

# STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions govern the Services that Microelite Limited ("**Microelite**") provides to its Customer. By accessing and utilizing the Services the Customer acknowledges and agrees to be bound by these Standard Terms and Conditions as set out hereunder.

## 1. DEFINITIONS.

- 1.1. **Agreement:** shall mean these Standard Terms and Conditions that govern the relationship between the Microelite and the Customer.
- 1.2. **Customer:** shall mean the person or organization using the Services and to which the Services are provided.
- 1.3. **Professional Services:** means the services related to the delivery of the agreement including consulting, advisory, training and project management.
- 1.4. **Services:** means Software and/or Professional Services and/or Managed Services or any combination of these.
- 1.5. **Customer's Data:** means the information provided by the Customer to Microelite to provide the Services as well as the data accumulated through the operation of the Services.
- 1.6. **Customer Account:** means the operating environment through which the Customer effects the system or application provided through the Services.
- 1.7. **Managed Services:** means the services designed to help the Customer manage, monitor and maintain its technology environment on an ongoing basis.
- 1.8. **Software:** means subscription-based software, which is usually based in the cloud.
- 1.9. **Vendor Partner:** means the company owning or providing the Software, other than Microelite.
- 1.10. **Users:** means those authorized persons appointed by the Customer to use the Customer Account.

## 2. THE SERVICES.

### 2.1. Scope of the Services:

Subject to Customer requirements, the Services are comprised of all or some of the following progressions:

- Cloud Digital Discovery Services. An assignment commissioned by the Customer detailing the Customer's operating environment to determine the most effective cloud deployment strategy for the business.
- Professional Services. Services related to the delivery of the agreement including consulting, advising, training and project management.
- Consulting Services.

## 3. CUSTOMER OBLIGATIONS.

- 3.1. Provision of facilities, information, etc. by the Customer. During the term of this Agreement, the Customer shall, and shall ensure that its staff and agents:
  - Co-operate with and assist Microelite, as Microelite reasonably require;
  - Provide all information and documentation that Microelite reasonably requires, and;
  - Make available to Microelite such facilities as Microelite reasonably requires.
- 3.2. Providing Information. The Services or any portion thereof, are dependent on information supplied by the Customer. Microelite shall be entitled to assume that all the data and information provided by the Customer is accurate and complete. Microelite will not be liable to the Customer or to any third party for any damages suffered as a result of the Customer providing any information that is incorrect or incomplete or where the Customer fails to disclose any relevant information to Microelite; and the Customer indemnifies Microelite against any claims or expenses relating thereto.

#### **4. CUSTOMER DATA.**

- 4.1. Security. Microelite will use industry standard efforts to maintain and protect the confidentiality of the Customer Data it receives. Despite these efforts, the Customer acknowledges that Microelite cannot guarantee unauthorized access to this information and it is therefore provided at the Customer's own risk. Microelite, however, will use strict procedures and security features to try to prevent unauthorized access as far as possible.
- 4.2. Ownership. The Customer is the owner of all Customer Data. Upon termination of the Services the Customer may reclaim any data accumulated through the Services within 5 days of such termination or such other period of time mutually agreed by the parties. Microelite will clear all data from their systems after this time period.
- 4.3. Use of Data. Unless mutually agreed to by the Parties, the Customer Data shall not be used by Microelite for any other reason other than the provision of the Services.

#### **5. INTELLECTUAL PROPERTY RIGHTS.**

- 5.1. Customer Data. The Customer retains all right, title and interest in and to the Customer Data. The Customer will be solely responsible for providing and obtaining the rights to provide all Customer Data required for the proper operation of the Services.

