

# Marsh & McLennan Companies, Inc.'s Standard Terms and Conditions

## DEFINITIONS AND INTERPRETATION

In this Agreement, unless otherwise stated or unless the context otherwise requires, each capitalized term will have the meaning set forth below:

**Control** or **indirect control**, **is controlled by** or **is under common control with, with** **part** here control refers to the power to direct or cause the direction of the management and policies of another entity, whether through ownership, securities, contract or otherwise.

**Agreement** means these Standard Terms and Conditions, the Purchase Order, any Statement of Work or similar document governing the Services, and all other documents of Customer that refer to this Agreement, all as amended from time to time;

**Customer** means the Affiliate in the Customer Group that orders the Goods or Services under this Agreement or if Marsh & McLennan Companies, Inc. orders the Goods or Services then Customer means Marsh & McLennan Companies, Inc.;

**Customer Data** means any data, including Personal Data, whether in physical or electronic form, including but not limited to documents, databases, records, intellectual property and confidential information (as defined elsewhere in the Agreement), created by or made available to Supplier in the course of providing Services to Customer and/or any of its Affiliates.

**Customer Group** means Customer and all Affiliates of Customer;

**Customer Premises** means premises owned, leased, licensed or otherwise controlled by any member of the Customer Group from time to time;

**Business Day** means a day (other than a Saturday or a Sunday or a local public holiday);

**Charges** means the charges to be paid by Customer to Supplier for the Goods and Services provided by Supplier under this Agreement as set forth in the Purchase Order;

**Confidential Information** means in relation to either party to this Agreement (first party) any and all information (including Personal Data) in whatever form, whether in oral,

tangible or in documented form, that

- a) is by its nature confidential; or
- b) the other party (or Receiving Party whether by contract, ownership of the board of directors, agreement or otherwise. The terms Controlling and Controlled shall have a corresponding meaning;

**Data Processing or Process** means any operation or set of operations which is performed by or on behalf of Supplier as part of the Services upon Personal Data or other Customer Data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

**Data Protection Legislation** means all laws and regulations applicable to the Processing of Personal Data under the Agreement, including, without limitation, the GDPR and all other laws and regulations of any jurisdiction in which Personal Data is being Processed by Customer or Supplier under the Agreement relating to data protection.

**Personal Data** means any information relating to an identified or identifiable natural person, living or deceased made available to Supplier in connection with the Services; an identifiable natural person, is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to the physical, physiological, mental, economic, cultural or social identity of that natural person.

**Deliverables** means the items identified as such in the Purchase Order or a Statement of Work or similar document governing the Services together with any other materials

developed or generated by Supplier for Customer under



either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Agreement are fulfilled;

Group, the following terms of this Section 10.6 apply:

**Equal Employment Opportunity:** Unless exempted, Customer and Supplier shall abide by the requirements of 41 CFR 60-1-4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

Supplier will take all appropriate measures to act in accordance with Good Industry Practice in respect of its environmental impact, health and safety, diversity and human rights policies and will comply with the Minimum Control Requirement relating to Sustainability if so required by Customer.

Upon request, Supplier will provide Customer in a timely manner with all certificates required by Relevant Law.

## **WARRANTIES**

Supplier warrants and represents as of the Effective Date and on an ongoing basis that:

- a) it has full authority to grant the licenses granted by Supplier under this Agreement;
- b) it will perform its obligations under this Agreement with all due skill, care and diligence and in accordance with Good Industry Practice;
- c) the performance of its obligations under this Agreement and Customer's receipt and use of the Services and/or

- b) any other intellectual property provided or made available by Supplier to the extent necessary to:
- 1 - receive or use the Services or Deliverables;
  - 2 - enable Customer to receive the full benefit of ownership of the Goods; and
  - 3 - perform its obligations and exercise rights under this Agreement.

Supplier shall indemnify and hold the Indemnified Parties harmless from and against all claims, demands, causes of action, losses, expenses, liabilities and damages and costs (including without limitation any loss of profit and loss of reputation, and all interest, penalties reasonable legal fees and expenses, and other professional costs and expenses) suffered or incurred by Indemnified Parties, their officers, directors, employees, agents and sub-contractors arising out of or in connection with any claim, demand or action alleging that the performance of the Services or the use or possession of any Goods, Deliverables, Supplier Confidential Information, and/or Services provided or otherwise made available to any Indemnified Party infringes any Intellectual Property Rights of a third party.

