## 8. General

- 8.1 **Sub-contracting** – We reserve the right to employ agents and sub-contractors to assist us when providing any part of the Services. However, we will remain liable to you in respect of any Services provided, subject to the other provisions of this Contract. Any reference to our personnel in this Contract includes Melior Solutions agents and sub-contractor staff.
- 8.2 **Affiliates** – In this Contract, "Affiliate" means any entity which from time to time Controls, is Controlled by or is under common Control with the relevant party or entity, where "Control" means having the ability (including without limitation by means of a majority of voting rights or the right to appoint or remove a majority of the board of directors) to control the management and policies of an entity.
- 8.3 **Force Majeure** – Neither of us will be liable to the other for any failure to fulfil obligations caused by circumstances outside its reasonable control.

- 8.4 Assignment** – Neither of us may assign, transfer, charge or otherwise seek to deal in any of its rights or obligations under this Contract without the prior written consent of the other party, except that Melior Solutions may, without consent, assign or transfer its rights and obligations to a person or persons whose identity we may notify to you in writing to whom all or part of its business is transferred. References in this Contract (including without limitation in Clause 7) to a “party” or the “parties” will include their respective assignees and transferees under this Clause 8.4, unless the context reasonably requires otherwise.
- 8.5 Waiver** – Subject to Clause 7.8, no delay to either one of us enforcing any of the terms or conditions of this Contract will affect or restrict our own rights and powers arising under this Contract. No waiver of any term or condition of this Contract will be effective unless made in writing.
- 8.6 Notices and other Communications** – Notices must be made in writing and served either personally, sent by prepaid registered post or faxed to the address of the other party given in this Contract or to any other address as the relevant party may have notified to the other during the period of this Contract. Any notice sent by post will be deemed to have been delivered 48 hours after sending. Any notice sent by fax or served personally will be deemed to have been delivered on the first working day following its despatch. Unless the Terms of Engagement state otherwise, you acknowledge that the parties may from time to time communicate electronically with each other and accept that this is not without risk.
- 8.7 Amendment** – Any amendment of this Contract will not be effective unless agreed in writing and signed by both parties.
- 8.8 Survival and Validity of Contract Provisions** – The provisions of this Contract which expressly or by implication are intended to survive the termination or expiry (including for the avoidance of doubt Clauses 2.3 and 4-9 of these Terms of Business) will survive and continue to bind both of us. If any provision of this Contract is held to be invalid, in whole or in part, such provision (or relevant part, as the case may be) shall be deemed not to form part of this Contract. In any event the enforceability of the remainder of this Contract will not be affected.
- 8.9 Working for other clients** – We and our Affiliates will not be prevented or restricted by anything in this Contract from providing services for other clients.
- 8.10 Entire Agreement** – This Contract, including any attachments or referenced documents, forms the entire agreement between us relating to the Services. It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral. Neither party is liable to the other, in equity or otherwise, for a representation that is not set out in this Contract. Each party acknowledges that it has not relied on been induced to enter into this Contract by a representation other than those expressly set out in this Contract. Nothing in this Clause shall have the effect of excluding or limiting liability for fraud. The headings and titles in this Contract are included to make it easier to read, but do not form part of this Contract.
- 8.11 Conflict** – In the event and only to the extent of any conflict between these Terms of Business and the Terms of Engagement or any other document which forms part of this Contract, these Terms of Business shall prevail, except where amended by specific reference to the relevant Clause of the Terms of Business. In the event and only to the extent of any conflict between the Terms of Engagement and any referenced or attached document other than the Terms of Business, the Terms of Engagement will take precedence.
- 8.12 Data Privacy** – You agree to allow Melior Solutions and its Affiliates to store and use your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors acting on Melior Solutions behalf, Business Partners and assignees of Melior Solutions and its Affiliates for uses consistent with your business relationship with Melior Solutions, including communicating with you (for example, for processing orders, for promotions, and for market research).
- 8.13 General** – Nothing in this Contract requires us to perform services which would cause us to breach any professional or regulatory rule or guideline applicable to Melior Solutions or its Affiliates, or precludes us or any Melior Solutions personnel from taking such steps as are necessary in order to comply with the professional or ethical rules or guidelines of any relevant professional body of which any Melior Solutions personnel may be or become a member.

## **9. Governing Law and Dispute Resolution**

- 9.1 Applicable Law** – This Contract will be governed by and interpreted in accordance with the laws of England.
- 9.2 Resolving Disputes** – Should any dispute arise between us we will attempt to resolve the dispute in good faith by senior level negotiations. Where both of us agree that it may be beneficial we will seek to resolve the dispute through mediation using the services of the Centre for Effective Dispute Resolution to facilitate the mediation process. If the dispute is not resolved through negotiation or mediation, both of us agree that the English Courts will have exclusive jurisdiction in connection with the resolution of the dispute.