#### **6. FEES AND PAYMENT TERMS.**

- 6.1. Microelite's invoices are due for payment within 30 days from date of invoice. Payments are collected by bank transfer and/or payment by cheque.
- 6.2. The Customer will be charged in addition for ad-hoc Services it requests. These Services will be charged at the prevailing hourly rate of the applicable Microelite consultant and will be notified to the Customer before such costs are incurred.
- 6.3. In addition to the rights afforded to Microelite in clause 11.2.3 and 11.3.4 below, if an invoice remains unpaid for more than 30 days, Microelite, at its discretion, may decline to act any further and suspend the Services provided.
- 6.4. Microelite may charge interest on amounts which are overdue for more than one month. Interest is calculated at an annual rate of 12% APR.
- 6.5. All invoices are payable in the currency reflected on the invoice.
- 6.6. All quotations or estimates which are provided by Microelite exclude applicable taxes, which will be added to its charges where applicable.

#### **7. NON-EXCLUSIVITY.**

- 7.1. The Customer acknowledges that Microelite provides a variety of other services to a large and diverse range of customers. The provision of the Services to the Customer will not prevent Microelite from providing the same or similar services to other parties, some of whom could be competitors of the Customer or who may be in conflict with the Customer.
- 7.2. The Customer also acknowledges that Microelite may already have provided the same or similar services to other parties.

#### **8. CONFIDENTIALITY.**

Subject to applicable law or regulation, the parties shall maintain the confidentiality of any Confidential Information and shall not, without the prior written consent of the Disclosing Party, disclose such confidential information to any third party. Confidential Information means any information that is designated as "Confidential" or that the Receiving Party should reasonably believe to be confidential given the circumstances. Confidential information excludes any information that: (i) is known by the Receiving Party prior to disclosure; (ii) becomes publicly available through no fault of the Receiving Party; (iii) is disclosed to the Receiving Party by a third party with the legal right to make such disclosure; or (iv) is independently developed by Receiving Party without use or reference to the Discloser's Confidential Information.

#### **9. LIABILITY AND INDEMNITY**

- 9.1. Applicable Insurance Cover. Microelite warrant that for the duration of this Agreement appropriate Professional Indemnity and Public Liability Insurance cover will be maintained by Microelite.
- 9.2. Liability. To the extent that either of the Parties has any liability in contract, tort (including negligence), or otherwise under or in connection with this Agreement, including any liability for breach of warranty, their liability shall be limited in accordance with the following provisions:
- The aggregate liability of each Party shall be limited to the greater of (i) a sum equal to the total Fees paid to Microelite by the Customer under this Agreement; or (ii) €325,000;
  - In no circumstances shall either Party be liable for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the other Party or its Affiliates that is (i) of indirect, special or consequential nature; or (ii) any loss of profits, revenue, business opportunity or goodwill.
  - Nothing in this Agreement excludes or limits any person's liability to the extent that it may not be so excluded or limited under applicable law, including any such liability for death or personal injury caused by that person's negligence, or liability for fraud or fraudulent misrepresentation.
- 9.3. Indemnity. The Customer shall indemnify Microelite against all third party Claims which may be asserted against or suffered by Microelite and which relate to:
- The use of any results, materials or other items generated or supplied in the course of the Services;
  - The manufacture, distribution, sale, supply or use of any products or services which incorporate any delivered items under this Agreement,

by or on behalf of the Customer or its affiliates or subsequently by any third party, including claims based on product liability laws.

## **10. WARRANTIES.**

- 10.1.No Implied Warranties. Each of the Parties acknowledges that, in entering into this Agreement it does not do so in reliance on any representation, warranty or other provision except as expressly provided in the Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
- 10.2.Performance of the Services. Microelite shall use reasonable endeavours to perform the Services and shall use reasonable care and skill in the performance of the Services.
- 10.3.No other Warranties. The Customer acknowledges that this Agreement for the performance of consultancy and the specific results cannot be guaranteed. Microelite expressly does not warrant that any result or objective, whether stated in this Agreement or not, shall be achieved, be achievable or be attained at all by a given completion date or any other date, nor does Microelite give any warranty that the content or use of any results, Intellectual Property, reports, information or other materials provided in connection with this Agreement will not constitute or result in an infringement of third-party rights.