## **CONFIDENTIALITY**

The Receiving Party will treat and keep all Confidential Information of the Disclosing Party as secret and confidential in perpetuity and will not, without the Disclosing Party's written consent directly or indirectly communicate or disclose (whether in writing or orally or in any other manner) Confidential Information to any other person other than in accordance with the terms of this Agreement. The Receiving Party may disclose Confidential Information of the Disclosing Party to an Affiliate, subcontractor, or agent (provided that such third parties are under confidentiality obligations substantially similar to those set forth herein and the Receiving Party remains responsible to the Disclosing Party for any breach of confidentiality by such third parties) and to employees of the Receiving Party in order to fulfill its obligations or exercise its rights under this Agreement or to receive the benefit of the Services. The foregoing shall not apply to the extent that any Supplier Confidential Information is embodied in or otherwise incorporated into any Goods.

Supplier will take all appropriate steps to ensure that adequate security measures are implemented and maintained regarding the provision of Goods and/or Services under this Agreement and will comply with the Minimum Control Requirements relating to IT Security, Physical Security and Logical Access Management if so required by Customer.

In no circumstances may Supplier Personnel access server rooms, data centers, electrical or telephone closets, or any other areas deemed by Customer to be critical security access areas, without first being cleared for access to, and if cleared for access supervised during access, by Customer.

Supplier may not use the name of Customer or refer to it or any member of the Customer Group, directly or indirectly, in any advertisement, news release, marketing materials, customer or client list, or professional or trade publications, or otherwise publicize its relationship with Customer or any member of the Customer Group in any way without receiving prior written approval from Customer, which approval may be withheld by Customer in its sole discretion.

## **DATA PROTECTION AND RECORDS MANAGEMENT**

Supplier shall at all times comply with its obligations under all applicable Data Protection Legislation, including maintaining any valid and up-to-date registration or notification required under the Data Protection Legislation.

If required by Customer, Supplier shall at all times also comply with the Minimum Control Requirement relating to Data Privacy.

If Supplier Services include Data Processing, Supplier agrees to the terms of the Data Processing Addendum posted here: [link] which may be amended from time to time by Customer.

Supplier shall only process Personal Data:

- a) for the purpose of providing Goods or Services (or both) to Customer;
- b) as otherwise expressly instructed by Customer; and
- c) in each case in accordance with Relevant Law.

Supplier shall ensure that it does not publish, disclose or divulge Personal Data to any third party, except to the extent required by a legal requirement in which case it shall give written notice to Customer.

Supplier shall implement appropriate technical and organizational measures to protect Personal Data against unlawful processing and against accidental loss, destruction, damage, alteration or disclosure of the Personal Data including encrypting all Personal Data stored or processed on all digital or electronic portable storage devices. Customer may at reasonable intervals request a detailed written description of the technical and organizational methods employed by Supplier.

Supplier shall promptly notify Customer if:

- a) the subject of any Personal Data makes a written request to have access to Personal Data; or
- b) it receives any complaint or request or becomes aware of any allegation relating to the Personal Data processed under this Agreement or Customer obligations under Data Protection Legislation; or
- c) it becomes aware of any loss, damage, destruction, or unauthorised processing or accidental disclosure of Personal Data.

Supplier agrees to indemnify and keep indemnified and hold the Indemnified Parties harmless against all fines, penalties, costs, claims, causes of action, demands, liabilities, expenses, damages or losses (including without limitation any loss of profit and loss of reputation, and all interest, penalties, reasonable legal fees and expenses, and other professional costs and expenses) suffered or incurred by Indemnified Parties arising out of or in connection with a breach by Supplier of this Section 14.

Supplier will implement and comply with adequate records management policies in accordance with Good Industry Practice and will comply with the Minimum Control Requirement relating to Records Management if so required by Customer.