## **11. TERM AND TERMINATION.**

- 11.1.Term. These Terms and Conditions shall govern the Services for the duration applicable to the particular products purchased by the Customer, unless mutually agreed in writing by the Parties or terminated in accordance with this Agreement.
- 11.2.Termination. Microelite may terminate this Agreement:
- 11.2.1. In the event of the Customer being in breach of any of the terms as set out herein, Microelite may, by written notice require the Customer to remedy such breach. If this has not been remedied within 30 calendar days of receipt of such notice, or if the breach is incapable of being remedied, Microelite may terminate the Services.
- 11.2.2. In the event the Customer becomes the subject to any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 11.2.3. Microelite may terminate this Agreement upon thirty (30) days prior written notice to the Customer if the Customer fails to pay the fees for the Services and does not cure such failure within the 30 day notice period. Upon any termination by the Customer pursuant to this section, Microelite shall refund Customer any prepaid fees for the affected Services that were to be provided after the effective date of termination.
- 11.3.Effects of Termination.
- 11.3.1. Upon date of termination, the Customer shall promptly discontinue use and access of the Services.

- 11.3.2. Termination or expiry of the Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.
- 11.3.3. Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.
- 11.3.4. Termination for any reason shall not relieve the Customer of its duty to pay any fees accrued or due and payable to Microelite including interest prior to the effective date of termination and termination for any reason other than for uncured material breach by Microelite shall not relieve the Customer of the obligation to pay all future amounts due.

## **12. DISPUTE RESOLUTION.**

- 12.1. In the event of any dispute, controversy or claim as to the Parties respective rights and obligations or as to any matter arising from or that in any way is related to the Services, including any question as to its existence, validity or termination, both Parties shall attempt in good faith to resolve the dispute between themselves.
- 12.2. If the Parties are unable to resolve the dispute by mutual agreement within 30 days after the dispute is notified in writing by either Party to the other, or within such further period as mutually agreed to, then the dispute shall be submitted to and finally resolved by the judgement of a competent court.
- 12.3. Unless otherwise agreed by both of Parties in writing, all litigious matters shall be held in the jurisdiction of the Laws and Courts of Ireland. To the maximum extent permitted by law, the Customer hereby consents to this jurisdiction and venue of such courts and waives any objections it may have to this.

## **13. GOVERNING LAW.**

These terms of engagement and all disputes arising therefrom shall be determined exclusively in accordance with the Laws and Courts of Ireland.

## **14. GENERAL PROVISIONS.**

- 14.1. These terms are not intended by the Parties to constitute or create a joint venture, partnership or formal business organization of any kind, and the rights and obligations of the Parties shall be only those expressly set forth herein and as are agreed in writing between the Parties. Neither Party shall have authority to bind the other except to the extent authorized herein.
- 14.2. These terms may not be assigned or otherwise transferred by the Customer in whole or in part without the prior written consent of Microelite.
- 14.3. If any provision of these terms and conditions shall be held invalid by a court of competent jurisdiction to be contrary to law, the remaining provisions shall remain in full force and effect.
- 14.4. Force Majeure. Except for the Customer's payment obligations, neither Party shall be liable to the other Party for any delay or non-performance of its obligations under these terms and conditions arising from acts beyond its reasonable control including, without limitations, acts of God(s), acts of war or terrorism, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties or civil unrest. Subject to the Party so delayed promptly notifying the other Party in writing of the reason for the delay and the likely duration of the delay. The performance of the delayed Party's obligations, to the extent affected by the delay, shall be suspended during the period that the cause persists, provided that if performance is not resumed within 30 (thirty) days after that notice the non-delayed Party may by notice in writing terminate the agreement. Termination shall come into effect 7 days after the termination notice is given. Payment obligations for work done under the agreement shall not be affected by force majeure.
- 14.5. Waiver and Cumulative Remedies. No failure or delay by either Party in exercising any right under these terms and conditions shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies a Party may have in terms of the law.

14.6. These governing terms may be modified or amended only by written agreement signed by the Parties, and neither Party may bind the other Party by unilateral submission of additional or different terms and conditions absent written consent to such terms and conditions by the other Party.