## LIABILITY

Neither party limits or excludes its liability;

- a) in respect of any deceit, theft, fraud or fraudulent misrepresentation by it or its employees, and in the case of Supplier, by Supplier Personnel;
- b) for death or personal injury or property damage caused by the negligence or wilful misconduct of a party or its employees, and in the case of Supplier, by Supplier Personnel;
- c) for its indemnification and related obligations;
- d) under Section 12 (Intellectual Property Rights);
- e) for breach of Section 13 (Confidentiality);
- f) for breach of Section 14 (Data Protection and Records Management); or
- g) to the extent such limitation or exclusion is not permitted by Relevant Law.

Subject to Section 15.1, the maximum aggregate liability of Supplier to Customer (other than liability covered by Section 15.1) shall be limited to the amount that is equal to 100% of the Charges set forth in this Agreement.

Subject to Section 15.1 the maximum aggregate liability of the Customer Group (other than liability covered by Section 15.1) shall be limited to the amount that is equal to 100% of the Charges set forth in this Agreement.

Subject to Section 15.1, neither party will be liable to the other party for any indirect or consequential loss or damage including any indirect loss of business or profits, in each case whether arising from negligence, breach of contract or otherwise<sup>1</sup>.

## TERMINATION

This Agreement may be terminated for convenience by Customer at any time by giving to Supplier not less than 14 days' prior written notice.

This Agreement may be terminated by Customer should Supplier fail to comply with Section 11.1 (j).

The following events shall allow Customer to terminate this Agreement, in whole or in part, immediately upon written notice to Supplier:

- a) material breach by Supplier of this Agreement (being a single event or a series of events which are together a material breach) which is either not capable of being remedied, or, if the breach is capable of being remedied, Supplier fails to remedy such breach within 30 days after receiving written notice requiring it to do so; or
- b) Supplier is affected by an Insolvency Event.

Supplier shall have the right to serve on Customer a written notice (Initial Notice) referring to this Section 16.4 if Customer has failed to pay undisputed invoiced Charges which have been due and payable for a period in excess of 60 days prior to the date of service by Supplier of the Initial Notice. If the sums referenced in the Initial Notice remain unpaid for a period in excess of 14 days following the receipt by Customer of the Initial Notice then Supplier may serve a further notice, stating Supplier's intention to terminate this Agreement attaching the Initial Notice and specifically referring to this Section 16.4 (Final Notice). If Customer fails to pay such undisputed invoiced Charges within 14 days of receipt of the Final Notice Supplier may, unless and until Customer pays such undisputed invoiced Charges detailed in the Initial Notice (or if the parties agree on a different amount, that amount), serve notice on Customer to terminate this Agreement with immediate effect. For the avoidance of doubt, any right of Supplier to terminate this Agreement in accordance with this Section 16.4 shall lapse upon payment by Customer of the undisputed invoiced amounts.

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<sup>1</sup> When the Services are performed or the Goods are delivered in Australia "consequential loss or damage" means any damages that do not flow directly and naturally from the relevant breach or circumstances, or damages that could not reasonably be supposed to have been in the contemplation of the parties as a probable result of the breach or the circumstances at the time the parties entered into the Agreement.

Any termination or expiry of this Agreement, or completion of the Services, shall not affect any accrued rights or liabilities of either party or the coming into force or continuation in force of any other clauses and provisions of this Agreement which are expressly or by implication intended to come into force or continue in force on or after termination or expiry of this Agreement, or completion of the Services.

## EXIT MANAGEMENT

Upon:

- a) expiration or termination of this Agreement or completion of the Services; or
- b) expiration or termination of the assignment of any Sup-

plier Personnel to any obligations under or pursuant to this Agreement; or

- c) the re-assignment of Supplier Personnel to other tasks or roles; or
- d) Customer's request;

Supplier shall, and shall procure that Supplier Personnel shall:

- 1 - immediately, or as otherwise advised in writing by Customer, deliver up to Customer, or any third party nominated in writing by Customer, all property belonging to Customer (including any IT equipment, any access credentials such as cards, keys or electronic fobs to Customer Premises, mobile phones and Confidential Information) which may be in the possession of, or under the control of, Supplier or any Supplier Personnel (or both of them); and
- 2 - ensure that all access provided by or on behalf of Customer to Customer's systems is fully and properly withdrawn (including changing any passwords or log-ins) from all Supplier Personnel and that email accounts used by Supplier Personnel are immediately terminated. If any property is in electronic form Supplier shall provide Customer with secure and readable copies of the same on magnetic media or, at Customer's option, via email if such information is capable of transmission by e-mail, and shall irretrievably destroy and delete copies so held.

Within 5 days after the earlier of expiry or termination of this Agreement or the completion of the Services for any reason whatsoever, but without prejudice to Supplier's obligations under this Agreement, all property of Supplier shall be removed from the relevant Customer site by Supplier or Supplier Personnel and Supplier shall be liable for any storage charges and all risk, including loss, damage and theft of such property not removed within such 5-day period.

Unless otherwise instructed by Customer, within 30 days after the earlier of expiry or termination of this Agreement or the completion of the Services for any reason whatsoever, Supplier will return or destroy all Personal Data and any copies thereof, unless legislation or regulation prevents it doing so, in which case Supplier undertakes that it will no longer actively process such Personal Data and will comply with the provisions of Section 13 (Confidentiality) in relation to such Personal Data such that the Personal Data remains confidential.

Upon request by Customer, Supplier shall confirm in writing to Customer that it has complied fully with the provisions of Sections 17.1, 17.2 and 17.3 above.

## GENERAL

**Audit:** Upon reasonable notice to Supplier, Customer may:

- a) access any premises used by Supplier to provide the Services or from where the Services are managed or administered;
- b) interview any Supplier Personnel; and
- c) copy any relevant record in order to audit Supplier's compliance with this Agreement.

**Amendment and Variation:** No variation to this Agreement shall be valid unless it is in writing, expressly states that it is amending this Agreement, and is signed by each of the parties to it.

**Assignment and Subcontracting:** Supplier shall not be entitled to assign, transfer, subcontract or otherwise deal with its rights and obligations arising under or in connection with this Agreement without Customer's prior written consent. It shall be a condition of any consent given by Customer to Supplier to subcontract its obligations under this Agreement that Supplier's subcontractor complies with the requirements set forth in Sections 7, 13 and 14 hereof, and Relevant Law.

**Notices:** All notices and consents to be given to a party under this Agreement shall be effective upon receipt, shall be in writing, and delivered by hand or by overnight courier, or sent by prepaid registered post, when given to Supplier, to the address set forth on the Purchase Order or, when given to Customer, to: Head of Global Procurement Operations, Marsh & McLennan Companies, Tower Place - UK Head Office, Lower Thames Street, London, EC3R 5BU.

**Cumulative Rights:** Except as expressly stated in this Agreement the rights of each party under this Agreement are cumulative and not exclusive of rights or remedies provided by law save to the extent that such rights are inconsistent with those rights as expressly set forth in this Agreement.

**Further Assurance:** Each party shall, and Supplier shall ensure that Supplier Personnel shall, at the request and cost and expense of the other party, sign all documents and do all other acts, which may be necessary to give full effect to this Agreement.

**Whole Agreement:** This Agreement (together with all other documents to be entered into pursuant to it) states the entire agreement and understanding between the parties, and supersedes all proposals and prior agreements, arrangements and understandings between the parties, relating to its subject matter.

**Governing Law:** This Agreement and any noncontractual obligations arising out of or in relation to this Agreement shall be governed by and will be interpreted in accordance with the laws of the country in which the Services are performed or the Goods are delivered without regard to the principles of conflict of laws thereof. However, the phrase "the laws of the country in which the Services are performed or the Goods are delivered" is replaced by the following phrases



- 1) "the laws of the State or Territory in which the Services are performed or the Goods are delivered" when the Services are performed or the Goods are delivered in Australia;
- 2) "the laws of the Province of Ontario and the federal laws of Canada applicable therein" if the Services are performed or the Goods are delivered in Canada;
- 3) "the laws of England and Wales" when the Services are performed or the Goods are delivered in the United Kingdom;
- 4) "the laws of the State of New York, U. S. A." when the Services are performed or the Goods are delivered in the U.S.A;
- 5) "the laws of the Federative Republic of Brazil" when the Services are performed or the Goods are delivered in Brazil;
- 6) "the laws of Ireland" when the Services are performed or the Goods are delivered in Ireland. The UN Convention on Contracts for the International Sale of Goods shall not apply.

**Severability:** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed by the court and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.